

WATER RIGHTS: Supply Issues for Local Agency Formation Commissions

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I. WATER ISSUES AND THE LAFCO

“The biggest challenge for California water resources management remains making sure that water is in the right places at the right time.”

-- Public Review Draft of the *California Water Plan*

Update 2005, www.waterplan.water.ca.gov/.

The role of LAFCo in facing this challenge coincides with the core goals and purpose of LAFCo to ensure orderly growth and development, and involves the preparation of Municipal Service Reviews, consideration of proposals to provide new services and decisions regarding spheres of influence and annexation. The Cortez-Knox-Hertzberg Act of 2000 (“CHK”) requires all spheres of influence to be updated every five years. Prior to updating a sphere, the LAFCo is required to approve a Municipal Service Review (“MSR”) for public services provided within the sphere. Additionally, the California Water Analysis Legislation (SB 221 and SB 610 [2000-2001 Legislature]) require districts of a certain size, to prepare an Urban Water Management Plan (“UWMP”). Water Code sections 10610-10656 require that every urban water supplier that provides over 3,000 acre-feet of water annually, should make every effort to ensure the appropriate level of reliability in its water service sufficient to meet the needs of its various categories of customers during normal, dry and multiple dry years.

The 2005 Urban Water Management Plans are due by December 31, 2005, and the resource “Guidebook to Assist Water Suppliers in the Preparation of a 2005 Urban Water Management Plan is available at www.owue.water.ca.gov/urbanplan/index.cfm. These UWMPs are considered a source of information for a Water Supply Assessment and written verification of water supply under Government Code section 66473.7.

A. California Water Analysis Legislation

Since January 1, 2002, cities and counties are required to determine the adequacy of water supply identified for proposed projects. Senate Bill 610 applies to various projects including residential, commercial, industrial, hotels, and mixed use, as defined in Section 10912 of the California Water Code. (SB 610 water supply requirements were codified at Water Code § 10910.) Verification of water supply sufficiency is provided through the preparation of a Water Supply Assessment, compiled by the water purveyor or the city or county. Senate Bill 221 only applies to a tentative tract map or a development agreement associated with residential developments of 500 dwelling units or more and requires the preparation of a Water Verification, also provided by the water purveyor or the city or county. This legislation basically prohibits the approval of a project without written confirmation that the water supply will be available prior to completion of project construction. (SB 221 was codified at Bus. and Prof. Code § 11010; and Govt. Code §§ 65867.5, 66455.3 and 66473.7.)

The California Water Analysis Legislation imposes requirements upon cities and counties, but how does this relate to LAFCo?

B. The Role of Water Supply Data in Preparation of MSRs and Changes in Organization

The CKH provides that LAFCo's goals include discouraging urban sprawl, preserving open space and agricultural lands, promoting the efficient delivery of government services, and encouraging the orderly formation and development of local agencies. The CKH calls on local commissions to be proactive and not just react to proposals for changes in organization and reorganization. Section 56301 of the Government Code provides that "one of the objects of the commission is to make studies and to obtain and furnish information which will contribute to the logical and reasonable development of local agencies *and* to shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities."

MSRs provide information to support decisions regarding proposals for a change in organization or reorganization. Further, furnishing information gleaned from the MSR can assist local agencies in making decisions relating to growth and development.

LAFCO then, through the proper exercise of its powers under CKH, is well positioned to not only assist local agencies in making good development decisions, but through the MSR, may act intelligently on annexations, extensions of service, detachments, formations and other organizational changes. Even though LAFCo is prohibited from engaging in land use decisions, the local commission may, through the MSR process, play a significant role in the direction of land use decision-making at the local level.

In reviewing reorganization proposals, AB 2838 requires LAFCO to review the timely availability of adequate water supplies. (Govt. Code § 5668(k).) Adequate water supply is an issue with most LAFCos. Many LAFCo's have noted the usefulness of SB 610 which requires "will serve" statements from water supply agencies for subdivisions in excess of 500 units. Many LAFCos have prepared comprehensive water services reviews to improve their ability to evaluate proposals with respect to water supply.

LAFCos will play a key role in facing the challenges of water supply management in California. Thus, staff and the commissioners must become acquainted with California water law and its layered intricacies, which are mirrored by the state's labyrinthine water conveyance and storage system.

