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Conservation District  
7

8 BEFORE THE CALIFORNIA  
9 STATE WATER RESOURCES CONTROL BOARD

10 Public Hearings to Determine Whether to Adopt)  
11 Cease and Desist Orders against:

12 Mark and Valla Dunkel, Middle River in San )  
Joaquin County; )

13 Yong Pak and Sun Young (Pak/Young), Duck )  
14 Slough in San Joaquin County; )

15 Rudy Mussi, Toni Mussi and Lory C. Mussi )  
Investment LP (Mussi et al.), )  
16 Middle River in San Joaquin County )  
17 . )

**REQUEST FOR OFFICIAL NOTICE**

18 San Joaquin County and San Joaquin County Flood Control and Water Conservation District  
19 (hereinafter collectively "County") hereby requests that the Hearing Officers in the above referenced  
20 matters before the State Water Resources Control Board ("State Water Board") take official notice  
21 of the attached documents as follows: (1) Attached Exhibit "A" entitled "State Water Resources  
22 Control Board Information Pertaining to Water Rights in California – 1990;" (2) Attached Exhibit  
23 "B" entitled "Frequently Asked Questions;" (3) Attached Exhibit "C" entitled "Assembly Bill No.  
24 2267" as Amended in Senate August 12, 2002; (4) Attached Exhibit "D" entitled "Analysis for AB  
25 2267 Third Reading;" and (5) Attached Exhibit "E" entitled "Bill Number AB 2267 Chaptered."

26 Section 648.2 to title 23 of the California Code of Regulations authorizes the State Water  
27 Board to take official notice of "such facts as may be judicially noticed by the courts of this state."  
28

1 (23 Cal. Code Regs. § 648.2.) California Evidence Code section 452 enables courts to take judicial  
2 notice of the following types of facts:

3 (a) The decisional, constitutional, and statutory law of any  
4 state of the United States and the resolutions and private acts of the  
5 Congress of the United States and of the Legislature of this state.

6 (b) Regulations and legislative enactments issued by or under  
7 the authority of the United States or any public entity in the United  
8 States.

9 (c) Official acts of the legislative, executive, and judicial  
10 department of the United States and of any state of the United  
11 States.

12 (d) Records of (1) any court of this state or (2) any court of  
13 record of the United States or of any state of the United States.

14 (e) Rules of court of (1) any court of this state or (2) any court  
15 of record of the United States or of any state of the United States.

16 (f) The law of an organization of nations and of foreign  
17 nations and public entities in foreign nations.

18 (g) Facts and propositions that are of such common knowledge  
19 within the territorial jurisdiction of the court that they cannot  
20 reasonably be the subject of dispute.

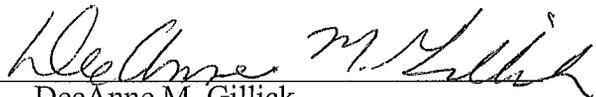
21 (h) Facts and propositions that are not reasonably subject to  
22 dispute and are capable of immediate and accurate determination  
23 by resort to sources of reasonably indisputable accuracy.

24 The County respectfully requests that the Hearing Officers take official notice of Exhibit "A"  
25 and Exhibit "B" as an official record of and reflects an official act of the State Water Board. Both  
26 documents are currently available on the State Water Resources Control Board website at the  
27 following addresses: (1) Exhibit "A" is located at  
28 [http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/docs/app\\_general\\_info.pdf](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/app_general_info.pdf) which  
was last visited on June 30, 2010, and (2) Exhibit "B" is located at  
[http://www.swrcb.ca.gov/waterrights/board\\_info/faqs.shtml](http://www.swrcb.ca.gov/waterrights/board_info/faqs.shtml), which was last visited on June 30,  
2010.

1 The County respectfully requests that the Hearing Officers take official notice of Exhibit  
2 "C," Exhibit "D," and Exhibit "E" as an official act of the Legislature. These documents are  
3 currently available on the Legislative Counsel's website at the following addresses: (1) Exhibit "C"  
4 is located at [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020812_amended_sen.pdf)  
5 [2300/ab\\_2267\\_bill\\_20020812\\_amended\\_sen.pdf](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020812_amended_sen.pdf) which was last visited on August 27, 2010; (2)  
6 Exhibit "D" is located at [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_cfa_20020820_153745_sen_floor.html)  
7 [2300/ab\\_2267\\_cfa\\_20020820\\_153745\\_sen\\_floor.html](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_cfa_20020820_153745_sen_floor.html) which was last visited on August 27, 2010;  
8 and (3) Exhibit "E" is located at: [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020918_chaptered.html)  
9 [2300/ab\\_2267\\_bill\\_20020918\\_chaptered.html](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020918_chaptered.html) which was last visited on August 30, 2010.

10  
11 Dated: August 30, 2010

NEUMILLER & BEARDSLEE  
A PROFESSIONAL CORPORATION

12  
13 By:   
14 DeeAnne M. Gillick  
15 Attorney for  
16 County of San Joaquin and  
17 San Joaquin County Flood Control and  
18 Water Conservation District  
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# Exhibit "A"

## STATE WATER RESOURCES CONTROL BOARD INFORMATION PERTAINING TO WATER RIGHTS IN CALIFORNIA - 1990

### TABLE OF CONTENTS

INTRODUCTION.....	2
GENERAL INFORMATION PERTAINING TO WATER RIGHTS .....	3
APPROPRIATIVE RIGHTS INITIATED PRIOR TO DECEMBER 19, 1914.....	3
APPROPRIATIVE RIGHTS INITIATED SUBSEQUENT TO DECEMBER 19, 1914 .....	4
LOSS OF APPROPRIATIVE RIGHTS .....	4
RIPARIAN RIGHTS .....	4
PRESCRIPTION .....	6
VESTED APPROPRIATIVE AND RIPARIAN RIGHTS NOT AFFECTED BY FILING AN APPLICATION.....	7
DISPUTES OVER THE USE OF WATER.....	7
PUBLIC TRUST .....	8
DETERMINATION OF EXISTING RIGHTS .....	9
APPROPRIATION OF UNDERGROUND WATER.....	10
SPRING WATER.....	11
NO ASSISTANCE RENDERED IN SECURING RIGHT OF ACCESS TO POINT OF DIVERSION OR RIGHT-OF-WAY.....	11
PATENTS AND HOMESTEADS .....	11
SUPERVISION OVER DAMS.....	11
PROVISIONS OF FISH AND GAME CODE .....	12
STATEMENTS OF WATER DIVERSIONS AND USE.....	12
STOCKPOND RIGHTS .....	13
GENERAL INFORMATION PERTAINING TO APPLICATIONS FOR PERMITS TO APPROPRIATE UNAPPROPRIATED WATER .....	13
WHO SHOULD FILE AN APPLICATION.....	14
WHO SHOULD <u>NOT</u> FILE AN APPLICATION.....	14
PURPOSE OF FILING.....	14
WHEN TO FILE .....	15
UNAPPROPRIATED WATER AND RESPONSIBILITIES OF PERMITTEES.....	15
OUTLINE OF ESSENTIAL STEPS.....	16
PREPARATION OF APPLICATIONS .....	17
CHANGES IN OWNERSHIP .....	17
APPENDIX - TABLE OF EQUIVALENTS.....	17

## INTRODUCTION

Additional information concerning procedures for appropriating water is available in SWRCB's publications entitled, "How to File an Application/Registration to Appropriate Water in California" and "A Guide to California Water Right Appropriations". These free publications may be picked up from the State Water Resources Control Board, Division of Water Rights, 901 P Street, Third Floor, Sacramento, California 95814. If you wish to write for either one or both of these publications, address your request to the Division of Water Rights, Post Office Box 2000, Sacramento, CA 95812-2000 or telephone (916) 657-2170 and request they be mailed to you.

The California Code of Regulations, Title 23. Waters, contains the regulations for the administration of water rights and water quality activities of the State Water Resources Control Board. A complete copy of these regulations may be obtained at the current cost of \$15.90 from the California Department of General Services, Publications section, Post Office Box 1015, North Highlands, CA 95660. A renewal service, which provides new and amended regulations also, may be obtained from the California Department of General Services at the current cost of \$20.00 per year.

Booklets containing excerpts from the California Code of Regulations and the California Water Code pertaining to water rights may be obtained free of charge from the Division of Water Rights as described in the first paragraph. These booklets, however, contain information only as of the date the booklets were published.

## **GENERAL INFORMATION PERTAINING TO WATER RIGHTS**

The following general information pertaining to water rights is offered for the guidance and assistance of those who may be interested. While believed to be correct, the information is by no means complete. For additional information, see the California Water Code and case law.

Those to whom this general information is of particular importance or who propose to apply it to specific cases should seek the advice of an attorney or engineer, depending on the kind of information needed.

## **APPROPRIATIVE RIGHTS INITIATED PRIOR TO DECEMBER 19, 1914**

Prior to 1872, appropriative water rights could be acquired by simply taking and beneficially using water. The priority of the right was the first substantial act leading toward putting the water to beneficial use provided the appropriation was completed with reasonable diligence; otherwise, priority did not attach until beneficial use of the water commenced.

In 1872, sections 1410 through 1422 of the California Civil Code were enacted. These sections established a permissive procedure for perfecting an appropriation of water. Provisions were made for establishing a priority of right by posting a notice of appropriation at the proposed point of diversion and recording a copy of the notice with the respective County Recorder. If these procedures were not followed, the pre-1914 appropriative right did not attach until water was beneficially used.

Once acquired, an appropriative right can be maintained only by continuous beneficial use of water. Regardless of the amount claimed in the original notice of appropriation or at the time diversion and use first began, the amount which now can be rightfully claimed under an appropriative right initiated prior to December 19, 1914 therefore has, in general, become fixed by actual beneficial use as to both amount and season of diversion. The conditions under which an appropriative right may be forfeited in whole or in part are set forth under the heading "Loss of Appropriative Rights".

Successful assertion of an appropriative right which was initiated prior to December 19, 1914, where the validity of the right is disputed, requires evidence of both the original appropriation and the subsequent maintenance of the right by continuous and diligent application of water to beneficial use (see California Water Code section 1202(b)). Frequently such evidence consists of oral testimony of persons who have actual knowledge of the relevant facts. As the years pass, such testimony, dependent upon the recollection of individuals, may become difficult or impossible to secure. At least a partial remedy for this situation may be found in the procedure for perpetuation of testimony set forth in section 2017 of the California Code of Civil Procedure.

A record of water use under "pre-1914 Appropriative Rights" should be established by filing a Statement of Water Diversion and Use with the SWRCB.

## APPROPRIATIVE RIGHTS INITIATED SUBSEQUENT TO DECEMBER 19, 1914

The two methods of appropriation existing prior to December 19, 1914, the effective date of the California Water Commission Act, no longer are available for appropriating water from surface streams, other surface bodies of water, or from subterranean streams flowing in known and definite channels. An appropriation of such water now requires compliance with the provisions of Division 2, Part 2 of the California Water Code.

The steps which now must be taken in order to initiate and acquire an appropriative water right are described under the heading "General Information Pertaining to Applications for Permits to Appropriate Unappropriated Water".

## LOSS OF APPROPRIATIVE RIGHTS

By Abandonment - To constitute abandonment of an appropriative right, there must be concurrence of act and intent, the relinquishment of possession, and the intent not to resume it for a beneficial use, so that abandonment is always voluntary, and a question of fact (1 Wiel, 3d ed., 604, 605).

By Nonuse - Nonuse is distinguished from abandonment. Nonuse means failure to put water to beneficial use for a period of years. The courts have held that pre-1914 rights can be lost as the result of five years' nonuse (Smith v. Hawkins 42 P. 454).

California Water Code section 1241 provides for loss of appropriative rights after five years' nonuse. This section applies only to an appropriative right acquired after December 19, 1914.

