

A Really Short Course on Water Rights

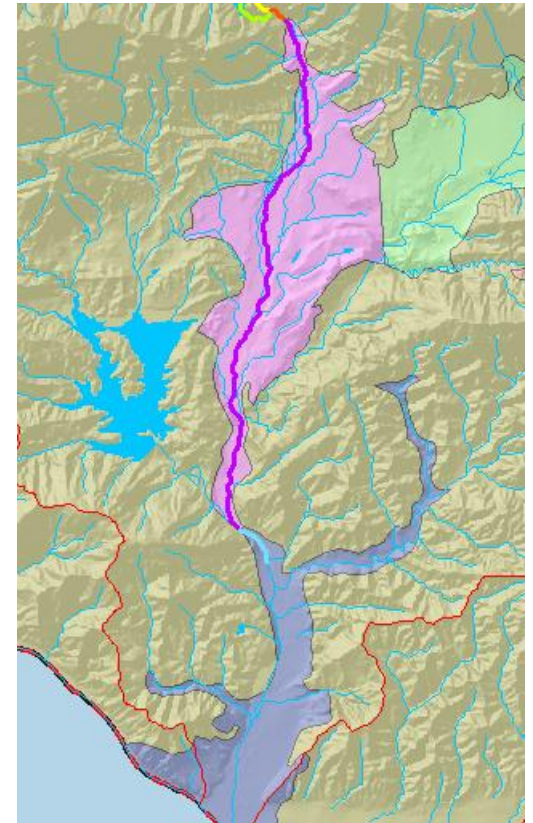
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Why Are We Talking About Water Rights?

- Pumping/diversion impairments in Reaches 3 and 4 of the Ventura River
- TMDLs are typically used to address impairments
- We are looking for alternate ways to address impairments
- Water rights may play a role but it's a complex topic



Water Rights

- A water right is legal permission to use a reasonable amount of water for a beneficial use such as swimming, fishing, farming, and industry; it is not ownership of the water itself
- If you take water from a lake, river, stream, or creek, or from underground supplies for a beneficial use, the California Water Code requires that you have a water right (with one exception)
- This is not the same as having a permit or license

Exception to Needing a Water Right

- If you take and use a small amount of water only for domestic purposes or use a small amount for commercial livestock watering purposes
- Use must be registered with State Board's Division of Water Rights and notification made to Fish & Game
- Maximum registered use is 4,500 g/day for immediate use or 10 ac-ft per year for storage in a pond or reservoir

The Benefits of Water Rights Laws

- 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
- Water rights permits include conditions to protect other water users and the environment
- State Board has continuing authority over permits it issues and can modify permits and licenses

What About Groundwater?

- State Board does not have authority to issue permits for GW diversions, except from subterranean streams
- BUT, pumpers may be regulated by a local entity, such as the Ojai Basin GWA

Groundwater

- A “subterranean stream flowing in a known and definite channel” is not groundwater
- To get a right to “groundwater” (percolating), you simply extract the water and use it for beneficial purpose
- Overlying GW rights have a higher priority than appropriative GW rights

What are Subterranean Streams?

- A subsurface channel must be present
- The channel must have relatively impermeable bed and banks
- The course of the channel must be known or capable of being determined by reasonable inference
- Groundwater must be flowing in the channel

The Two Most Common Types of (Surface) Water Rights

- Riparian
- Appropriative

Riparian Rights

- The right to use the natural flow of water on land that touches a lake, river, stream, or creek; it extends to the amount of water that can be reasonably used on the parcel
- Water cannot be stored during a wet time for use during a drier time under a riparian right
- Riparian rights are not lost by non-use
- A riparian right is superior to any permit or license issued by State Board to appropriate water
- Riparian right holders on a stream all have the same priority; they share any shortage

Appropriative Water Rights

- Someone who takes water for use on non-riparian land, or who uses water that would not be there under natural conditions on riparian lands, appropriates water
- Can be lost through non-use
- Shortages are not shared: “first in time, first in right”

Pre-1914 Appropriative Rights

- An appropriative right acquired before 1914 does not need a water right permit unless use of the water has increased since 1914
- Quantity is the amount put to reasonable beneficial use
- Priority is based on when the appropriation was initiated

Post-1914 Appropriative Rights

- Can be acquired through filing a water right application and paying required fees
- State Board must determine if there is water available for the proposed project
- And, that the proposed project will not deprive anyone who has a higher priority water right of the use of water under that right
- And, show that the proposed project will not harm public trust resources and is in the public interest

Permits versus Licenses

- 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 the project is constructed it is inspected
- If there is compliance with permit conditions then a water right license is offered
- The license confirms actual use which may be less than the permit allowed; license is only for that water that has been reasonably and beneficially used

Statement of Water Diversion and Use Program

CA law requires each person or entity that uses diverted surface water or pumped groundwater from a known subterranean stream to file:

- A Statement of Water Diversion and Use, or
- An application to appropriate water with State Board

Statement of Water Diversion and Use Program

- A Statement is filed if water is diverted and used under a claim of riparian entitlement to the natural stream flow; it is advantageous to document since it is a superior right
- A Statement should also be filed for water appropriated prior to 12/19/1914 and is not covered by a permit or license

When a Statement Should Not Be Filed

- The diversion is covered by a permit or license to appropriate water that is on file with State Board
- A notice is filed with State Board for the recordation of GW extractions and diversions in LA, Ventura, Riverside, and SB Counties
- The diversion is covered by a registration for small domestic or livestock stockpond uses
- The diversion is regulated by a Watermaster

Purpose of Statement Program

- To create a central repository for records of diversions and uses of water
- This repository differs from the records of appropriated water rights that are permitted and licensed
- Information from the Statements helps State Board protect the rights of existing and known diverters and help determine whether there is water available for appropriation by new applicants
- No fees required

Recordation of Groundwater Extractions and Diversions

- The Groundwater Recordation Program began in the 1950s and applies to only Los Angeles, Riverside, San Bernardino, and Ventura Counties
- Requires those persons with wells with aggregate extractions of more than 25 ac-ft (or 10 ac-ft or more from a single source) to file a report with the State or a delegated local agency (Ojai Basin GWA)
- Fee required

Enforcement and Penalties

- A diversion without a water right is illegal and a person or entity can be fined up to \$500 per day of diversion and use
- Failure to file a Statement for each diversion that occurred after 1/1/2009 may be subject to civil liabilities that carry a maximum fine of \$1,000 plus \$500 for each day the violation continues after 30 days of the State Board notification of the violation

Sources of Information on Water Users

- Statement of Water Use and Diversion Program
- Division of Water Rights Permitting and Licensing
- Groundwater Recordation Program
- Small Domestic Use and Livestock Stockpond Use Registration

Local Actions That Can Be Taken to Address the Pumping/Diversion Impairment

- Participate in discussions to form a groundwater management agency and develop a groundwater management plan
- Be committed to water conservation during dry periods
- Make sure State Board knows about your riparian right through submitting a Statement of Use
http://www.waterboards.ca.gov/waterrights/water_issues/programs/diversion_use/index.shtml

For additional questions or comments

Stay in the loop or provide comments by giving your name and email address to

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call at 213-576-6679