II. Urban Water Supply and Planning

Urban water managers are increasingly concerned about California's water supply and its reliability during an extended drought. Droughts are a fact of life in the west, and maintaining supplies in California's elaborate network of canals, reservoirs and aquifers supports, among other things, the economic stability of the state.

The last multi-year drought occurred in 1987-1993, and that prolonged period of drought revealed vulnerability in many regions in the state, particularly southern California and the central coast.

About 20 million Californians get some portion of their water from the State Water Project ("SWP") – the state's major distribution system for urban water supplies. The 29 water agencies that buy SWP water have contracted for long-term deliveries of about 4 million acre-feet of water. The existing facilities, however, allow the SWP to deliver between 2.5 million and 3.5 million acre-feet in a normal water year and 1.1 million acre-feet in dry years. Federal deliveries of water from the Central Valley Project are similarly subject to delivery of a percentage of the contract totals for municipal and

industrial users. Faced with delivery uncertainties, some water districts have taken out insurance in the form of off-stream storage facilities and alternative sources.

Alternative sources include wastewater recycling, water conservation, water transfers, groundwater banking and, for some coastal communities, seawater desalination. California has some 200 water reclamation facilities that recycle about 450,000 acre-feet a year. The treated wastewater is used in a variety of ways, ranging from irrigation to groundwater recharge. It is anticipated that another 162 recycling plants will come on line this decade. These projects, which are mostly in southern California, are expected to produce up to 1 million acre-feet of recycled water annually by 2020.

In addition to concerns about supplies, urban water agencies face water quality issues. The most significant threat to water quality is “nonpoint” source pollution, which includes runoff from city streets, construction sites and agricultural fields, leaking underground storage tanks, accidental spills and abandoned mines. Controlling point sources is relatively easy, but nonpoint source pollution comes from a diffuse and often difficult to identify range of sources, making regulation and enforcement difficult.

The federal Clean Water Act (“CWA”) regulates both surface water and groundwater quality and is enforced by the U.S. Environmental Protection Agency (“EPA”), with some enforcement delegated to the states. The CWA was amended in 1987 to include a requirement that states develop nonpoint source pollution assessment and management programs. For additional information on the CWA and EPA enforcement, see www.epa.gov/region9/water/.

This paper will focus on water rights and supply issues, but water quality challenges facing LAFCOs and planning agencies across the state must be considered in the overall water supply planning process.

III. SUMMARY OF CALIFORNIA WATER RIGHTS

In fulfilling its goals of shaping services to meet the present and future needs of the community, preparing MSRs, and considering proposals regarding organization or reorganization, LAFCo staff and commissioners are increasingly called upon to make assessments relating to water rights, water supply availability, reliability and quality.

In order to understand the distinctions between different types water rights, one needs to understand the basic principles of California water law. This paper provides a

basic primer. In order to divert, use and/or transfer water, one must possess a valid water right. A transfer does not represent a new right, but a “change” to an existing right. Following is a brief summary of California water law and the relationship between certain water rights and the ability and procedures for making water transfers. For a more in-depth review of California water law, please refer to the books and resources cited at the end of this paper.

A. SURFACE WATER AND GROUNDWATER

Water rights recognized in California apply to two types of water: surface water and groundwater. These two types of water are treated very differently in California. Groundwater is a local supply and there is little regulation by the state. The courts have developed some statewide groundwater law, however, defining the nature and extent of groundwater rights. Unlike groundwater, surface water is subject to state laws and regulations controlling its development and use. **The State Water Resources Control Board administers these laws related to the use of surface water.**

Surface water rights in California are part of a complex system of laws that borrows from two distinct and separate bodies of law. California’s “hybrid” or “dual” water rights system recognizes both riparian and appropriative doctrines.ⁱ **Riparian rights are rights to the reasonable and beneficial use of the water on the land contiguous to a watercourse. Appropriative rights rely upon a “first in time, first in right,” rule and contemplate the diversion of water for use on lands that are not contiguous to a watercourse.ⁱⁱ** In some western states the amount of the water right is the quantity of water consumptively used by the right holder. **In California, the measure of the water right is that amount of water diverted and put to “beneficial use,” including reasonable conveyance losses. In other words, water rights holders in California can conserve water and transfer the water conserved to other users consistent with California law.ⁱⁱⁱ**

The nature of a water right, i.e. riparian, pre-1914 appropriative, post-1914 appropriative, and decreed (“adjudicated”) determines the entity that has jurisdiction over the water right. Additionally, the type of water right and its effective date will determine the priority of the water right in relationship to competing water users.