## RIPARIAN RIGHTS

No California statute defines riparian rights, but a modification of the common law doctrine of riparian rights has been established in this State by decisions of the courts and confirmed by the provisions of section 3, Article XIV of the California Constitution (see California Water Code sections 100, 101). Lands within the watershed of a natural watercourse, which are traversed thereby or border thereon, with the exceptions and limitations hereinafter, indicated, may be riparian. Each owner thereof may have a right, which is correlative with the right of each other riparian owner to share in the reasonable beneficial use of the natural flow of water, which passes his land. No permit is required for such use. The State Water Resources Control Board's (SWRCB) policy is to consider natural flow as not including return flows derived from use of ground water, water seasonally stored and later released, or water diverted from another watershed. In administering the California Water Code, the SWRCB is governed by the following considerations relative to the doctrine of riparian rights as applied to this State:

1. The riparian right exists by reason of ownership of land abutting upon a stream or body of water and affords no basis of right to use water upon nonriparian land.  
(Rancho Santa Margarita v. Vail, 11 Cal. 2d 501, 81 P. 2d 533)

2. In order to divert water under claim of riparian right, the diverter must use the water on riparian land but need not own the land at the point of diversion. That is, such diverter may divert at a point upstream from his land so long as permission is granted to use that point of diversion, and intervening land owners between the point of diversion and the place of use are not adversely affected by such practices. (*Turner v. James Canal Co.*, 155 Cal. 82, 99 P. 520 (1909))
3. A parcel of land loses its riparian right when severed from land bordering the stream by conveyance unless the right is reserved for the severed parcel. The riparian right also may be destroyed when purportedly transferred apart from the land by grant, contract, or condemnation. Once lost, it cannot be restored.
4. As between riparian owners, priority of use establishes no priority of right; i.e., one cannot claim superior right merely because water was used first. (*Pabst v. Finmand*, 190 Cal. 124, 211 P. 11 (1922))
5. The riparian right is neither created by use nor lost by nonuse.
6. If there is insufficient water for the reasonable beneficial requirements of all riparian owners, they must share the available supply. Apportionment is governed by various factors, including each owner's reasonable requirements and uses. In the absence of mutual agreement, recourse to judicial determination may be necessary.
7. As between riparian owners, one of them may take the whole supply if necessary for strictly domestic use; that is, for so-called "natural uses ... arising out of the necessities of life on the riparian land, such as household use, drinking, watering domestic animals." (1 *Wiel*, 3d ed., *Water Rights in the Western States*, page 795; *Deetz v. Carter*, 232 Cal. App. 2d 851; but see *Prather v. Hoberg*, 24 Cal. 2d 549, 150 P. 2d 405, re an equitable apportionment where the use is commercialized as for resort purposes and therefore is not strictly domestic.)
8. The riparian owner is subject to the doctrine of reasonable use, which limits all rights to the use of water to, that quantity reasonably required for beneficial use and prohibits waste or unreasonable use or unreasonable methods of use or diversion. (Sec. 3, Art. XIV, Const. of Cal.; *Peabody v. City of Vallejo*, 2 Cal. 2d 351, 40 Pac. 2d 486; *Tulare Irr. Dist. et al v. Lindsay Strathmore Irr. Dist.*, 3 Cal. 2d 489, 45 Pac. 2d 972; *Rancho Santa Marqarita v. Vail*, 11 Cal. 2d 501, 81 P. 2d 533)
9. A riparian right may be impaired or lost through prescription. Refer to the following section, "PRESCRIPTION".
10. The riparian right attaching to a particular parcel of land is subject to appropriative rights established by diversion upon vacant public domain before the first valid steps were taken to acquire said parcel of land from the United States, whether diversion was made at points upstream or downstream.
11. The riparian right cannot be transferred for use upon another parcel of land.

12. The riparian right does not apply to foreign water; i.e., water originating in a different watershed cannot be used under claim of riparian right. (*E. Clemens Horst Co. v. New Blue Point Mining Co.*, 177 Cal. 631, 171 P. 417; *Crane v. Stevinson*, 5 Cal. 2d 387, 54 P. 2d 1100; *Rancho Santa Margarita v. Vail*, 11 Cal. 2d 501, 81 P. 2d 533)
13. Water cannot be stored and withheld for a deferred use (other than regulatory storage) under claim of riparian right. (*Seneca Consol. Gold Mines Co. v. Great Western Power Co.*, 209 cal. 206, 287 pac. 93; *Colorado Power Co. v. Pac. Gas and Electric Co.*, 218 cal. 559, 24 p. 2d 495; *Moore v. California Oregon Power Co.*, 22 cal. 2d 725, 140 p. 2d 798)

A record of water use under riparian claim should be established by filing a Statement of Water Diversion and Use with the SWRCB.

## PRESCRIPTION

A right secured by appropriation does not depend upon use for any given length of time. It is complete immediately upon full beneficial use being made of water pursuant to a permit. The right, however, is subordinate and subject to all prior vested rights, whether appropriative or riparian. This limitation may be removed under certain circumstances by continuous use adverse to prior rights for five years and failure of the owners of the prior rights to file legal action to protect themselves during that time. Their cause of action then becomes barred by the statute of limitations. The right of the subsequent appropriator thereafter no longer is subject to the prior vested rights. This result is called a prescriptive right to the use of water.

In order for an appropriative or riparian claim to ripen into a prescriptive right as against the owner of a riparian or a prior appropriative right, the use must be continuous and uninterrupted for a period of five years. During all of such time, the use must be open and notorious, exclusive, under claim of right, hostile and adverse to the title of the prior owner, and an invasion of the prior owner's right. The prior right owner must have had an opportunity to prevent the adverse use by legal action, and such taxes as are assessed must be paid. Absence of any of these conditions is fatal to the acquisition of a prescriptive water right.

Water users ordinarily have no concern with the use of water by others after it has passed their land or point of diversion. The upstream users thus have no legal right to prevent downstream use. A well-established rule is that a prescriptive water right ordinarily cannot be acquired against an upstream user.

A right cannot be acquired by prescription to use a greater quantity of water than reasonably is necessary for the beneficial purpose served, regardless of the amount actually used, in accordance with the constitutional amendment of 1928 (art. XIV, sec. 3).

Since enactment of the California Water Commission Act on December 19, 1914, a right to appropriate or use water (other than as a riparian or overlying owner, or appropriator of percolating ground water, or stockpounds that comply with article 2.5, commencing with section 1226 of chapter 1 of part 2 of division 2 of the California Water Code), cannot have been

secured without first obtaining a permit from the State (see California Water Code section 1225 and Crane v. Stevinson, 5 cal. 2d 387, 54 p. 2d 1100). Although one who now uses water without a permit for a sufficient period of time may, under certain circumstances foreclose objection by those who have been adversely affected, such user thereby does not acquire a right to prevent diversions by others which deplete the supply of water available. California courts have not been called upon to determine this precise question. In view of the uncertainty in this respect and because a prescriptive right can be finally determined only by a court of competent jurisdiction, the policy of the SWRCB is to disregard a claim to water subject to the permit procedure which is based only upon use initiated subsequent to 1914 unless such use is supported by a permit.

In PecDie v. Shirokow (1980) 26 cal. 3d 301, the California Supreme Court addressed the question of whether a person who does not hold a water right permit or license may establish a prescriptive water right to divert and use water. The Court held that the water appropriation procedure established by statute constitutes the exclusive method of acquiring a right to appropriate or use water, which is subject to appropriation. Since Shirokow was using water and held no permit or license authorizing an appropriation of water, the Court concluded that such use of water was improper. In addition, the Court held that the State's governmental interest in regulating the use of public water is a public right, which cannot be lost through prescription.

#### **VESTED APPROPRIATIVE AND RIPARIAN RIGHTS NOT AFFECTED BY FILING AN APPLICATION**

An existing valid riparian or appropriative right will be neither strengthened nor impaired by a permit to appropriate water issued to the owner of such right (see Barr v. Branstetter, 42 cal. app. 725, 184 p. 409). An application to appropriate water may be filed by such owner, however, in the following instances: (1) to initiate a right to additional unused water where water is available for further appropriation in excess of that covered by the existing right; and (2) to establish a new right to water already in use by applicant where the validity of the existing right has not been adjudicated or is in doubt. In either event, the priority of the right acquired by beneficial use under the permit will be the date of filing the application--the priority will not relate back to the time of the first use under a former claim.

The California Code of Regulations, title 23~ section 731, requires an applicant for a permit to list all claims to existing rights for the use of all or part of the water sought by the application. A permit, if issued, will limit the water to be appropriated so that existing rights, combined with the permit will not yield a right to use an unreasonable quantity of water. Subsections (c), (d), and (e) of section 731 contain penalties for anyone who transfers an existing right before, or does not claim an existing right until, a permit or license is issued. This provision is in recognition of the fact that a permit should be issued only for unappropriated water, and that water which is being used pursuant to an existing right is not unappropriated, whether the right is being exercised by the applicant or by another person.

#### **DISPUTES OVER THE USE OF WATER**

The right to use water is a property right and may be protected against infringement in the same manner as any other property right; i.e., by appropriate court action. The SWRCB does not have

the authority to determine the validity of vested rights other than appropriative rights initiated December 19, 1914 or later. The SWRCB, however, may assist the courts in such determination as described in the following paragraphs entitled, "Determination of Existing Rights". The SWRCB will investigate and take appropriate action on a written complaint received alleging (1) a violation of the conditions of a permit or license issued by the SWRCB, (2) waste or unreasonable use of water, (3) illegal diversion or use, or (4) unreasonable effects on public trust or public interest uses of the water. (See title 23, chapter 3, subchapter 2, articles 18 and 22 of the California Code of Regulations; California Water Code section 275 et. seq.; and California Water Code section 1050 et. seq.)

When a complaint of an illegal diversion or use is filed, the SWRCB will take action under section 1052 of the California Water Code. Subsection (a) provides that "The diversion or use of water subject to this division other than as authorized in this division is a trespass." Subsection (d) provides, in part, that "Any person or entity committing a trespass as defined in this section may be liable for a sum not to exceed five hundred dollars (\$500) for each day in which the trespass occurs. The Attorney General, upon request of the SWRCB, shall petition the superior court to impose, assess, and recover any sums pursuant to this subdivision. " SWRCB policy is to initiate court action only in a clear instance of unlawful use of water. Where there is a bona fide dispute as to the facts, or where circumstances indicate an adjudication is required, action by the SWRCB under section 1052 generally is not considered appropriate.

## **PUBLIC TRUST**

With its roots in Roman law, the doctrine of public trust holds that certain resources are the property of all. In its modern form, the public trust doctrine holds that a state, as sovereign, takes title to tidelands and the beds of nontidal navigable waters at the time the state is admitted to the Union. Holding these lands and the waters above them in trust, the state's duty is to exercise continued supervision over the trust for the benefit of the people. Entities acquiring rights, for example in navigable streams, lakes, marshlands and tidelands, generally hold those rights subject to the trust and can assert no vested right in a manner harmful to the public trust. In other words, rights acquired in public trust resources cannot be placed entirely beyond the direction and control of the state.

The scope of the public trust doctrine continues to evolve as popular perceptions of the values and uses of waterways change. The public trust was traditionally defined to protect navigation, commerce, and fisheries; but recently it has been held to include the right to fish, hunt, bathe, swim, boat, recreate, navigate, and use the bottom of navigable waters for anchoring, standing, or other purposes.

In this century, the California courts have interpreted the legal term "navigable" very broadly to include recreational rafting and kayaking which can take place in very shallow water. Within the last decade, the California Supreme Court has recognized that uses of public trust resources include the preservation of the land, especially tideland, in its natural state to serve as ecological units for scientific study, as open space, and as habitat for birds and aquatic life. In administering the public trust, the courts have allowed the state to favor one use over another.

In its presently-developed form, the public trust doctrine requires the courts and the SWRCB to perform a balancing test to weigh the potential value to society against the impact on trust resources of a proposed or existing diversion. The action which will feasibly protect public trust values must be implemented.

On February 17, 1983, the California Supreme Court filed its decision in National Audubon Society v. Superior Court of Alpine County, 33 Cal. 3d 419, 189 Cal. Rptr. 346 (1983). The Court merged the public trust doctrine with the California water rights system. The Court also held that all uses of water, including public trust uses, must conform to the standard of reasonable use. The Court further held that the SWRCB has a duty to consider public trust values before it approves water right applications. Finally, the Court held that the SWRCB has a continuing duty to supervise the taking and use of appropriated water.

#### **DETERMINATION OF EXISTING RIGHTS**

Court Reference. When a suit is brought by private parties in any court of competent jurisdiction in this State for determination of water rights, sections 2000 and 2001 of the California Water Code provide that the case, at the discretion of the court, may be referred to the SWRCB, as referee, for investigation. All rights of whatever character may be included under this procedure.

Statutory Adjudication. section 2525 of the California Water Code provides for the initiation of proceedings for the determination of all rights to the water of any stream, lake, or other body of water except percolating underground water. A petition signed by one or more claimants of the right to the use of water from the source involved must be filed with the SWRCB. The procedures outlined in sections 2500 through 2900 of the California Water Code must be followed.

If a determination is undertaken under either the court reference or statutory procedure, the SWRCB thoroughly investigates the stream system and water rights involved. In general, such investigation will include measurements of the water supply and of all diversions from the stream system, a survey of all diversion systems and areas irrigated therefrom, and a determination of the duty of water for irrigation and other uses.

After due notice to all parties, the SWRCB prepares findings which are submitted to the court. The court itself hears those who may be dissatisfied with these findings and enters a decree establishing the various rights involved.

The court also sets forth the relative priority, amount, purpose of use, season of diversion, point of diversion, and place of use of each right. Appeals from such decree may be taken in the same manner and with the same effect as in other civil cases.

By virtue of the above procedures, the SWRCB may supplement with effective and expeditious methods the work of the courts in determining water rights. These procedures lead to a complete and final determination of all the water rights involved, and, should necessity arise, a watermaster may be appointed to administer the stream and insure distribution of the water as decreed.

A copy of the SWRCB's publication, "Regulations and Information Pertaining to Determination of Rights to the Use of Water in California" may be obtained on request.

## **APPROPRIATION OF UNDERGROUND WATER**

The jurisdiction of the SWRCB to issue permits and licenses for appropriation of underground water is limited by section 1200 of the California Water Code to "subterranean streams flowing through known and definite channels".

If use of underground water on nonoverlying land is proposed and the source of the water is a subterranean stream flowing in a known and definite channel, an application pursuant to the California Water Code is required. A Statement of Water Diversion and Use should be filed for use of water from a subterranean stream on overlying land (see Statements of Water Diversion and Use section of this document).

