Presentation on California Water Rights Law

Mountain Counties Water Resources Association
Association of California Water Agencies, Region 3
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Introduction

- Purposes of the Presentation
  - Describe the types of water rights recognized under California law
  - Describe the key elements of water rights
  - Describe the process for acquiring water rights and for losing water rights
  - Describe the process for transferring water rights
  - Describe the "area of origin" doctrine

A Quick Overview of California Water Rights Law

- Types of Surface Water Rights

    - Riparian rights – based on the ownership of land adjacent to a river

    - Appropriative rights – based on the use of water

        - Pre-1914 appropriative rights

        - Post-1914 appropriative rights

A Quick Overview of California Water Rights Law

- Characteristics of an Appropriative Right

    - Must take control of the water at a specific point(s)

        - Diversion out of a stream
        - Storage behind a dam
        - Instream flows – by themselves – are not sufficient

    - Must place the water to a beneficial use

        - Municipal and industrial
        - Agriculture (including aquaculture and forestry)
        - Environmental uses (tricky)

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- Must use the water on a specific parcel(s) of land

- Must use the water during a defined season during the year

- The use must be reasonable in quantity

    - Drowning gophers is not reasonable
    - Gathering aggregate is not reasonable
    - Excessive losses from an irrigation ditch are not reasonable
    - Is a lawn reasonable in Southern California?

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- Acquiring a Water Right

  - Application to the SWRCB

    - Identification of the characteristics of the proposed right
    - Demonstration that granting the application:
      - Will not injure other water users
      - Serves the public interest

  - Grant of a Permit

    - Permit allows for the diversion of water but is not a permanent right
    - Must divert water to demonstrate that the use of water is reasonable, beneficial and in the public interest

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- Grant of a License

  - SWRCB will review diversions in the past and not grant a license for an amount greater than the amount actually put to use
  - SWRCB is becoming less willing to extend the period for licensing
  - Municipal rights are most likely to have a lengthy development period before licensing

A Quick Overview of California Water Rights Law

Loss of a Water Right

- What Triggers the Loss of a Right?

  - Review by the SWRCB (e.g., permit review)
  - Complaint by third party

- The Legal Standard/Process

  - Prior to 1979, a water right was forfeited if it was not used for three years, without need for a hearing
  - Since 1979, a water right is forfeited if it is not used for five years. There must be a hearing if the permittee requests a hearing
  - What if use declines and then increases? The law is presently unclear.

A Quick Overview of California Water Rights Law

Water Transfers

- Types of water transfers: short term (1-year or less) or long-term (more than 1-year)

- Process

  - Application to SWRCB
  - Must demonstrate to the SWRCB that:
    - No injury to water right holders
    - No unreasonable impacts to fish and wildlife
    - No unreasonable impacts to the economy
  - Must comply with CEQA, federal Endangered Species Act, etc.

A Quick Overview of California Water Rights Law

- Key benefits and risks of water transfers

  - Benefit: The water is put to use, and so cannot be lost through non-use. Also, the revenues generated can be used to support other public projects (e.g., Yuba County Water Agency).

  - Risk: The buyer becomes dependent on the water and is unwilling to give it up at the end of the transfer period.

    - To avoid this risk, most transfers are for one-year periods
    - A properly drafted water transfer should be able to avoid this risk, but we haven't had enough time to put a long-term transfer to the test.

A Quick Overview of California Water Rights Law

- Area of Origin
  - History
    - Reaction to LA's export of water from the Owens Valley
    - Intended to govern the Central Valley Project/State Water Project
    - Number of different statutes

  - Legal Interpretations
    - Attorney General's (Moskovitz) opinion
    - *Robie* Decision

  - Current litigation
    - State law
    - Federal law

A Quick Overview of California Water Rights Law

- Questions?