B. RIPARIAN WATER RIGHTS

Riparian rights are rights to the use of water by the owners of land abutting the river, stream or lake. Riparian rights attach to land and can be lost if the property's connection to the stream is severed through a change in ownership. Riparian rights allow the landowner to take as much water as can be reasonably and beneficially used on the riparian property within the watershed of the watercourse involved. Riparian owners must share equally with other riparian owners on the same water body. Riparians are not allowed to waste water or unreasonably impact public trust resources. Riparian rights extend only to water naturally occurring in the lake or stream. In other words, riparian rights do not include "foreign" water that has been introduced into the stream from storage and release upstream or from importation from another watershed or water body.

Riparian rights do not permit storage of water for later use.

Riparian right holders do not need a permit from the state, but most are required to file statements of water diversion and use (Water Code section 5100) so that the state can document the riparian's water use. Riparian rights may not be lost by a period of non-use and cannot ordinarily be transferred. One important exception, however, appears under Water Code section 1707, which allows a riparian user to request a change from the SWRCB to dedicate a riparian right to instream uses.

C. APPROPRIATIVE WATER RIGHTS

It is possible to possess rights to use water under a second type of right, the appropriative right. Unlike the riparian right, appropriative rights can exist on both riparian and non-riparian lands. Holders of appropriative water rights in California may use the natural flow of a stream provided that riparian rights are satisfied. Appropriative rights may be held for diversion and beneficial use or for the storage of water. So-called "foreign" water may be diverted or stored under an appropriative right. While riparians share equally in available, naturally occurring water, appropriators are entitled to diversions based upon a priority system.

Whether an appropriative right was initiated before or after 1914 effects the priority and legal history of the right. Pre-1914 and Post-1914 rights are addressed separately below.

1. PRE-1914 APPROPRIATIVE RIGHTS

Before 1914, water rights could be acquired simply by posting and taking water from the source, or exercising control over the water and applying it to reasonable beneficial use. This was known as a “common law appropriation.” In 1872, the Legislature recognized the doctrine of prior appropriation and provided for a second method of appropriating water, under which an individual could record a notice of appropriation in the county where the diversion was located.^{iv} This method is called a “Code appropriation,” referring to the old provisions in the Civil Code that predated the Water Commission Act of 1913. There was – and this continues to be the case today - no need to obtain permission to exercise these water rights from any governmental authority. Like riparians, however, pre-1914 rights holders are required to file statements of water diversion and use with the SWRCB (Water Code section 5100), and they may not waste water or unreasonably affect public trust resources. Pre-1914 rights can be lost through non-use or abandonment.^v

Pre-1914 rights holders may change the purpose of use, place of use, or points of diversion without the approval of the SWRCB. Such changes may not be made, however, if they would cause injury to another legal user of water (Water Code section 1706). The injured water user’s recourse, however, would not be through the SWRCB, but through a court action since the SWRCB does not have jurisdiction over the pre-1914 rights.

2. POST-1914 APPROPRIATIONS

In 1914, California’s water laws changed to provide state oversight over appropriative water rights. The new laws established the administrative process for issuing water rights permits and licenses.

Today, appropriative rights are obtained only by application to the SWRCB, the issuance of a permit, and by putting the water to beneficial use as prescribed in the permit.^{vi} The beneficial use is confirmed with a license given by

the SWRCB.^{vii} The application process includes the publication of the proposed appropriation and notice to downstream water users. Parties are allowed to protest the application. If the protests cannot be resolved by the applicant and the protestants, the SWRCB will hold a hearing.^{viii} If the application is approved by the SWRCB, a water right decision is issued. The water right decision sets forth the conditions under which the water may be appropriated. For small projects of less than 200 acre feet of storage or 3 cubic feet per second diversion, a field investigation is conducted and a staff decision is issued.^{ix}

Changes to a post-1914 appropriative right are allowed after public notice. Changes can be made to the place of use, purpose of use and the point of diversion, so long as the change will not injure other legal users of water.