Underground water not flowing in a subterranean stream, such as water percolating through a ground water basin, is not subject to the SWRCB's jurisdiction. Applications to appropriate such water, regardless of use, should not be submitted. Owners of lands overlying a ground water basin or other common source of supply have the first right to withdraw water for reasonable beneficial use on their overlying lands, and the right of each owner is equal and correlative to the right of all other owners similarly situated. In case of insufficient water to supply fully the requirements of all, the available supply must be equitably apportioned. In these respects, overlying rights are closely similar to riparian rights pertaining to surface bodies of water.

Subject to future requirements on overlying lands, surplus water which may be withdrawn without creating an overdraft on the ground water supply may be appropriated for use on nonoverlying lands. Such appropriation is accomplished simply by use--no permit is required. An application filed to appropriate underground water subsequently may be rejected if the water it seeks to appropriate is not flowing through a known and definite channel.

Division 2 of Part 5 of the California Water Code, commencing with section 4999, requires every person who extracts ground water within the counties of Riverside, San Bernardino, Los Angeles, and Ventura in excess of 25 acre-feet per annum (with certain exceptions) to file a notice with the SWRCB on forms provided by the SWRCB. Copies of the SWRCB's rules, together with further information concerning this requirement, may be obtained on request.

Every person who intends to dig, bore, drill, deepen, or reperform a water well must file a notice of intent with the California Department of Water Resources. The notice must be filed on forms furnished by the Department and must contain information required by the Department. A report of completion also must be filed with the Department on forms furnished by the Department and containing information required by it (California Water Code sections 13750, 13751). These requirements also apply to any person who converts, for use as a water well, any oil or gas well originally constructed under the jurisdiction of the California Department of Conservation pursuant to the provisions of Article 4, Chapter 1, Division 3 of the California Public Resources Code. Further information or forms may be obtained from the California Department of Water Resources, Division of Planning, Post Office Box 942836, Sacramento, CA 942360001.

## **SPRING WATER**

Courts have held that water in springs and standing pools which have no natural outlet belong to the owner of the land on which these sources are located (see State v. Hansen, 189 Cal. App. 2d 604). Such water may be used without obtaining a permit.

If a spring contributes to a flowing stream, either by surface or subterranean means, the doctrine of correlative rights applies between the owner of the spring and those riparian to the stream. The right of the owner of a spring likewise is correlative with the right of those using ground water which supplies the spring. A Statement of Water Diversion and Use should be filed for such use.

## **NO ASSISTANCE RENDERED IN SECURING RIGHT OF ACCESS TO POINT OF DIVERSION OR RIGHT-OF-WAY**

The SWRCB will not assist in the matter of securing right of access to the stream or other source of supply, or in securing rights-of-way for ditches and conduit lines. In accepting an application or in issuing a permit, the SWRCB does not affirm that the applicant or permittee has right of access to the source of supply or necessary rights-of-way. The SWRCB will accept an application for filing before right of access has been secured. The SWRCB, however, may refuse to approve the application when the applicant apparently will be unable to secure right of access (see Title 23 of the California Code of Regulations, sections 775, 776, and 777).

## **PATENTS AND HOMESTEADS**

All patents granted or homesteads allowed by the U. S. Bureau of Land Management shall be subject to any vested and accrued water rights as may have been recognized and acknowledged by the local customs, laws, and decisions of courts (30 USCA 278, 287).

## **SUPERVISION OVER DAMS**

Division 3 of the California Water Code, commencing with section 6000 et seq., requires that construction or enlargement of any dam over a certain height and storage capacity shall not be commenced without written approval of the plans and specifications by the California Department of Water Resources. The California Department of Water Resources ordinarily will require a statement that the SWRCB is satisfied as to the adequacy of the water right.

Dams subject to supervision are as follows:

1. Dams which are 25 feet or more in height from downstream toe to spillway level provided they store more than 15 acrefeet of water.
2. Dams which store 50 acre-feet or more of water provided they are more than 6 feet in height from downstream toe to spillway crest.

Further information concerning construction or enlargement of any dam may be obtained from the California Department of Water Resources, Division of Safety of Dams, Post Office Box 942836, Sacramento, CA 94236-0001.

Further information concerning construction or enlargement of any dam may be obtained from the California Department of Water Resources, Division of Safety of Dams, Post Office Box 942836, Sacramento, CA 94236-0001.

#### **PROVISIONS OF FISH AND GAME CODE**

The owner of a dam is required to allow sufficient water to pass downstream at all times in order to keep fish below in good condition (section 5937, Article 2, Chapter 3, Part 1, Division 6 of the California Fish and Game Code). For purposes of Article 2, "dam" includes all artificial obstructions. Further information relating to the requirements of the California Department of Fish and Game may be obtained from local game wardens or from the California Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814.

#### **STATEMENTS OF WATER DIVERSIONS AND USE**

All diverters of surface water, with certain exceptions, are required to file a Statement of Water Diversion and Use with the SWRCB (see Division 2 of Part 5.1 of the California Water Code). The requirement applies to water diverted under claim of riparian right and to appropriations initiated prior to December 19, 1914, the effective date of the California Water Commission Act. Forms may be obtained from the Division of Water Rights, Post Office Box 2000, Sacramento, CA 95812-2000. One purpose of filing Statements of Water Diversion and Use is to make a public record of all surface diversions not already on file with or known to the SWRCB. The following types of diversions are excluded from the requirement:

1. From a spring which does not flow off the property on which it is located.
2. Covered by an application, permit, or license to appropriate water on file with the SWRCB.
3. Included in a notice filed under the recordation of ground water extractions law (Division 2 of Part 5 of the California Water Code) in the counties of Riverside, San Bernardino, Los Angeles, and Ventura.
4. Regulated by a watermaster appointed by the California Department of Water Resources.
5. Reported by the California Department of Water Resources in its hydrologic data bulletins.
6. Included in the consumptive use data for the delta lowlands published by the California Department of Water Resources in its hydrologic data bulletins.
7. Included in annual reports filed with a court or the SWRCB by a watermaster appointed by a court or pursuant to statute to administer a final judgement determining rights to water, which

reports identify the persons who have diverted water and give the general place of use and the quantity of water which has been diverted from each source.

8. For use in compliance with the provisions of Article 2.5 (commencing with section 1226) of Chapter 1 of Part 2 of Division 2 of the California Water Code concerning stockponds.

A statement should be completed for diversions during a calendar year and should be filed before July 1 of the following year. Supplemental statements are required at three-year intervals thereafter.

## **STOCKPOND RIGHTS**

**The stockpond program was 'sunset' by the Legislature as of December 31, 1997.**

Under certain conditions, the owners of stockponds having a capacity of not more than 10 acre-feet as of January 1, 1975 which were constructed prior to 1969 have a valid water right. Prior to January 1, 1975, a right for seasonal storage of water in a reservoir of any kind could be obtained only by appropriating the water through the application-permit-license procedure, and this is still the only way to obtain a water right for stockponds constructed after January 1, 1969 or which are larger than 10 acre-feet. Claims of rights for such stockponds and applications for this certification should be filed with the SWRCB. The priority of the right will be subject to other stockpond water rights on which certificates have been issued by the SWRCB with an earlier priority, to appropriative water rights with an earlier priority, and to riparian rights. The priority of the right will be the date the claim is filed. Ponds which were the subject of water right litigation between private parties prior to January 1, 1974 are excluded.

Before a certificate of validity of the stockpond right is issued, the SWRCB will verify the location of the pond, its capacity, and that it is used primarily for stockwatering purposes. In some cases, a field investigation is necessary. The original certificate will be filed with the SWRCB and will be available for public inspection. A copy of the certificate will be mailed to the owner of the stockpond. So that the records may be reasonably current, a statement of continued existence of the pond and its use for stockwatering will be solicited from the owner as determined by the SWRCB (currently every 10 years). If the water has ceased to be used primarily for stockwatering, the SWRCB may revoke the certificate after notice and an opportunity for hearing.

A reasonably accurate estimate of the capacity of a stockpond of 10 acre-feet or less can be computed by use of the "onethird rule" as follows:

Stockpond capacity in acre-feet =  $1/3$  height of dam to spillway crest, in feet, multiplied by the surface area of pond when full, in acres.

## **GENERAL INFORMATION PERTAINING TO APPLICATIONS FOR PERMITS TO APPROPRIATE UNAPPROPRIATED WATER**

The following information describes the statutory procedure for acquiring appropriative water rights. It is intended as a guide for persons who propose to take water from a surface or

underground source or who are uncertain as to the validity of their present taking. Those who are not already familiar with the procedure should carefully read this information.

### **WHO SHOULD FILE AN APPLICATION**

Since December 19, 1914, the appropriation of water in surface streams and other surface bodies of water and in subterranean streams flowing through known and definite channels has been governed by the California Water Commission Act (Statutes 1913, Chapter 586) now contained in the provisions of the California Water Code.

New legislation, effective January 1, 1989, modified the California Water Code to provide two methods of appropriating water through the California State Water Resources Control SWRCB. Provisions were added to the law for registering small domestic use appropriations, rather than applying for a water right permit under the existing process.

Small domestic use includes normal domestic use, plus incidental stockwatering of domestic animals and incidental irrigation of one-half acre or less of lawn, garden, and pasture at any single establishment, not exceeding 4,500 gallons per day by direct diversion or 10 acre-feet per annum by storage, the latter including incidental aesthetic, recreational, or fish and wildlife enhancement purposes. Refer to the SWRCB's booklet, "How to File an Application/ Registration to Appropriate Water in California" for specific information on filing for a permit or for registering a small domestic use appropriation.

Anyone who intends to divert water from surface waters or subterranean streams flowing in known and definite channels, either (1) directly to use on land which is not riparian to the source, (2) to storage in a reservoir for later use on either riparian or nonriparian land, or (3) for direct use of water which would not naturally be in the source, should apply with the SWRCB for a permit or small domestic use registration as the first step toward securing an appropriative water right. Persons diverting water under riparian or pre-1914 claims of right, with certain exceptions, are required to file a Statement of Water Diversion and Use with the SWRCB.

### **WHO SHOULD NOT FILE AN APPLICATION**

Underground water is not subject to the permit procedure unless it is the underflow of a surface stream or otherwise is flowing in a subterranean stream with a known and definite channel. One who proposes to pump ground water (with the exceptions noted) should not file an application. Anyone who pumps ground water in the counties of Riverside, San Bernardino, Los Angeles, and Ventura, with certain exceptions is required to file a notice with the SWRCB (see section 4999 of Division 2 of the California Water Code).

A permit is not required for the proper exercise of a riparian right. Diverters of surface water, with certain exceptions, are required to file a Statement of Water Diversion and Use with the SWRCB.

### **PURPOSE OF FILING**

The purpose of filing an application for a permit is to secure a right to the use of unappropriated water; i.e. water that is available and is not already in use under prior and existing rights. The

purpose of filing also is to establish a record of the right sought under the application so that its status in relation to other rights may be determined more readily. One who takes and uses water without possession of a valid right or first obtaining a permit does so at his own risk and is subject to possible court action to enjoin his use.

An application should not be filed in order to adjust a dispute which has arisen over water. Permits issued by the SWRCB cannot serve to ratify or confirm existing rights claimed by the applicant.

#### **WHEN TO FILE**

An application should be filed well in advance of construction of diversion works. An application, however, should not be filed until a definite plan has been formulated for construction of a project for use of water within a reasonable time in the future. What is reasonable depends on the size of the project and the circumstances of each case. In every case, the applicant should be prepared to commence construction work within the time ordered by the SWRCB and thereafter to complete construction and use of water with diligence. For most privately-owned projects designed to serve the individual needs of the applicant, the SWRCB will require actual construction to commence within a few months after issuance of permit. The filing of an application cannot serve to reserve water for an indefinite future use. Requests for undue delay in final disposition of an application will be denied.

#### **UNAPPROPRIATED WATER AND RESPONSIBILITIES OF PERMITTEES**

All applications are for permits to appropriate unappropriated water, and all permits are issued subject to vested rights. In order for the SWRCB to approve an application, unappropriated water must be available to supply the applicant. Water in many streams already has been fully appropriated during the dry seasons of the year. If there is doubt whether unappropriated water is available, the SWRCB's staff should be consulted before an application is filed.

The flow of water in most streams is variable and cannot be predicted with accuracy. Approval of an application and issuance of a permit thus does not guarantee that unappropriated water will be available at all times in the full amount specified in the permit. In some cases, there may be times during the authorized diversion season when no unappropriated water will be available. The holder of a permit should be prepared to accept responsibility for diverting only to the extent and at such times as will not

impair the prior rights of others, regardless of the amount or season named in the permit. The holder of the permit likewise must defend the right if it is attacked by others. A water right is a property right, and the owner has the same obligation to defend it against encroachment as in the case of any other kind of property.

## OUTLINE OF ESSENTIAL STEPS

The California Water Code and the regulations adopted pursuant thereto prescribe a definite procedure for the initiation and consummation of rights to appropriate water by permit. The essential steps are as follows:

### Appropriation by Permit:

1. An application is filed with SWRCB on forms provided. If the application is not complete, failure to complete it within the time allowed by the SWRCB will result in cancellation.
2. Notice of application is issued by the SWRCB and is posted or published by the applicant, depending on the size of the project.
3. If protests are received which cannot otherwise be adjusted, a hearing or an investigation under a proceeding in lieu of hearing is held. At the discretion of the SWRCB, a hearing also may be held on an unprotested application.
4. The application is reviewed and analyzed for possible environmental impacts as required by the California Environmental Quality Act of 1970.
5. If an application is approved and permit fees paid, a permit is issued. A reasonable time is allowed within which to begin construction of the diversion works, complete the construction, and make full beneficial use of the water. These times may be extended upon request if there are good reasons for doing so. Failure to comply with the time requirements or other-permit terms will be investigated by the SWRCB, and findings against the permittee may result in revocation of the permit.

All permits are issued SUBJECT TO PRIOR RIGHTS, and the permittee is required to respect all prior rights when diverting under the permit.

6. When construction and use of water are complete to the full extent contemplated, an inspection is made for possible issuance of a license. To the extent that beneficial use of the water has been made, as to both amount and season as specified in the terms and conditions of permit, a license may be issued.

A license has no time limit and continues as long as proper use is made for the water and required reports are submitted.

Statutes provide that, under certain conditions, a license may be lost through a five-year period of nonuse.

### Appropriation by Registration:

1. Forms to file for appropriation of water by registration are provided by the SWRCB.
2. The Environmental Services Supervisor for the California Department of Fish and Game region in which the diversion will be located (map, address, and telephone number are included on the form) is contacted to discuss the proposed project and to obtain answers to the questions contained on the Fish and Game Information form.
3. Registration forms are filed with both the State Water Resources Control SWRCB and the regional office of the California Department of Fish and Game.
4. If the registration is complete, fees have been paid, and written approval has been received from both the SWRCB and the California Department of Fish and Game, construction of the project may begin and diversion of water made.
5. If the forms are not complete, failure to complete them within the time allowed by the SWRCB will result in the return of all materials and fees.

#### **PREPARATION OF APPLICATIONS**

The SWRCB publishes a pamphlet entitled, "How to File an Application/Registration to Appropriate Water in Californians which will be of assistance in completing the blanks of an application form. When an application fails to comply with provisions of the California Water Code, the application will not be accepted for filing.

#### **CHANGES IN OWNERSHIP**

The SWRCB must be able to communicate with a registrant, applicant, permittee, or licensee. Any changes in ownership or address therefore should be submitted promptly to the SWRCB.

The SWRCB will not settle contests as to ownership but will accept any ownership claim, which is asserted unless the owner of record or an asserted successor objects. In case of contest the SWRCB's record will not be changed until the matter is settled by agreement or by a court decision.

#### **APPENDIX - TABLE OF EQUIVALENTS**

1 CUBIC FOOT PER SECOND (cfs) is a rate of flow passing any point equal to a volume of one cubic foot of water every second (sometimes referred to as second-foot) and is equivalent to:

- = 7.48 U.S. gallons per second (gps)
- = 448.8 U.S. gallons per minute (gpm)
- = 646,317 U.S. gallons per day (gpd)
- = 1.98 acre-feet per day
- = 40 standard (statute) miners' inches
- = 28.32 liters per second

1 ACRE-FOOT (af) is the amount (volume) of water which will cover one acre to a depth of one foot and is equivalent to:

- = 43,560 cubic feet
- = 325,851 U.S. gallons
- = 1,233.45 cubic meters

1,000,000 U. S. GALLONS PER DAY is equivalent to:

- = 1.55 cubic feet per second
- = 43.81 liters per second
- = 3.07 acre-feet per day
- = 3,786 cubic meters per day

THEORETICAL HORSEPOWER is calculated by multiplying the vertical fall of water in feet by the rate of waterflow in cubic feet per second and dividing the product by 8.8. One horsepower is equivalent to:

- = 550 foot-pounds per second
- = 746 watts

## Exhibit "B"

Home → Board Info

### Frequently Asked Questions

These are commonly asked questions and answers about California water right laws. If you are looking for information on reporting your water use or using the eWRIMS online reporting system, please search the information below.

#### How to Search:

- Click on a question listed below to find the answer; or
- Search for a particular topic by using the "find" command from the "Edit" menu at the top of your browser window, and typing in a keyword. [shortcut keys: Ctrl+F].

[Questions | Answers](#)

(Updated 6/8/10)

#### QUESTIONS

- [What is a water right?](#)
- [Do I need a water right?](#)
- [Why does the State require water users to have a water right?](#)
- [How does the water right system affect me?](#)
- [Who is responsible for administering water rights law?](#)
- [What are the benefits of water right laws?](#)
- [I moved here from another state. Are the rules in California the same as the rules in other states?](#)
- [What happens if I take water without a water right?](#)
- [How do I know if I need a water right permit?](#)
- [What is a riparian right?](#)
- [What is a prescriptive right?](#)
- [What is an appropriative water right?](#)
- [Do I need a water right permit if I began using water before 1914?](#)
- [How do I know if I have a riparian, prescriptive, or pre-1914 water right?](#)
- [What should I do if I think I have a riparian or pre-1914 appropriative water right but the courts have not decided my right?](#)
- [How do I file a "Statement of Water Diversion and Use" with the state?](#)
- [How do I know if I have a water right permit or license?](#)
- [Why can't I look up a water right by using my Assessor's Parcel Number \(APN\)?](#)
- [What is the difference between a water right permit and a water right license?](#)
- [How do I get a water right permit?](#)
- [How long does it take to get a water right permit?](#)
- [How much does it cost to get a water right permit?](#)
- [What benefit do I enjoy as a result of getting a water right permit or license or filing my Statement of Water Diversion and Use with the Division of Water Rights?](#)
- [Are there any other reasons I should comply with water right requirements?](#)
- [Do I need other permits for my water supply project?](#)
- [Are there any projects for which the Division of Water Rights will not accept an application?](#)
- [Are there any projects for which the Division of Water Rights will not issue a permit?](#)
- [What information and conditions will my water right permit contain?](#)
- [What happens after I get a water right permit?](#)
- [What should I do if I have an illegal water diversion project, but I don't want to get a permit?](#)
- [Are water right permits and licenses a matter of public record?](#)
- [How can I get a copy of a water right permit or license?](#)
- [What should I do if I think someone is illegally taking water?](#)
- [Will the Division of Water Rights accept complaints involving matters other than illegal diversions of water or permit or license?](#)

condition violations?

- »» What should I do if I have a permit or license, but my project is different from the project my permit or license describes?
- »» What happens if I file a petition for change or a petition for extension of time?
- »» How long will it take to get my petition for change or extension approved?
- »» I pump groundwater and don't think I need a water right permit. What other rules apply to me?
- »» How do I register my small domestic or livestock water use?
- »» I completed my project and the "complete use" (or construction and use) date expired. What happens next?
- »» I am following my land this year. Where can I obtain information about water transfers?
- »» How do I contact the Division of Water Rights?

[Back to Top](#)

**ANSWERS**

**What is a water right?**

A water right is legal permission to use a reasonable amount of water for a beneficial purpose such as swimming, fishing, farming or industry.

**Do I need a water right?**

If you take water from a lake, river, stream, or creek, or from underground supplies for a beneficial use, the California Water Code (Division 2) requires that you have a water right. Because California water right law is complicated, you may have a water right even if you do not have a water right permit issued by the state.

There is one exception to the requirement that you have a water right. You do not need a water right if you take and use a small amount of water only for domestic purposes or use a small amount of water for commercial livestock watering purposes. However, you are required to register your use with the Division of Water Rights, notify the California Department of Fish and Game, and agree to follow conditions the Department of Fish and Game may set to protect fish and wildlife. The maximum use allowed under such a registration is 4,500 gallons per day for immediate use or 10 acre-feet per year for storage in a pond or reservoir. You cannot register to divert water from a stream if the Water Board has declared the stream to be fully appropriated. If you use more water than is allowed under a registration, or if you use a portion of the water for a purpose other than domestic purposes or livestock watering, and you do not already have a water right, you must apply for and receive a permit from the State Water Board's Division of Water Rights before you can use water.

You should not assume that you have a water right just because you have a water diversion or a dam on your property. You can check with the Division of Water Rights to determine if you have a water right permit, license, certificate or registration, or if someone has claimed a water right for your water project.

**Why does the State require water users to have a water right?**

Water is protected for the use and benefit of all Californians. California's waters cannot be owned by individuals, groups, businesses, or governmental agencies. But permits, licenses, and registrations give individuals and others the right to beneficially use reasonable amounts of water.

**How does the water right system affect me?**

If your food was grown or raised by California farmers or ranchers, you depend on someone who either has a water right or buys water from a water supplier who has a water right (such as an irrigation district). If you live in the city or suburbs and drink, cook with, wash with, or water your yard with water, you are able to do so because your city has a water right or buys water from someone who has a water right. When you turn on your lights or use appliances in California, it is likely that at least some of the electricity you are using was generated by a power company that is able to operate a hydropower plant because it has a water right. If you swim, fish, or boat in a man-made lake or raft below a dam, you are able to do so because the dam owner has a water right.

**Who is responsible for administering water rights law?**

In California, water rights law is administered by the State Water Resources Control Board (often called simply the State Water Board). Within the State Water Board, the Division of Water Rights acts on behalf of the State Water Board for day to day matters. The State Water Board is the only agency with authority to administer water rights in California. Local governments, water districts, and the California Regional Water Quality Control Boards do not administer water rights. The State Water Board shares the authority to enforce water right laws with the state courts.

[Back to Top](#)

**What are the benefits of water right laws?**

Water rights laws help provide certainty that a water user will have water available in the future. Water rights are based on a priority system that is used to determine who can continue taking water when there is not enough water to supply all needs. Those with high priority rights know that they are likely to receive water. Those with low priority rights know that they may not receive water in all years and can plan accordingly. Water users make economic decisions based on the certainty of their water supply. For instance, farmers who have a high certainty of receiving water, even in dry years, plant permanent crops like fruit trees or vineyards, which can be sold for higher

prices.

Water right permits also help protect the environment from impacts that occur as a result of water diversions. Water right permits include conditions to protect other water users and the environment. The water right permitting process can stop bad projects from starting, can modify poorly planned projects, and can protect existing streamflows. The water right permit process cannot by itself restore streams, but because the State Water Board has continuing authority over permits that it issues, it can modify permits and licenses it previously issued to require more protective conditions. The State Water Board must provide the permit or license holder with notice and opportunity for a hearing before making changes. If the permit holder disagrees with the State Water Board's decision to modify the permit, it can ask the court to review the matter.

#### I moved here from another state. Are the rules in California the same as the rules in other states?

No. Each state has different laws regarding how people can use the state's water. All western states have enacted laws that require water users to get a permit from the state. In general, those laws provide the highest priority to the earliest water users. This is known as the "Doctrine of Prior Appropriation" and is sometimes called "first in time, first in right." However, even in the west, the laws vary from state to state. Most eastern states, which have different rainfall patterns, do not have a permitting system. In those states, water is used under a principle of "share and share alike."

#### What happens if I take water without a water right?

The use of water without a water right is a trespass against the State of California and can lead to fines of up to \$500 per day of use. If you are using water illegally, you can be required to stop taking and using water.

#### How do I know if I need a water right permit?

If you already have a water right, you do not need to apply for a permit. California law distinguishes between surface water and groundwater. To get a right to groundwater, you simply extract the water and use it for a beneficial purpose. There is one exception, which applies to "subterranean streams flowing in known and definite channels." If you use groundwater on land that is over the groundwater basin from which you took the water, you have an "overlying groundwater right." If you use the water somewhere else, you have an "appropriative groundwater right." Overlying groundwater rights have a higher priority than appropriative groundwater rights. The State Water Board does not have authority to issue permits for groundwater diversions, except for diversions from subterranean streams. However, the state does have the authority to take action to stop wasteful or unreasonable uses of groundwater or to stop groundwater diversions that harm state resources, such as fisheries. If you live in certain areas and pump groundwater, you may be subject to regulation by a local entity, like the county or a groundwater management district, even if you do not need a water right permit. Check with local authorities before pumping.

Surface water rights are more complicated. California recognizes several different types of rights to take and use surface water. Some water rights can only be held by government. These include pueblo rights, which can only be held by municipalities that were originally Mexican or Spanish pueblos, and federal reserved rights, which can only be held by the federal government.

Individuals can hold riparian water rights, appropriative rights, and prescriptive water rights. If you began using surface water or groundwater from a subterranean stream after 1914, when the *State Water Commission Act* was enacted, unless you have a riparian right you must apply for and receive approval from the State Water Board before using water. If the state approves your application, you will receive a water right permit. The permit will allow you to develop your water supply project and to take and use water. After you have developed your project and used water, the State Water Board will determine how much water was beneficially used and will issue you a water right license. You can click [here](#) to see a flowchart of the water right permitting process.

[Back to Top](#)

#### What is a riparian right?

A riparian water right is a right to use the natural flow of water on riparian land. Riparian land is land that touches a lake, river, stream, or creek. Land that is in the public domain does not have riparian rights. The U.S. Bureau of Land Management manages public domain land.

Most eastern states recognize riparian rights. Most western states either never recognized riparian rights or no longer do so. California is the only western state that continues to recognize riparian rights. The California Legislature has enacted very few laws regarding riparian rights. As a result, riparian rights have been frequently litigated. As a result of these lawsuits, the courts have clarified rules that apply to riparian rights.

Water can only be diverted under a riparian right when that water is used on land that drains back to the lake, river, stream, or creek from which the water was taken. Only the natural flow of water can be diverted under a riparian right. Water that is imported into a watershed from another river, stream, or creek cannot be used under a riparian right. Water cannot be stored during a wet time for use during a drier time under a riparian right. Neither can water released from an upstream storage reservoir be used by a downstream user under a riparian right. Because a riparian right only allows the use of natural flow, it is possible to have water available under a riparian right during wetter years or months and not during drier years or months. This is common in California, because of the presence of many ephemeral streams.