The priority of post-1914 rights is based on the date the application was filed with the SWRCB. The rights can be lost through non-use, with special exceptions made for non-use due to water conservation, use of recycled water or participation in a larger water use program.^x

D. OTHER RIGHTS

There are other, less common, types of water rights in California including federal reserved rights, Pueblo rights and adjudicated rights. These other rights often attach to land and do not represent a significant portion of the rights that may be available for urban uses and/or transfer. Additionally, some court decrees will specifically state that any change to the water right will have to be approved by the court. Other decrees, however, will be silent on issue of changes. If, however, the decreed water rights are part of a statutory adjudication under the Water Code,^{xi} then the water right may be transferred through the SWRCB's change petition process.^{xii} However, the court with jurisdiction over the water rights may supplement or modify the decree upon a motion from the SWRCB or the party with the water right.^{xiii}

If the water rights are subject to an adjudication or a court decree, any change in the purpose of use or place of use may have to be approved by the court that has jurisdiction over the water right.^{xiv}

E. PUBLIC RIGHTS IN SURFACE WATER

There has always been a strong assertion of public rights to water which extend beyond the consumptive uses for which water may be utilized. These uses include, among other things, the right to navigate, to fish and otherwise use the surface of water for commercial purposes. The federal navigation servitude in the surface of water was recognized as early as 1824 in the United States Supreme Court case of *Gibbons v. Ogden* (1824) 22 U.S. 1.

In recent years, in addition to the traditional purpose of navigation, fish and commercial use, the public right to use the surface of water has been extended to include the right to swim, wade, use water for other recreational and scientific purposes, and to even preserve water within the watercourse for ecological and environmental purposes. These public rights to use the surface of the water resource have become an essential element of the public interest determination made in evaluating a proposed use of water. Public rights have also been given greater consideration in California where the public trust doctrine, first enunciated by the United States Supreme Court in *Illinois Central Railroad Co. v. Illinois* (1892) 146 U.S. 387, has been further developed through a series of cases culminating in *National Audubon Society v. Supreme Court* (1983) 33 Cal.3d 419.

Public interest in water also includes the preservation of water instream to serve environmental or ecological purposes. Water for instream purposes is most crucial in the arid and semi-arid West, including California, where watercourses can, in fact, become or are dry during periods of the year. A method utilized at times in California to preserve instream flows is to, in essence, withdraw water from appropriation in sufficient quantities to preserve instream resources. These withdrawals or reservations can take the form of terms or conditions in water rights permits or a blanket prohibition on further appropriations.

F. GROUNDWATER RIGHTS

Initially, it bears emphasis that groundwater is not subject to statewide governmental regulation in California. This is in stark contrast to the comprehensive regulation of groundwater in most western states, and the highly regulated surface

water system in California. In addition, under California law, not all underground water is “groundwater.” The Water Code defines water subject to surface water appropriation as “surface waters, and subterranean streams flowing through known and definite channels.” (Water Code § 1200.) In contrast, groundwater law applies to underground water not flowing in known and definite channels. The groundwater rights system in California has developed somewhat separately from the surface water right system. Although there are some similar principles, groundwater law is mainly based upon common law concepts, as opposed to the expansive statutory treatment of surface water.

Subject to California’s constitutional requirement that all water used be put to reasonable and beneficial use, two types of groundwater rights exist in California: overlying rights and appropriative rights. The former right is analogous to riparian rights to surface water, with the latter similar in nature to a surface water appropriative right.

1. The Overlying Right

A landowner overlying a groundwater basin, an overlyer, has rights to use the percolating groundwater of the basin beneath his lands for reasonable beneficial uses on his overlying land. This right is equal and correlative with respect to other overlyers within the same groundwater basin exercising their respective rights; that is, each overlying owner is entitled to a reasonable share of the available groundwater. (*Katz v. Walkinshaw* (1903) 141 Cal. 116.) As a result, no priority is given to one overlyer’s rights as against any other overlyer, regardless of when the rights are exercised. The quantity attributed to the right is a function of the number of parties rightfully producing the available water.