A riparian right exists on the smallest piece of land that touches a water source. If riparian land is subdivided so that some parts of the land do not touch the water, those lands will lose their riparian rights unless steps are taken to preserve them when the subdivision takes place. Riparian rights that attach to a small parcel cannot be used on adjacent parcels, even if those parcels touch the riparian parcel. Water obtained through a riparian right must be used on the parcel connected to the riparian right.

A riparian right can be lost even if land is not cut off from the water source. This can happen when the owner of the riparian land sells or

transfers the land to someone but chooses not to transfer the water right. Once it is lost, a riparian right can almost never be restored. Riparian water rights cannot be sold or transferred other than with the riparian land.

However, riparian rights are not lost by non-use. A person who has a riparian right, but is not currently using water, has a "dormant" riparian right. He or she can begin using water under that dormant right at any time. If the new riparian use results in a junior water right holder not having enough water, the junior water right holder must decrease his or her diversion and use of water until the senior water right holder has enough water to meet his or her reasonable needs. Riparian right holders on a stream course all have the same priority. If there is not enough water available for competing riparian users, they must share the available supply according to their needs. Generally in this situation, water used for interior domestic purposes, such as drinking, cooking and bathing, has the highest priority.

#### What is a prescriptive right?

A prescriptive right is a right that is acquired through adverse possession of someone else's water right. It is similar to a "squatter's right" to land. Prescriptive rights are difficult to obtain and can only be granted by a court. Most people in California do not have and cannot acquire a prescriptive right. The courts have clarified that since 1914, the only way to acquire a new water right is to apply for and receive a water right permit from the State Water Board.

[Back to Top](#)

#### What is an appropriative water right?

Someone who takes water for use on non-riparian land or who uses water that would not be there under natural conditions on riparian land appropriates water. Water right permits and licenses issued by the State Water Board and its predecessors are appropriative water rights.

#### Do I need a water right permit if I began using water before 1914?

An appropriative water right that was acquired before 1914 is called a pre-1914 appropriative water right. If you have a pre-1914 right, you do not need a water right permit unless you have increased your use of water since 1914. If you have increased the amount of water over the amount used in 1914, you must get a water right permit for the new amount, unless you can prove that you had a plan in place before 1914 to use the additional water after 1914. If you can show that you began planning to use water before 1914 but did not begin using the water until after 1914, you may not need a water right permit if you diligently took steps to construct your project and to reasonably and beneficially use water.

You may have lost your pre-1914 appropriative water right if your construction activities or diversion and use of water lapsed for a period of five or more consecutive years. Once you lose an appropriative water right, you must apply for and receive a new water right permit from the State if you want to use water again.

#### How do I know if I have a riparian, prescriptive, or pre-1914 water right?

These types of water rights can only be confirmed by the courts. You can only tell for certain that you have one of these types of water rights if a court has issued a decree that confirms that the right exists. The rights to water on certain rivers, streams and creeks in California, or parts of those waters, have been adjudicated through court action. In those cases, you can review a water right decree to determine if you have a confirmed riparian, pre-1914, or prescriptive water right. Decrees usually identify the water right by the name of the person who held the right at the time the decree was issued. You may have to identify that person's name in order to determine whether or not you have a right that was confirmed in the decree. The decree may also identify where the water can be used under each decreed right. If that is the case, there is likely a map that you can use to help identify any rights that may attach to your property.

The State Water Board has assisted the courts in investigating and resolving some water right claims. We have copies of the decrees issued in these cases. We have copies of some other decrees, but most often we do not. We have posted the decrees that we have on our [Web site](#). The Superior Court of each county has copies of decrees that it has issued, but you will have a difficult time finding a decree unless you know the case number assigned by the court.

[Back to Top](#)

#### What should I do if I think I have a riparian or pre-1914 appropriative water right but the courts have not decided my right?

You must file a document called a "[Statement of Water Diversion and Use](#)" with the State Water Board's Division of Water Rights if you divert surface water or water from a subterranean stream unless: (1) you have a permit or license or have filed an appropriative water right application, (2) you have a certificate issued by the State Water Board for a livestock watering pond, (3) you take water from an adjudicated stream that is regulated by the California Department of Water Resources or a watermaster appointed by the court to administer a decree, (4) you are in the lowlands of the Sacramento/San Joaquin Delta, or (5) you take water from a spring that under natural conditions does not flow off of your property. We will record your claim without verifying that you have a right. Every three years after you file, we will ask you to file a supplemental statement that describes your diversion and use of water.

Verifying a pre-1914 or riparian right claim is time-consuming. Verifying a riparian right requires two steps. First it requires a title search of the property from the time that the land became available for private ownership. Then it requires a review of all deeds in the chain of title to ensure that the right has not been lost through separation of the land or transfer of the land without the right. Most old deeds are hand written and do not include a map. Instead they describe the land by [metes and bounds](#). When this happens, the legal description of the property must be mapped in order to analyze the property transfers. This can be difficult.

Verifying a pre-1914 water right requires that you prove water was used before 1914 and can show that the use has been continuous, with no lapse in use exceeding five years, except when water could not be used because of drought. If you file a Statement of Water

Diversion and Use that claims a right but looks suspect, the Water Board may investigate your claim. If the Water Board decides you are illegally using water, you may be issued a monetary penalty, an injunction, or both. You have the burden of proving your riparian or pre-1914 water right.

#### How do I file a "Statement of Water Diversion and Use" with the state?

Obtain a "Statement of Water Diversion and Use" form by contacting the Division of Water Rights or [download the form](#). Complete the form, sign it and mail it back to the Division of Water Rights. The Division will set up a file for your statement and issue you a statement number. Every three years you will be asked to file a report on your water use. If you do not file the form or subsequent reports, and the Division has to investigate your water diversion, you may be required to pay for the cost of the investigation.

#### How do I know if I have a water right permit or license?

The Division of Water Rights issues water right permits and licenses. You can check to see if you have a water right permit by using the [eWRIMS database System](#). See our [e-WRIMS introductory web page](#). Other entities issue permits or other types of approvals that may allow you to build a dam, or engage in another kind of construction activity. These permits are not water rights and do not allow you to use water.

We index our water rights by the name of the last known owner. However, we are not informed by the county recorder, county tax assessor, or title company when property is transferred. Instead, water right-owners are required to notify the Division of Water Rights when they transfer their rights. This frequently does not occur. If a previous owner has not notified us that he or she sold the property, there is a chance that the water right will still be shown under the name of the old owner.

You can also find whether a water right exists for a piece of property if you know the location of your point of diversion. You can visually inspect maps available on our [GIS system](#) at <http://waterrightsmaps.waterboards.ca.gov> using your Internet Browser. We are in the process of developing our GIS system so that we can also show where water used under permits and licenses can be used. That information will be added to the system as our resources allow.

[Back to Top](#)

#### Why can't I look up a water right by using my Assessor's Parcel Number (APN)?

Assessor's Parcel Numbers are frequently used to identify parcels of land. Because a water right can involve thousands of assessor's parcels and because Assessor's Parcel Numbers change, the land associated with a water right is not identified by Assessor's Parcel Number. Nevertheless, in a limited number of cases, our files may include the parcel number that was linked with the water right. In addition, we subscribe to a service that allows us to access some county real estate information, including Assessor's Parcel Number. If you have your parcel number, we may be able to help you identify your water right if you [contact us](#). Because our resources are limited, we are not able to assist you if your request involves more than one or two parcels or water rights. In that case, you might want to hire a [water right attorney](#) or [consultant](#) to do research for you.

#### What is the difference between a water right permit and a water right license?

A water right permit is an authorization to develop a water diversion and use project. The right to use water is obtained through actual use of water within the limits described in the permit. After you have received a water right permit, constructed your project, and used water, we will inspect your project. If you have used water beneficially and if you comply with all of the conditions in your permit, you will be offered a water right license. The water right license is a vested right that confirms your actual use. If you have not used all the water allowed by your permit, or if you have used water unreasonably, you will receive a license for less water than your permit allowed. You will receive a license for only that water that has been reasonably and beneficially used.

#### How do I get a water right permit?

- File a fully completed water right application with the Division of Water Rights.
- Pay all required fees
- Provide sufficient information to allow the State Water Board to determine that there is water available for your proposed project.
  - Show that your proposed project would not deprive anyone who has a higher priority water right of the use of water under that right.
  - Show that your proposed project will not harm public trust resources (such as fish, recreation, and navigation uses) where it is likely feasible to protect those resources.
- Show that your proposed project is in the public interest.
- Provide adequate information so that the State Water Board can consider the impacts of your project on water quality and the environment as required by the California Environmental Quality Act (CEQA).

A schematic of the [permit process](#) is on our Web site. A schematic of the [CEQA process](#) is also available.

#### How long does it take to get a water right permit?

That depends on your project. We must comply with Water Code requirements that require us to provide others with information about your project. We must also comply with the California Environmental Quality Act (CEQA), which involves a public process. This process usually takes at least a year, and can take significantly longer depending on the project.

The time it takes to obtain a permit depends on:

- »» The effects that your project could have on other water rights;
- »» The effects your project could have on the environment, including aquatic species, particularly endangered species;
- »» Whether anyone protests against issuing you a water right permit;
- »» Whether there are other applicants competing for the same water supply;
- »» Our staffing resources.

The Division has in excess of 500 pending water right applications. If you are able to provide all the necessary information, it may take three to four years to obtain a permit. If others protest your project or your project has the capacity to harm threatened or endangered species, it could take longer to get a permit.

[Back to Top](#)

#### How much does it cost to get a water right permit?

- »» Getting a water right permit is expensive. We assess a water right application fee based on how much water you want permission to divert. The water right application fee is revised each year depending on the Division's budget, which is determined by the Governor and the Legislature. The minimum application fee is currently \$1000. The current [fee schedule](#) is available on our Web site.
- »» When you file a water right application, you must also pay fees that the Division collects for the Department of Fish and Game. These fees are set by law. The current fee is \$850.00.
- »» Those who apply for a water right permit are required to pay for the preparation of documents that we prepare to comply with CEQA. Document preparation is usually done by an environmental consulting agency. This can cost \$30,000 or more.
- »» You will be required to pay a fee for the Department of Fish and Game to review the environmental document prepared for the project before the Division can issue a permit. This fee is currently \$1800 if the environmental documentation is a negative declaration or \$2500 if the environmental documentation is an environmental impact report.
- »» After getting a permit, you will be required to pay an annual fee to maintain it. The amount of the fee depends on how much water you are authorized to divert. The minimum annual fee is \$100. The current [fee schedule](#) is available at on our Web site.

#### What benefit do I enjoy as a result of getting a water right permit or license or filing my Statement of Water Diversion and Use with the Division of Water Rights?

- »» You will have priority to use water over persons who later file for water rights from the same source.
- »» The Division of Water Rights will notify you if someone is applying to divert water upstream from your diversion. You will have a chance to protest the proposed diversion and seek modification or denial of the project.
- »» You will receive protection of your investment in the right to divert water for beneficial use on your farm for irrigation, a feedlot, recreational reservoir, or in your municipality, water supply district, or industry. If you have water rights, you have legal standing to assert those rights against later conflicting water users who do not have water rights.
- »» If there is not enough water to supply the demands of all water users, the State Water Board will impose diversion restrictions. Those restrictions are imposed in order of water right priority. If you do not get a water right, the State will not protect you from those who developed their water use after you do.

#### Are there any other reasons I should comply with water right requirements?

- »» To protect California water resources for future generations.
- »» A diversion without a water right is illegal, and you may be fined up to \$500 per day of diversion and use.

#### Do I need other permits for my water supply project?

Yes. You will be required to obtain permits from other agencies before you can build and operate your water supply project, but those permits do not allow you to divert and use water. Other types of permits that you may be required to obtain are listed below. You should check with each of the agencies responsible for those permits to determine what you need to do.

1. A Streambed Alteration Agreement from the [California Department of Fish and Game](#) (to ensure that any construction activity that occurs in a streambed does not harm fish or wildlife).
2. A "take" permit from the [California Department of Fish and Game](#) under the *California Endangered Species Act* (if your project has the potential to harm a State-protected species).
3. A "take" permit from the [U.S. Fish and Wildlife Service](#) under the federal Endangered Species Act (if your project has the potential to harm a federally-protected species).
4. A "take" permit from the [National Marine Fisheries Service](#) under the federal Endangered Species Act (if your project has the potential to harm a federally protected anadromous species). Anadromous species breed and rear their young in fresh water but spend most of their adult lives in the ocean. Salmon are an example of an anadromous species.
5. A permit from the [U.S. Army Corps of Engineers](#) under section 404 of the federal Clean Water Act (to protect from the effects of

construction activity in waterways). If you are required to get a Clean Water Act section 404 permit, you will also need certification from the State Water Resources Control Board that your water diversion project will not violate California water quality standards. Obtaining this certification from the Water Board is a separate process from obtaining a water right permit or license.

6. A National Pollutant Discharge Elimination System permit from a [Regional Water Quality Control Board](#) (to protect against water quality effects if you disturb more than one acre of land during construction related to your project). You may also be required to get other approvals from a Regional Water Quality Control Board if your project could harm water quality as a result of discharges to a navigable water or its tributaries.
7. A permit from the [California Department of Water Resources, Division of Dam Safety](#), if your project involves a dam that is 25 feet high or higher or a reservoir with a capacity of more than 49 acre-feet of water.
8. A certification from the [Secretary of the California Resources Agency](#) to protect the free-flowing nature of streams if your project is on a wild and scenic river.

This is *not* a total list of permits that may be required for your project. For example, you may be required to get permits from your county, such as grading or building permits. Some counties require permits for the pumping of groundwater.

[Back to Top](#)

#### **Are there any projects for which the Division of Water Rights will not accept an application?**

The Division of Water Rights will not accept an application:

- If a stream is fully appropriated. Streams (or stream reaches) that have been declared by the State Water Board to be fully appropriated are listed on our Web page, [Fully Appropriated Streams](#).
- If the applicant proposes to build a dam or other obstruction on a wild and scenic river. Rivers designated as wild and scenic by the State of California are listed in [Public Resources Code, section 5093.54](#).

#### **Are there any projects for which the Division of Water Rights will not issue a permit?**

The Division of Water Rights will not issue a permit:

- Unless there is water available for appropriation. Even if a stream is not on the Fully Appropriated Streams List, water may be unavailable for appropriation. A stream cannot be listed as being fully appropriated unless the State Water Board or a court has previously issued a decision finding that no water is available. Therefore, you cannot assume water is available just because the stream from which you want to take water is not on the list.
- If the proposed project is not in the public interest.

The Division of Water Rights is unlikely to issue a permit:

- If the proposed project unreasonably harms fish, wildlife, the environment, or water quality. Water right applicants will be given an opportunity to modify their projects and amend their applications to protect these uses.

#### **What information and conditions will my water right permit contain?**

- The owner of the permit and the owner's address;
- The location of the point of diversion, including the county where the diversion occurs;
- The name of the watercourse from which the permit authorizes diversion and the watercourses to which the supply stream is tributary;
- The season (including a beginning date and an ending date) during which diversion of water may occur;
- the amount of water that may be diverted;
- the purpose for which the water can be used;
- The place where the water can be used;
- The development schedule for the project;
- All mandatory permit conditions, including conditions to protect prior vested water rights and conditions to protect the public trust, unless it is infeasible to do so;
- Conditions to mitigate for significant environmental impact, unless there are overriding reasons why significant environmental impacts should be allowed to occur.

[Back to Top](#)

#### **What happens after I get a water right permit?**

- You will be required to develop your project on a schedule specified in your permit.
- You will be required to comply with all conditions of your permit, to pay annual water right fees, and to report annually on your progress in completing your project and on the amount of water that you have used.

### What should I do if I have an illegal water diversion project, but I don't want to get a permit?

- Stop diverting and using water. The law provides for penalties if a threat of illegal diversion exists. In order to avoid a threat, you should take action to make sure that you make your system incapable of diverting water. Such action may range from simple (removing a pump or severing and capping a supply line, for example), to moderately difficult (lowering a spillway to the streambed or welding an outlet pipe valve open) to very difficult (removing a dam).
- You may be required to obtain permits from other agencies to remove some projects. A general list of agencies with responsibility over water projects and brief description of when those agencies may require a permit is [provided above](#).
- You may be able to purchase water from a legal water user. The Division of Water Rights staff may be aware of other legal water users from whom you can obtain either water or a secondary authority to divert water.

### Are water right permits and licenses a matter of public record?

Yes.

### How can I get a copy of a water right permit or license?

- You may get a copy of some water right permits and licenses on our web site.
  - If you know the water right application or license number, you can search and download from our [Web site](#).
  - If you do not know the water right application or license number, you can use [eWRIMS](#) to find it.
- You may also get a copy of any public record in the Division of Water Rights by [contacting](#) us. You will have to pay for any copying costs.

### What should I do if I think someone is illegally taking water?

The Division of Water Rights relies on the public to help identify illegal diversions of water and violations of water right permit and license conditions. The Division of Water Rights will accept complaints from the public. [Complaint forms](#) are available on our Web site or by [contacting](#) us.

### Will the Division of Water Rights accept complaints involving matters other than illegal diversions of water or permit or license condition violations?

Yes. The State Water Board has a duty to protect the public trust and to prevent the waste and unreasonable use of water, including unreasonable methods of diverting water. We may investigate complaints that involve these issues whether or not a permit or license is involved and, if a permit is involved, whether or not a permittee or licensee is complying with the conditions of his or her water right permit or license.

Because we do not have permitting authority over groundwater or pre-1914 and riparian surface water rights or authority to determine the relative priority of these classes of use, we will not investigate complaints that involve diversions by these water users unless the complaint involves waste or unreasonable diversion or use or unreasonable method of diversion or impacts to the public trust. Disputes between these water users must be resolved by a court. The court may refer the matter to the State Water Board for findings of fact or of law. If this happens, the parties will be required to pay the cost of the State Water Board's investigation. If the parties do not agree to pay the State Water Board's costs, the State Water Board can refuse the court's referral.

The Division sets enforcement priorities based on its resources. We may decide not to investigate a complaint, even if a violation is occurring. If we do investigate a complaint, we may exercise discretion in determining our enforcement priorities. Generally priority will be given to illegal diversions or permit term violations that are having an adverse impact on the State's public resources.

We will only investigate where flow or flow-dependent controllable factors appear to be a cause of the problem. However, we will refer public trust issues that appear to be related to discharges of a pollutant to the State Water Board's Division of Water Quality or to a Regional Water Quality Control Board.

[Back to Top](#)

### What should I do if I have a permit or license, but my project is different from the project my permit or license describes?

You should [contact](#) the Division of Water Rights. You cannot divert and use water except as authorized by your permit or license. You must revise your project so that it complies with your permit or license.

You may seek permission from the State Water Board to modify your permit or license. If so, you must file a petition for change or, if you want to modify the development schedule authorized in your permit, or a petition for extension of time. A fee is required to be filed with a petition for change or extension of time. The current [fee schedule](#) is available on our Web site. If it is obvious that your permit or license contains an error (for example, if your application correctly identifies the point of water diversion, but your permit has a different point listed) we may administratively correct the permit or license without a petition being filed.

### What happens if I file a petition for change or a petition for extension of time?

Before approving any change petition, the State Water Board must find that the change will not injure any legal water user (including any water right holders who are junior in priority and any one who contracts with a legal water user) and that the change will not harm fish or wildlife.

The law requires that water supply projects be diligently constructed and used. Before approving a petition for time extension, the State Water Board must determine that good cause exists to approve the time extension. We will review the petition to determine whether we can make this finding. Good cause does not normally exist if the project was not developed because of a lack of financing or for other reasons that involve the water right holder, rather than the project.

If a petitioned change or time extension has the potential to impact other water users or the environment, we will tell those who have requested notification about the petition. The petitioner is required to notify the Department of Fish and Game of the proposed change. Other water right holders and the public will be allowed to object to the proposed change by filing a protest form with the State Water Board. Because the State Water Board has discretion over whether or not to approve the requested petition, we must comply with the California Environmental Quality Act (CEQA) before approving the change or extension petition.

The petitioner generally will be required to hire a consultant to prepare any environmental document required by CEQA, to pay for the cost of preparing the document, and to provide enough information to allow the State Water Board to make the required findings. Before we can approve the petition, all protests must be resolved, either through negotiation or by the State Water Board following an investigation or hearing, depending on how much water is involved.

#### How long will it take to get my petition for change or extension approved?

It depends on the change or time extension you are requesting. If the change is minor, it could take three months. If the change is major or controversial, it will take longer. The most controversial changes can take as long as 10 years to process, but most don't take that long.

[Back to Top](#)

#### I pump groundwater and don't think I need a water right permit. What other rules apply to me?

If you live in Ventura, Riverside, Los Angeles, or San Bernardino counties, and you extract 25 acre-feet or more of groundwater annually, you are required to file an annual notice of your groundwater use with either the State Water Board or a local groundwater agency. Please contact the State Water Board at (916) 322-8465 for assistance in determining whether you should file with the State Water Board or with your local agency. There is a fee associated with filing your annual notice.

#### How do I register my small domestic or livestock water use?

You can download an [application form](#) to register your small domestic use or livestock pond use or by [contacting](#) the Division of Water Rights.

Before you can file the registration form, you must contact your local office of the Department of Fish and Game. The Department of Fish and Game has the authority to impose conditions to protect fish and wildlife on your registration. The Department will provide you with these conditions. If you agree to these conditions, you can file your registration application, your fee, and a copy of the conditions provided to you by the Department to the Division of Water Rights. The Division of Water Rights will record your registration, set up a file for your registration, and issue you a registration number. To maintain the registration, you will have to file reports of your water use and pay a renewal fee when requested by the Division of Water Rights. If you do not renew your registration within the time allowed, you will lose your registration and you will have to repeat the registration process if you want to continue using water.

#### I completed my project and the "complete use" (or construction and use) date expired. What happens next?

Water Code section 1605 requires the State Water Board to conduct a water right licensing inspection of the works constructed and the use of water as soon as practicable after receiving notification that a permitted project is complete and ready for licensing. When possible, staff from the Division of Water Rights (Division) will schedule and conduct an inspection of the project, which includes (1) taking measurements to determine the establishment of the permit's beneficial use of water and (2) confirming compliance with all permit terms and conditions. If appropriate, an offer for final licenses will be made and if accepted by the permittee, the Division will issue a license. The license is recorded in the County Recorder's Office and is the final confirmation of the water right and remains effective as long as its conditions are fulfilled and beneficial use continues. From the date that the project is permitted, permittees should keep records of the following to assist in the final licensing process, if applicable:

1. Amount of water diverted or used (acre-feet, cubic feet per second, gallons per day) at the smallest time interval possible (daily, weekly or monthly)
2. Reservoir water surface elevation changes during collection and use seasons
3. Annual acres irrigated and crop type
4. Irrigation schedule(s)
5. Frost and Heat protection hours and acreage protected (acres), dates and times
6. Nature of Industrial use
7. Number and type of animals for Stock watering use
8. Approximate population and delivery amounts for Municipal use
9. Number of persons, area of garden, lawn, etc used for Domestic use
10. Installed capacity for Power generation and daily diversions (KW, MW or hp)

- 11. Types of Recreational or Wildlife Enhancement uses such as boating, fishing, or wildlife use
- 12. Water conserved (acre-feet)
- 13. Water reclaimed (acre-feet)
- 14. Water conjunctively used (acre-feet)
- 15. Staff gauges and measuring devices installation dates

Due to limited resources, the Division may be unable to promptly inspect all projects reported ready for licensing. Division staff will contact the Permittee when the project is scheduled for inspection. To expedite the licensing of water rights with reservoirs, the Division has set up an alternate process. If a permit authorizes diversion of water to a reservoir, the Permittee may retain a licensed land surveyor or civil engineer to (1) survey the reservoir and submit the certified survey to the Division with a request for a license inspection and (2) submit records of diversion or calculations of beneficial use of water under the permit. Whenever possible, the Division will prioritize its field inspections based on the date that the survey and diversion/use information is submitted to the Division.

**I am following my land this year. Where can I obtain information about water transfers?**

You may obtain information about water transfers [here](#).

**How do I contact the Division of Water Rights?**

- Call: (916)341-5300
- Fax: (916)341-5400
- Mailing:  
State Water Resources Control Board  
Division of Water Rights  
PO Box 2000  
Sacramento, CA 95812-2000

(Updated 6/8/10 )

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AMENDED IN SENATE AUGUST 12, 2002

AMENDED IN ASSEMBLY APRIL 8, 2002

CALIFORNIA LEGISLATURE—2001-02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2267**

**Introduced by Assembly Member Kelley**

February 20, 2002

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An act to amend Sections 1055, 1055.2, 1536, 1825, 1831, 1832, 1834, 1845, and 1850 of, and to repeal Sections 1003.5 and 1833 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, as amended, Kelley. Water rights.

(1) Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to any person on whom civil liability may be imposed for an unauthorized water diversion or certain misstatements relating to water diversions. Existing law provides that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for unauthorized water diversions pursuant to statute.

This bill would extend the authority of the state board to issue a complaint to any person on whom civil liability may be imposed for failure to pay an application fee for a permit to appropriate water and for the violation of a cease and desist order, and would provide that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for those violations.

(2) Existing law requires the State Water Resources Control Board to cancel an application for a permit to appropriate water if an

application fee is not received by the board within 30 days after notice by the board.

This bill, instead, would authorize the board to cancel the application and specify that civil liability may be imposed both administratively and by the superior court. The bill would provide that the applicant may be liable in an amount not to exceed \$500 for each day until the application fee is received, or the application is otherwise canceled or withdrawn.

(3) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, upon the failure of any person to comply with a final cease and desist order and, if so requested by the board, to petition the superior court for the issuance of relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. The bill would revise provisions relating to notification by the board in the event of a violation or a threatened violation. The bill would specify that civil liability may be imposed by the superior court.

(4) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, in addition, would declare that it is the intent of the Legislature that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the board.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1003.5 of the Water Code is repealed.
- 2 SEC. 2. Section 1055 of the Water Code is amended to read:

1 1055. (a) The executive director of the board may issue a  
2 complaint to any person or entity on which administrative civil  
3 liability may be imposed pursuant to Section 1052, Section 1536,  
4 Section 1845, or Section 5107. The complaint shall allege the act  
5 or failure to act that constitutes a trespass or violation, the  
6 provision of law authorizing civil liability to be imposed, and the  
7 proposed civil liability.