Each overlying landowner can extract as much groundwater as is reasonably needed for use on his overlying land. However, each overlying landowner must reduce his extractions proportionately when groundwater supplies cannot provide enough water for the cumulative, reasonable, overlying uses of each overlying landowner. (*Wright v. Goleta Water District* (1985) 174 Cal.App.3d 74,84.)

The overlying right is analogous to the riparian right to surface waters. It is appurtenant only to land that overlies the groundwater source (the groundwater

basin). Like the riparian right, the overlying right is not quantified unless adjudicated. It extends to that amount of water that can be reasonably and beneficially used on the overlying land. Like the riparian right, it is correlative. (See *Katz v. Walkinshaw*, *supra*, 141 Cal. at p. 134; *Wright v. Goleta Water District*, *supra*, 174 Cal.App.3d at p. 84.) Overlying rights, like riparian rights, are also superior to appropriative rights. (*City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 926. See Hutchins, *The California Law of Water Rights* (1956) p. 441 *et seq.*)

2. The Appropriative Right to Groundwater

Groundwater appropriators are generally (1) strangers to the groundwater basin (who do not own or use groundwater on overlying lands) who act to appropriate available groundwater; (2) overlyers who use all or a portion of their groundwater on lands that do not overlie the groundwater basin; or (3) an overlying municipality that extracts available groundwater for municipal purposes. In essence, if there is surplus water,^{xv} it may be appropriated for use on non-overlying land. An appropriative right to groundwater is a right to use groundwater outside of the groundwater basin or for public service in communities overlying the basin, as long as enough water is left to meet all overlying landowner needs. (*Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1000 n.6, 1001.) Between overlyers and appropriators, overlyers have priority; among appropriators, priority follows the rule of “first in time, first in right.” (*City of Pasadena v. City of Alhambra*, *supra*, 33 Cal.2d at p. 926.) Earlier appropriative users have priority over later appropriative users.

Where the basin is in a condition of overdraft,^{xvi} no appropriative rights can be acquired, except by prescription. (*City of Pasadena v. City of Alhambra*, *supra*, 33 Cal.2d at pp. 926-27; *City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d at p. 278.) Thus, if the basin is in overdraft, an appropriative right could not be established.

3. Possible Remedies of Adjacent Landowners

Ordinarily, an overlying owner could bring suit to enjoin an appropriative use which would interfere with the overlyer’s superior right. This is the normal remedy

that would be invoked in situations where a conflict exists. Once a public use has attached, however, private owners may no longer be able to obtain injunctive relief. Many cases recite that where public use has attached, a prohibitive injunction should be granted only if no other relief would be adequate. (*Peabody v. City of Vallejo* (1935) 2 Cal. 2d 351, 377; *Wright v. Goleta Water Dist.*, *supra*, 174 Cal.App.3d at p. 90.) Where an intervening public use precludes injunctive relief, an injured party may seek relief in damages. (*Newport v. Temescal Water* (1906) 149 Cal. 531, 538.)

4. Prescription

Once an appropriator has pumped from an overdrafted groundwater basin for five or more consecutive years, injured overlyers lose their right to sue, and the appropriator may obtain a prescriptive right to continue pumping. While *City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d at p. 274, holds that Civil Code section 1007 precludes prescription against a public entity, it is still possible to obtain a prescriptive right against private overlyers. Thus, pumping by a city or other appropriator during five straight years of overdraft^{xvii} could establish the right to continue such pumping.

5. Administration of Groundwater

In California the appropriation of groundwater does not require a permit, *per se*, from any state agency. Local control or management is, however, increasing in California.

a. Permits for Wells: Permits are required prior to the installation of a well. These permits focus upon protection of the resources from a health and safety perspective, rather than from a supply perspective.

b. Special Legislation: In some areas of California, groundwater basins are managed pursuant to special legislation. In these areas the state Legislature has established management plans for specific basins which control the extraction and use of groundwater. Among the most important means of managing groundwater basins in the context of general water conservation is the conjunctive use of surface and groundwater sources and the storage of surface water within groundwater basins.

c. Adjudicated Basins: In some areas of California, groundwater basins are managed pursuant to rules established in an adjudication of

groundwater rights. An adjudication is a court proceeding which establishes the relative rights of all parties claiming an interest in the water source. In these equitable proceedings the court usually maintains continuing jurisdiction, supervising, through a special master or watermaster, the use of water from the adjudication basins.

d. Water Quality Regulation: As is the case with surface water, various federal statutes control the use of water from groundwater basins. These statutes deal primarily with the discharge of pollutants, but may also regulate the pumping of groundwater.