8 (b) The complaint shall be served by personal notice or  
9 certified mail, and shall inform the party served that the party may  
10 request a hearing not later than 20 days from the date the party was  
11 served. The hearing shall be before a member of the board as it may  
12 specify.

13 (c) After any hearing, the member shall report a proposed  
14 decision and order to the board and shall supply a copy to the party  
15 served with the complaint, the board's executive director, and any  
16 other person requesting a copy. The member of the board acting  
17 as hearing officer may sit as a member of the board in deciding the  
18 matter. The board, after making an independent review of the  
19 record and taking any additional evidence as may be necessary that  
20 could not reasonably have been offered before the hearing officer,  
21 may adopt, with or without revision, the proposed decision and  
22 order.

23 (d) Orders setting administrative civil liability shall become  
24 effective and final upon issuance thereof and payment shall be  
25 made.

26 SEC. 3. Section 1055.2 of the Water Code is amended to read:  
27 1055.2. No person or entity shall be subject to both civil  
28 liability imposed under Section 1055 and civil liability imposed by  
29 the superior court under subdivision (d) of Section 1052, Section  
30 1536, or Section 1845 for the same act or failure to act.

31 SEC. 4. Section 1536 of the Water Code is amended to read:  
32 1536. (a) If an annual application fee is not paid when due the  
33 board shall notify the applicant by registered mail of the amount  
34 due, and of the provisions of this section.

35 (b) If the fee is not received by the board within 30 days after  
36 the notice has been mailed, the application may be canceled.

37 (c) (1) If the fee is not received by the board within 30 days  
38 after the notice has been mailed, the applicant may be liable civilly  
39 for a sum not to exceed five hundred dollars (\$500) for each day

1 until the fee is received, the application is canceled, or the  
2 application is withdrawn, whichever occurs first.

3 (2) Civil liability may be imposed by the superior court. The  
4 Attorney General, upon request of the board, shall petition the  
5 superior court to impose, assess, and recover those sums.

6 (3) Civil liability may be imposed administratively by the  
7 board pursuant to Section 1055.

8 SEC. 5. Section 1825 of the Water Code is amended to read:

9 1825. It is the intent of the Legislature that the state should  
10 take vigorous action to enforce the terms and conditions of permits  
11 licenses, certifications, and registrations to appropriate water, to  
12 enforce state board orders and decisions, and to prevent the  
13 unlawful diversion of water.

14 SEC. 6. Section 1831 of the Water Code is amended to read:

15 1831. (a) When the board determines that any person is  
16 violating, or threatening to violate, any requirement described in  
17 subdivision (d), the board may issue an order to that person to  
18 cease and desist from that violation.

19 (b) The cease and desist order shall require that person to  
20 comply forthwith or in accordance with a time schedule set by the  
21 board.

22 (c) The board may issue a cease and desist order only after  
23 notice and an opportunity for hearing pursuant to Section 1834.

24 (d) The board may issue a cease and desist order in response to  
25 a violation or threatened violation of any of the following:

26 (1) The prohibition set forth in Section 1052 against the  
27 unauthorized diversion or use of water subject to this division.

28 (2) Any term or condition of a permit, license, certification, or  
29 registration issued under this division.

30 (3) Any decision or order of the board issued under this part,  
31 Section 275, or Article 7 (commencing with Section 13550) of  
32 Chapter 7 of Division 7, in which decision or order the person to  
33 whom the cease and desist order will be issued, or a predecessor  
34 in interest to that person, was named as a party directly affected by  
35 the decision or order.

36 (e) *This article shall not authorize the board to regulate in any*  
37 *manner, the diversion or use of water not otherwise subject to*  
38 *regulation of the board under this division.*

39 SEC. 7. Section 1832 of the Water Code is amended to read:

1 1832. Cease and desist orders of the board shall be effective  
2 upon the issuance thereof. The board may, after notice and  
3 opportunity for hearing, upon its own motion or upon receipt of an  
4 application from an aggrieved person, modify, revoke, or stay in  
5 whole or in part any cease and desist order issued pursuant to this  
6 chapter.

7 SEC. 8. Section 1833 of the Water Code is repealed.

8 SEC. 9. Section 1834 of the Water Code is amended to read:

9 1834. (a) In the event that a violation of a requirement  
10 described in subdivision (d) of Section 1831 is occurring or  
11 threatening to occur, the board shall give notice by personal notice  
12 or certified mail, pursuant to which the party shall be informed that  
13 he or she may request a hearing not later than 20 days from the date  
14 on which the notice is received, to the person allegedly engaged in  
15 the violation. The notice shall contain a statement of facts and  
16 information that would tend to show the proscribed action, and  
17 notification of the requirements of subdivision (b).

18 (b) Unless a written request for a hearing signed by or on behalf  
19 of the notified party is delivered to or received by mail by the board  
20 within 20 days after receipt of the notice, the board may adopt a  
21 cease and desist order, based on the statement of facts and  
22 information set forth in the notice, without a hearing.

23 SEC. 10. Section 1845 of the Water Code is amended to read:

24 1845. (a) Upon the failure of any person to comply with a  
25 cease and desist order issued by the board pursuant to this chapter,  
26 the Attorney General, upon the request of the board, shall petition  
27 the superior court for the issuance of prohibitory or mandatory  
28 injunctive relief as appropriate, including a temporary restraining  
29 order, preliminary injunction, or permanent injunction.

30 (b) (1) Any person or entity who violates a cease and desist  
31 order issued pursuant to this chapter may be liable for a sum not  
32 to exceed one thousand dollars (\$1,000) for each day in which the  
33 violation occurs.

34 (2) Civil liability may be imposed by the superior court. The  
35 Attorney General, upon the request of the board, shall petition the  
36 superior court to impose, assess, and recover those sums.

37 (3) Civil liability may be imposed administratively by the  
38 board pursuant to Section 1055.

39 (c) In determining the appropriate amount, the court, or the  
40 board, as the case may be, shall take into consideration all relevant

1 circumstances, including, but not limited to, the extent of harm  
2 caused by the violation, the nature and persistence of the violation,  
3 the length of time over which the violation occurs, and the  
4 corrective action, if any, taken by the violator.

5 (d) All funds recovered pursuant to this section shall be  
6 transferred to the General Fund of the state.

7 SEC. 11. Section 1850 of the Water Code is amended to read:

8 1850. Any factual or legal determinations made pursuant to a  
9 cease and desist order shall be conclusive and shall preclude any  
10 party to the order from raising those issues in any subsequent  
11 administrative proceeding.

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BILL ANALYSIS

**Exhibit "D"**

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 Fax: (916) 327-4478	AB 2267
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## THIRD READING

Bill No: AB 2267  
Author: Kelley (R)  
Amended: 8/19/02 in Senate  
Vote: 21

SENATE AG. & WATER RESOURCES COMMITTEE : 7-2, 6/24/02  
AYES: Costa, Alpert, Bowen, Kuehl, Machado, Perata,  
Torlakson  
NOES: Monteith, Poochigian

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 52-17, 5/23/02 - See last page for vote

SUBJECT : Water rights

SOURCE : State Water Resources Control Board

DIGEST : This bill expands the State Water Resources Control Boards (SWRCBs) enforcement authority by authorizing the SWRCB to issue cease and desist orders, not only when a permit holder is in violation of a water right permit, but also in the case of illegal diversions and other violations of SWRCB orders and decisions. The bill also specifies that civil liability will be imposed by the superior court or by the failure to pay a permit application fee.

Senate Floor Amendments of 8/19/02 correct a technical drafting error in a previous amendment of the bill.

CONTINUED

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AB 2267  
Page

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Senate Floor Amendments of 8/12/02 clarify that by streamlining the administrative process for issuing cease and desist orders the bill does not also expand the powers of the SWRCB.

ANALYSIS : The SWRCB was established by the Legislature on January 1, 1914, and has jurisdiction over all appropriative water rights granted after that date. One of the most significant duties assigned to the Board is administration of the state's water rights system. The SWRCB has established a system to administer water rights that is based on an application, permit, and license model. To gain a perfected appropriative water right, a petitioner must first apply to the SWRCB a water right. The SWRCB reviews the application and approves or denies it. If the application is approved, a permit is issued. The permit holder has a specified period of time within which to put the water to "reasonable and beneficial use" as required by Article X of the state constitution. If the permit's conditions are satisfied, the permit may mature into a license.

The SWRCB enforcement authority to ensure that those holding water rights are using water within the terms of their application, permit, or license. The SWRCB may issue a preliminary cease and desist order (CDO) to any person that is violating the terms of their application, permit, or license. If the infraction is not corrected, the preliminary CDO may mature into a final CDO. The Attorney General, at the request of the Board, may seek a court order for temporary restraining order, preliminary injunction, or permanent injunction. The Attorney General may also seek imposition of a fine not to exceed \$1,000 per day for each day the infraction occurs. Water right holders who receive a CDO may appeal to the superior court for review.

This bill:

1. Deletes the definition of the SWRCB for the purposes of Division 2 of the Water Code.
2. Adds Section 1845 (failure to comply with a cease and desist order) to the list of violations for which the

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AB 2267  
Page

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executive director may issue a complaint for any unauthorized diversion of water. The complaint is the operative legal ground on which a civil or administrative penalty would rest.

3. Clarifies that persons who violate Section 1845 will not be subject to both civil and administrative liability.
4. Strengthens the annual fee for a water rights permit application by allowing the SWRCB to impose a civil liability of up to \$500 per day until the fee is received, or the application withdrawn. This bill allows the court to impose the civil liability and the Attorney General, on the request of the SWRCB, to ask the court to impose the liability (\$500/day) and recover the fee. Alternatively, the bill allows the SWRCB to impose civil liability.
5. Expands the areas over which the SWRCB may issue cease and desist orders to include prospective unauthorized diversion of water, violations of valid permit terms or conditions, or any decision or order of the SWRCB.
6. Eliminates the step of issuing a preliminary cease and desist order. The bill requires the SWRCB to give notice to any person to whom a cease and desist order will be issued.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes  
Local: No

SUPPORT : (Verified 8/12/02)

State Water Resources Control Board (source)  
Attorney General's Office  
Sierra Club of California

ARGUMENTS IN SUPPORT : The SWRCB, the sponsor of this bill, seeks to correct identified deficiencies in its water right enforcement authority. Streamlining the process by eliminating the issuance of a preliminary CDO and holding a hearing prior to the issuance of a final CDO will allow for prompt enforcement. The ability to force compliance with the threat of a fine is an important regulatory tool, as is

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AB 2267  
Page

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the ability to be pre-emptive by issuing a CDO to prevent a violation.

ASSEMBLY FLOOR :

AYES: Alquist, Aroner, Calderon, Canciamilla, Cardenas, Cardoza, Chan, Chavez, Chu, Cohn, Corbett, Correa, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Havice, Hertzberg, Horton, Jackson, Keeley, Kehoe, Kelley, Koretz, Liu, Longville, Lowenthal, Maddox, Matthews, Migden, Nakano, Nation, Negrete McLeod, Oropeza, Papan, Pavley, Reyes, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Thomson, Vargas, Wayne, Wiggins, Wright, Wesson  
NOES: Aanestad, Ashburn, Bates, Bill Campbell, John Campbell, Cogdill, Cox, Daucher, Hollingsworth, Leach, Leslie, Mountjoy, Rod Pacheco, Pescetti, Runner, Strickland, Wyman

TSM:cm 8/20/02 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*



BILL NUMBER: AB 2267      CHAPTERED  
BILL TEXT

## Exhibit "E"

CHAPTER 652  
FILED WITH SECRETARY OF STATE    SEPTEMBER 18, 2002  
APPROVED BY GOVERNOR    SEPTEMBER 17, 2002  
PASSED THE ASSEMBLY    AUGUST 28, 2002  
PASSED THE SENATE    AUGUST 27, 2002  
AMENDED IN SENATE    AUGUST 19, 2002  
AMENDED IN SENATE    AUGUST 12, 2002  
AMENDED IN ASSEMBLY    APRIL 8, 2002

INTRODUCED BY    Assembly Member Kelley

FEBRUARY 20, 2002

An act to amend Sections 1055, 1055.2, 1536, 1825, 1831, 1832, 1834, 1845, and 1850 of, and to repeal Sections 1003.5 and 1833 of, the Water Code, relating to water.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2267, Kelley. Water rights.

(1) Existing law authorizes the executive director of the State Water Resources Control Board to issue a complaint to any person on whom civil liability may be imposed for an unauthorized water diversion or certain misstatements relating to water diversions. Existing law provides that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for unauthorized water diversions pursuant to statute.

This bill would extend the authority of the state board to issue a complaint to any person on whom civil liability may be imposed for failure to pay an application fee for a permit to appropriate water and for the violation of a cease and desist order, and would provide that no person may be subject to both administrative civil liability and civil liability imposed by the superior court for those violations.

(2) Existing law requires the State Water Resources Control Board to cancel an application for a permit to appropriate water if an application fee is not received by the board within 30 days after notice by the board.

This bill, instead, would authorize the board to cancel the application and specify that civil liability may be imposed both administratively and by the superior court. The bill would provide that the applicant may be liable in an amount not to exceed \$500 for each day until the application fee is received, or the application is otherwise canceled or withdrawn.

(3) Existing law authorizes the board to issue a preliminary cease and desist order to any person holding a permit or license to appropriate water if the board determines that person is violating a term or condition of that permit or license and provides for the issue of a final cease and desist order. Existing law requires the Attorney General, upon the failure of any person to comply with a final cease and desist order and, if so requested by the board, to petition the superior court for the issuance of relief.

This bill would delete references to a preliminary or final cease and desist order and, instead, would authorize the board to issue a

cease and desist order to any person who the board determines is violating, or threatening to violate, a prohibition against unauthorized diversion or use of water, any term or condition of a permit, license, certification or registration issued by the board, or prescribed orders or decisions of the board. The bill would revise provisions relating to notification by the board in the event of a violation or a threatened violation. The bill would specify that civil liability may be imposed by the superior court.

(4) Existing law makes a statement of legislative intent regarding the need for the state to take action to enforce the terms and conditions of permits and licenses to appropriate water.

This bill, in addition, would declare that it is the intent of the Legislature that the state take action to enforce certifications and registrations to appropriate water and to enforce the orders and decisions of the board.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1003.5 of the Water Code is repealed.

SEC. 2. Section 1055 of the Water Code is amended to read:

1055. (a) The executive director of the board may issue a complaint to any person or entity on which administrative civil liability may be imposed pursuant to Section 1052, Section 1536, Section 1845, or Section 5107. The complaint shall allege the act or failure to act that constitutes a trespass or violation, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

(b) The complaint shall be served by personal notice or certified mail, and shall inform the party served that the party may request a hearing not later than 20 days from the date the party was served. The hearing shall be before a member of the board as it may specify.

(c) After any hearing, the member shall report a proposed decision and order to the board and shall supply a copy to the party served with the complaint, the board's executive director, and any other person requesting a copy. The member of the board acting as hearing officer may sit as a member of the board in deciding the matter. The board, after making an independent review of the record and taking any additional evidence as may be necessary that could not reasonably have been offered before the hearing officer, may adopt, with or without revision, the proposed decision and order.

(d) Orders setting administrative civil liability shall become effective and final upon issuance thereof and payment shall be made.

SEC. 3. Section 1055.2 of the Water Code is amended to read:

1055.2. No person or entity shall be subject to both civil liability imposed under Section 1055 and civil liability imposed by the superior court under subdivision (d) of Section 1052, Section 1536, or Section 1845 for the same act or failure to act.

SEC. 4. Section 1536 of the Water Code is amended to read:

1536. (a) If an annual application fee is not paid when due the board shall notify the applicant by registered mail of the amount due, and of the provisions of this section.

(b) If the fee is not received by the board within 30 days after the notice has been mailed, the application may be canceled.

(c) (1) If the fee is not received by the board within 30 days after the notice has been mailed, the applicant may be liable civilly for a sum not to exceed five hundred dollars (\$500) for each day

until the fee is received, the application is canceled, or the application is withdrawn, whichever occurs first.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

SEC. 5. Section 1825 of the Water Code is amended to read:

1825. It is the intent of the Legislature that the state should take vigorous action to enforce the terms and conditions of permits licenses, certifications, and registrations to appropriate water, to enforce state board orders and decisions, and to prevent the unlawful diversion of water.

SEC. 6. Section 1831 of the Water Code is amended to read:

1831. (a) When the board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d), the board may issue an order to that person to cease and desist from that violation.

(b) The cease and desist order shall require that person to comply forthwith or in accordance with a time schedule set by the board.

(c) The board may issue a cease and desist order only after notice and an opportunity for hearing pursuant to Section 1834.

(d) The board may issue a cease and desist order in response to a violation or threatened violation of any of the following:

(1) The prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division.

(2) Any term or condition of a permit, license, certification, or registration issued under this division.

(3) Any decision or order of the board issued under this part, Section 275, or Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

(e) This article shall not authorize the board to regulate in any manner, the diversion or use of water not otherwise subject to regulation of the board under this part.

SEC. 7. Section 1832 of the Water Code is amended to read:

1832. Cease and desist orders of the board shall be effective upon the issuance thereof. The board may, after notice and opportunity for hearing, upon its own motion or upon receipt of an application from an aggrieved person, modify, revoke, or stay in whole or in part any cease and desist order issued pursuant to this chapter.

SEC. 8. Section 1833 of the Water Code is repealed.

SEC. 9. Section 1834 of the Water Code is amended to read:

1834. (a) In the event that a violation of a requirement described in subdivision (d) of Section 1831 is occurring or threatening to occur, the board shall give notice by personal notice or certified mail, pursuant to which the party shall be informed that he or she may request a hearing not later than 20 days from the date on which the notice is received, to the person allegedly engaged in the violation. The notice shall contain a statement of facts and information that would tend to show the proscribed action, and notification of the requirements of subdivision (b).

(b) Unless a written request for a hearing signed by or on behalf of the notified party is delivered to or received by mail by the board within 20 days after receipt of the notice, the board may adopt a cease and desist order, based on the statement of facts and information set forth in the notice, without a hearing.

SEC. 10. Section 1845 of the Water Code is amended to read:

1845. (a) Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter, the Attorney General, upon the request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

(b) (1) Any person or entity who violates a cease and desist order issued pursuant to this chapter may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court. The Attorney General, upon the request of the board, shall petition the superior court to impose, assess, and recover those sums.

(3) Civil liability may be imposed administratively by the board pursuant to Section 1055.

(c) In determining the appropriate amount, the court, or the board, as the case may be, shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and the corrective action, if any, taken by the violator.

(d) All funds recovered pursuant to this section shall be transferred to the General Fund of the state.

SEC. 11. Section 1850 of the Water Code is amended to read:

1850. Any factual or legal determinations made pursuant to a cease and desist order shall be conclusive and shall preclude any party to the order from raising those issues in any subsequent administrative proceeding.

1 DEEANNE M. GILLICK (SBN: 179218)  
MIA S. BROWN (SBN: 242268)  
2 NEUMILLER & BEARDSLEE  
A PROFESSIONAL CORPORATION  
3 P.O. Box 20  
Stockton, CA 95201-2030  
4 Telephone: (209) 948-8200  
Facsimile: (209) 948-4910

5 Attorneys for County of San Joaquin and  
6 San Joaquin County Flood Control and Water  
Conservation District  
7

8 BEFORE THE CALIFORNIA  
9 STATE WATER RESOURCES CONTROL BOARD

10 Public Hearings to Determine Whether to Adopt)  
11 Cease and Desist Orders against: )  
12 Mark and Valla Dunkel, Middle River in San )  
Joaquin County; )  
13 Yong Pak and Sun Young (Pak/Young), Duck )  
14 Slough in San Joaquin County; )  
15 Rudy Mussi, Toni Mussi and Lory C. Mussi )  
Investment LP (Mussi et al.), )  
16 Middle River in San Joaquin County )  
17 . )

**DECLARATION OF  
DEEANNE M. GILLICK IN SUPPORT OF  
REQUEST FOR OFFICIAL NOTICE**

18  
19 I am an attorney duly licensed to practice law in the State of California and participating in  
20 the above referenced matters before the State Water Resources Control Board on behalf of the  
21 County of San Joaquin and the San Joaquin County Flood Control and Water Conservation District  
22 (hereinafter collectively "County").

23 On June 30, 2010 at approximately 2:00 p.m. I printed a copy of Exhibit "A" to the Request  
24 for Official Notice by the County entitled "State Water Resources Control Board Information  
25 Pertaining to Water Rights in California - 1990" from the State Water Resources Control Board  
26 website at the following website address

27 [http://www.swrcb.ca.gov/waterrights/publications\\_forms/forms/docs/app\\_general\\_info.pdf](http://www.swrcb.ca.gov/waterrights/publications_forms/forms/docs/app_general_info.pdf).  
28

1 On June 30, 2010 at approximately 2:00 p.m. I printed a copy of Exhibit "B" to the Request  
2 for Official Notice by the County entitled "Frequently Asked Questions" from the State Water  
3 Resources Control Board website at the following website address  
4 [http://www.swrcb.ca.gov/waterrights/board\\_info/faqs.shtml](http://www.swrcb.ca.gov/waterrights/board_info/faqs.shtml).

5 On August 27, 2010 at approximately 3:30 p.m. I printed a copy of Exhibit "C" to the  
6 Request for Official Notice entitled "Assembly Bill No. 2267" as Amended in Senate August 12,  
7 2002 from the Legislative Counsel's website at the following website address  
8 [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-2300/ab\\_2267\\_bill\\_20020812\\_amended\\_sen.pdf](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020812_amended_sen.pdf).

9 On August 27, 2010 at approximately 3:30 p.m. I printed a copy of Exhibit "D" to the  
10 Request for Official Notice entitled "Analysis for AB 2267 Third Reading" from the Legislative  
11 Counsel's website at the following website addresss [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-2300/ab\\_2267\\_cfa\\_20020820\\_153745\\_sen\\_floor.html](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_cfa_20020820_153745_sen_floor.html).

13 On August 30, 2010 at approximately 9:30 a.m. I printed a copy of Exhibit "E" to the  
14 Request for Official Notice entitled "Bill Number AB 2267 Chaptered" from the Legislative  
15 Counsel's website at the following website address: [http://leginfo.ca.gov/pub/01-02/bill/asm/ab\\_2251-2300/ab\\_2267\\_bill\\_20020918\\_chaptered.html](http://leginfo.ca.gov/pub/01-02/bill/asm/ab_2251-2300/ab_2267_bill_20020918_chaptered.html).

17 I declare under penalty of perjury under the laws of the State of California that the foregoing  
18 is true and correct.

20 Dated: August 30, 2010

NEUMILLER & BEARDSLEE  
A PROFESSIONAL CORPORATION

22 By:   
23 DeeAnne M. Gillick  
24 Attorney for  
25 County of San Joaquin and  
26 San Joaquin County Flood Control and  
27 Water Conservation District  
28

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**PROOF OF SERVICE**  
**CCP 1013a**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 509 W. Weber Avenue, Stockton, California 95203. On August 30, 2010, I served the within documents:

**CLOSING BRIEF OF COUNTY OF SAN JOAQUIN AND SAN JOAQUIN COUNTY  
FLOOD CONTROL AND WATER CONSERVATION DISTRICT; REQUEST FOR  
OFFICIAL NOTICE AND DECLARATION OF DEEANNE M. GILICK IN SUPPORT OF  
REQUEST FOR OFFICIAL NOTICE**

- (BY U.S. MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.
- (BY PERSONAL SERVICE)** I delivered such envelope by hand to the address(es) shown below.
- (BY ELECTRONIC MAIL)** I caused a true and correct scanned image (.PDF file) copy to be transmitted via the electronic mail transfer system in place at Neumiller & Beardslee, originating from the undersigned at 509 W. Weber Avenue, 5th Floor, Stockton, California, to the email address(es) indicated in the attached Service List of Participants.
- (BY OVERNIGHT DELIVERY)** I enclosed the documents in an envelope or package designated by an overnight delivery carrier and addressed to the persons at the addresses stated below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier, or with a courier or driver authorized by the overnight delivery carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 30th day of August 2010, at Stockton, California.

  
\_\_\_\_\_  
ELVIA C. TRUJILLO

**SERVICE LIST  
(VIA ELECTRONIC MAIL)**

<p>DIVISION OF WATER RIGHTS PROSECUTION TEAM c/o David Rose State Water Resources Control Board 1001 I Street Sacramento, CA 95814 DRose@waterboards.ca.gov</p>	<p>MARK AND VALLA DUNKEL; RUDY MUSSI, TONI MUSSI AND LORY C. MUSSI INVESTMENT LP; YONG PAK AND SUN YOUNG c/o John Herrick, Esq. 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 JHerrick@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 Dean@hpllp.com</p>
<p>SOUTH DELTA WATER AGENCY c/o John Herrick Attorney at Law 4255 Pacific Avenue, Suite 2 Stockton, CA 95207 JHerrlaw@aol.com</p> <p>c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 Dean@hpllp.com</p>	<p>CENTRAL DELTA WATER AGENCY c/o Dean Ruiz, Esq. Harris, Perisho &amp; Ruiz 3439 Brookside Road, Suite 210 Stockton, CA 95219 Dean@hpllp.com</p>
<p>SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY c/o Jon D. Rubin Diepenbrock Harrison 400 Capitol Mall, Suite 1800 Sacramento, CA 95814 JRubin@diepenbrock.com</p>	<p>MODESTO IRRIGATION DISTRICT c/o Tim O'Laughlin Ken Petruzzelli O'Laughlin &amp; Paris LLP 117 Meyers Street, Suite 110 P.O. Box 9259 Chico, CA 95927-9259 towater@olaughlinparis.com kpetruzzelli@olaughlinparis.com</p>
<p>SAN JOAQUIN COUNTY AND THE SAN JOAQUIN COUNTY FLOOD CONTROL &amp; WATER CONSERVATION DISTRICT c/o DeeAnne M. Gillick Neumiller &amp; Beardslee P.O. Box 20 Stockton, CA 95201-3020 dgillick@neumiller.com mbrown@neumiller.com</p>	<p>STATE WATER CONTRACTORS c/o Stanley C. Powell Kronick, Moskovitz, Tiedemann &amp; Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 spowell@kmtg.com</p>