6. Springs: When the flow of a spring naturally becomes part of the flow of a stream system which extends beyond the property on which the spring arises, rights to use are obtained as either riparian or appropriative surface water rights. When the flow does not naturally leave the land upon which it arises, the flow is exclusively owned by the owner of the land and can be used on that land for reasonable, beneficial purposes.

IV. OBTAINING A WATER RIGHT OPINION

Taking on the challenge of determining the validity and scope of a water right held by a service provider or agency will make the difference between correct assumptions and conclusions, and a community relying upon water rights that simply do not exist. LAFCoS stand the best chance of identifying *actual* water rights, including reliability and availability by understanding California water law, and engaging the appropriate experts when necessary.

The water rights opinion should be prepared by an attorney experienced in California water law and the law of water transfers if the objective is to implement a transfer or exchange. A water rights opinion will also provide additional assurance regarding the validity of the water right. Often times the conclusions in a water rights opinion as to the extents and validity of a water right may differ significantly from what the water right holder thought about the water rights. In these cases the opinion will almost always result in a reduction in what was believed to be the water right. Such reductions may come as a result of their being no pre-1914 appropriative water right, or that a portion of the riparian right had been severed in an old transaction, or that a portion

of the water right had been lost by non-use. Water rights opinions frequently expose historic water uses to the legal daylight only to discover that no such right exists or that such right is significantly limited.

With respect to water transfers, it bears mentioning that the SWRCB has not completed any final guidebook on water transfers in California and has indicated that each transfer will be assessed on a case-by-case basis as a result of the lack of experience with water transfers in the state.^{xviii} Thus, efforts to acquire and transfer water for urban supply purposes in California will require much in the way of documentation and legal support.

V. WATER TRANSFERS

The Water Code recognizes two types of transfers: short term transfers and long-term transfers. Short-term transfers, by definition, cannot exceed one-year, whereas, a long-term transfer is for any period in excess of one year.^{xix}

A. SHORT-TERM WATER TRANSFER

In order to meet the need for short-term water transfers, the Water Code provides for expedited review of short term or temporary transfers of post-1914 appropriative water rights.^{xx} A petition for a short-term transfer receives the highest priority from the SWRCB. To assist in expediting the review of temporary transfers, the Water Code exempts the transfer from review under the California Environmental Quality Act.^{xxi}

Water Code section 1725 allows for a temporary transfer in the form of a change in the point of diversion, place of use, or purpose of use for a period of one year or less, of water that otherwise would have been consumptively used or stored. The transfer may not injure any legal user of the water or unreasonably affect fish, wildlife, or other instream beneficial uses.^{xxii}

Consumptively used means “the amount of water which would have been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.”^{xxiii} Thus, the Code limits the water available for short-term transfers to that water that otherwise would have been *consumptively* used or stored by the water right holder.^{xxiv} In contrast, a long-term transfer may include additional water such as return flows.

Within ten days of receiving a petition for a short-term transfer, the SWRCB must initiate an investigation of the proposed temporary change.^{xxv} and the petitioner must publicly the water right holders of record that may be affected by the proposed change.^{xxvi}

Within thirty days of the notice of the change petition, water users and other interested parties may submit written comments on the proposed transfer.^{xxvii}

Generally, the SWRCB must render a written decision within 35 days after the SWRCB commenced its investigation or the notice of the petition was published.^{xxviii} The SWRCB may extend this time by 20 days for good cause or if the SWRCB received timely written comments on the proposed transfer.^{xxix}

The SWRCB may also extend the time for rendering a decision, with the petitioner's consent, if the SWRCB determines that a hearing is necessary in order for the SWRCB to make the findings allowing it to approve the transfer.^{xxx}

In submitting a petition for a short-term transfer, the petitioner must establish to the SWRCB's satisfaction that the temporary change would not injure any legal user of water during any potential hydrologic condition, nor would it unreasonably affect fish, wildlife, or other instream beneficial uses.^{xxxi}

B. LONG-TERM WATER TRANSFER

A long-term water transfer involves changing the point of diversion, place of use, or purpose of use for any period in excess of one-year.^{xxxii} In reviewing a proposed long-term transfer, the SWRCB must provide public notice and an opportunity for a hearing on the proposed transfer. Because these transfers will last longer than one year, the Water Code does not provide for expedited processing like that for short-term transfers. Long-term transfers are also subject to the requirements of the California Environmental Quality Act ("CEQA"), which means environmental documentation must be completed. Such documentation, depending on the circumstances, can be a simple declaration of no significant environmental impacts or as complicated as a full-blown Environmental Impact Report.

VI. CONCLUSION

By July 2003, California's population was estimated at 35.5 million people, reflecting the tremendous overall growth experienced during the past decade. Water

demand in urban areas is expected to increase in average water years from its current 8.8 million acre-feet annually to 11.4 million acre-feet by 2020, according to 1998 projections. As evidenced by the Water Analysis Legislation, policy makers are moving toward regional and local solutions to meet community water needs. As this shift takes place, LAFCos will find themselves playing an essential role in shaping water service for their communities, but must do so within the larger arena of the state’s complex water delivery systems, water rights laws and regulations, increasing pressure from agriculture and environmental needs, and the emerging water market. Challenges abound, but opportunities are opening up to allow communities to meet the goal of making sure the water is in the right places at the right times.

ⁱ *People v. Shirokow* (1980) 26 Cal.3d 301; *National Audubon Society*, 33 Cal.3d at p. 441; Hutchins, *The California Law of Water Rights*, *supra*, at pp. 40, 55-67.)

ⁱⁱ *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 925.

ⁱⁱⁱ California State Water Resources Control Board. 1999. *A Guide to Water Transfers (Draft)*. Division of Water Rights. A copy of *A Guide to Water Transfers (Draft)* may be downloaded from the SWRCB’s website at www.waterrights.ca.gov/watertransfer/watertransfer.htm

^{iv} Civil Code § 1410-1422 (1872).

^v *Smith v. Hawkins* (1998) 120 Cal. 86, 88; *Wood v. Etiwanda Water Co.* (1905) 147 Cal. 228, 233-234

^{vi} Wat. Code, §§ 1225 *et seq.*)

^{vii} Wat. Code, § 1605.

^{viii} Wat. Code § 1225 *et seq.*

^{ix} SWRCB Transfer Guide, p. 15.

^x Wat. Code § 1011.

^{xi} Water Code, § 2500 *et seq.*

^{xii} Water Code, § 1740

^{xiii} Water Code, § 1740

^{xiv} Water Code, § 1740

^{xv} In this context, the term “surplus” means water in excess of that which is necessary to meet the needs of all overlying landowners.

^{xvi} An overdrafted groundwater basin is one in which the safe yield has been and continues to be exceeded over a period of years. In general, the safe yield of a groundwater basin is determined by subtracting the diversion (or extractions from the aquifer) from recharge. Where the diversion exceeds the recharge to the basin, the safe yield is being exceeded.

^{xvii} Any year of surplus would interrupt the prescriptive period. Five consecutive years of overdraft are required.

^{xviii} California State Water Resources Control Board. 1999. *A Guide to Water Transfers (Draft)*. Division of Water Rights.

(www.waterrights.ca.gov/watertransfer/watertransfer.htm)

^{xix} Water Code, §§ 1725, 1735

^{xx} Water Code, §§ 1725-1732.

^{xxi} Water Code, § 1729, Public Resources Code, § 21000 *et seq.*

^{xxii} Water Code, § 1725.

^{xxiii} Water Code, § 1725.

^{xxiv} *In the Matter of License 1050, et al (Application 534 et al.)*, SWRCB Order WR 99-012 (December 28, 1999).

^{xxv} Water Code, § 1726 (e)

^{xxvi} Water Code, § 1726 (d)

^{xxvii} Water Code, 1726(f)

^{xxviii} Water Code, § 1726(g)(1).

^{xxix} Water Code, § 1726(g)(2).

^{xxx} Water Code, § 1726(g)(3).

^{xxxi} Water Code, § 1727(b)(1).

^{xxxii} Water Code, § 1735