

**GOVERNOR'S COMMISSION
TO REVIEW CALIFORNIA WATER RIGHTS LAW**



SUMMARY

FINAL REPORT



DECEMBER 1978

Summary of the Final Report

The Governor's Commission to Review California Water Rights Law was established on May 11, 1977, to review existing California water rights law, to evaluate proposals for modifications and to recommend appropriate legislation in a report to the Governor. The Commission began its work by publishing six detailed staff papers and conducting seven public workshops on various aspects of California water rights law.

Topics studied were appropriative rights to surface waters, groundwater rights, legal aspects of water conservation, riparian water rights, the transfer of water rights and legal aspects of instream water uses.

Thereafter, the Commission met periodically to debate the policy options available to California.

On August 30, 1978, a Draft Report of the Commission's recommendations was released. Public hearings on the draft were held on September 28, 29, 30, and November 9, 1978. On the basis of these hearings, the recommendations were revised and a Final Report prepared.

This summary will deal with the proposals in the Final Report to bring greater certainty in water rights, to improve efficiency in water use, to improve the protection of instream uses of water, and to provide for effective management of groundwater resources.

CALIFORNIA SURFACE WATER RIGHTS

Although California law recognizes several types of rights to use surface water, two are dominant. Of greatest importance is the appropriative right. This water right allows use of a fixed quantity of water, with no restriction to the boundaries of a watershed or to parcels of land adjoining or crossed by the stream. The origin, measure and limit of the right is beneficial use, so that the right ceases when beneficial use has ended. In time of shortage the most recent appropriators must give up use of water first. There is no pro rata sharing of the shortage. Since 1914 all new appropriations of surface water have required a permit from the state.

Second in importance for surface water is the riparian water right. Riparian rights are part of ownership of land adjoining a watercourse. They entitle the landowner to the reasonable use of water from the source, but this water must be shared with other riparian landowners. These waters may be used only on riparian parcels of land located within the watershed.

CERTAINTY AND EFFICIENCY CRITICISMS

Critics of California's principal types of water rights have emphasized uncertainty regarding these rights and inefficiencies in their utilization.

Riparian surface water rights are neither quantified nor given priorities vis-a-vis other riparian rights. Such uncertainty, in the view of many critics, inhibits investment on the basis of the rights and encourages litigation.

Appropriative rights are quantified and have priorities, but the scope of the unregulated pre-1914 appropriative rights is uncertain in many instances. Criticisms regarding inefficiency center on difficulties encountered in transferring either kind of water right from one place of use, point of diversion, or purpose of use to another.

Although many of the criticisms of riparian and appropriative rights may be valid, the Commission urges that the established structure of surface water rights be retained. The existing system performed in much better fashion than might have been anticipated during two of the driest years in California history. Riparian and appropriative rights have served as the foundation for billions of dollars worth of investment. They are property rights subject to constitutional protection. Their deficiencies are better remedied by making them more secure and their utilization more efficient than by eliminating them in favor of an untried system.

TOWARD GREATER CERTAINTY IN WATER RIGHTS

To bring greater certainty and security to California water rights, the Commission recommends that greater use be made of an improved process for the comprehensive and final determination of water rights on a stream or stream system. This process, known as "statutory adjudication", has been used in California for many years. It is primarily an administrative process conducted by the State Water Resources Control Board. It should be improved by the following changes:

1. Authorization for the State Water Resources Control Board to initiate the process, which presently may be begun only on petition of a water rights claimant.
2. Conversion in certain circumstances of ordinary lawsuits into statutory adjudications.
3. Inclusion of closely interconnected groundwater.
4. Authority for the quantification of riparian rights, where quantification is necessary to secure the reasonable beneficial use of water.
5. Institution of procedures to expedite the process and the modification of decrees once issued.
6. Provisions for the state to assume a greater portion of the costs of the process.

An additional measure recommended to improve the certainty of water rights is strengthening of existing requirements to report to the state on water diversion and use. The Commission also recommends that, whatever the existing legal status of acquisition of water rights by prescription may be, water rights, in the future, should not be subject to acquisition by prescription.

The Commission does not recommend that riparian rights be included in the state's permit system. The report reviews various developments which have given a measure of precision to many riparian rights and notes the high cost of such inclusion. It concludes that the statutory adjudication process provides a more cost-effective means of addressing problems created by uncertainty in riparian and other kinds of water rights.

IMPROVING EFFICIENCY IN WATER USE

The Commission's report reviews the pressing need for more efficient use of water in California. By the year 2000, California's water demand deficit will be substantial even if facilities contemplated by recent legislative proposals, such as the Peripheral Canal, should be completed. Rising costs and concern over the potential environmental costs of water supply development have greatly reduced the prospects for new water supply projects. More efficient use of water would, however, help to meet the deficit. The Commission consequently recommends a series of changes in the law.

Some of these changes go to the manner in which water use is regulated. Although the Commission recommends against a comprehensive definition of what constitutes the "reasonable beneficial use" required by the State Constitution, it does recommend that local custom be given less weight than heretofore in making the reasonable beneficial use determination. It also recommends that the State Water Resources Control Board be given more tools with which to enforce existing water rights. In particular, it recommends that the Board be permitted to impose civil penalties on those who violate a valid cease and desist order issued to deal with an unauthorized diversion or the violation of a term or condition in a state permit or license.

Other changes are designed to increase the incentives for efficient water use. One of these would restrict the forfeiture doctrine, according to which non-use of water leads to loss of an appropriative water right, where the non-use occurs because of water conservation efforts. A second would give a better water right to a person who provides water for a watercourse which would not have been available for beneficial use but for that person's effort. This "salvage" water right would be measured by the amount of the water saved.

Other recommendations seek to encourage voluntary transfers of water rights, such as by sale or lease. Where the interests of third parties and of areas of origin are properly protected, the Commission believes such transfers are in the public interest. They move water resources from lower-value to higher-value uses and permit more productive overall use of the finite resource of developed water supplies.

One of the transfer recommendations would clarify the legal status of reclaimed water, such as sewage effluent. The Commission recommends that, as between the owner of a wastewater treatment facility and a water supplier, the owner of the facility be granted the right to sell or distribute the reclaimed water, unless otherwise provided by agreement. Another recommendation would protect reclaimed water introduced into a stream system for the purposes of maintaining or enhancing instream beneficial uses against the possibility of appropriation by others.

Another proposal designed to increase transfers of water rights would liberalize existing rules on changes in the place of use, point of diversion, or purpose of use of water held under state permit or license. The Commission also recommends that provisions which prohibit water districts from selling non-surplus water be repealed.

It should be emphasized that improvements in efficiency of water use do not necessarily require major transfers of water rights on a permanent basis. Short-term transfers of water rights may be adequate to improve productivity.

The Commission also proposes one administrative reform aimed at speedier processing of applications for a permit to appropriate unappropriated water. The recommendation is to require mandatory field investigations, since investigations often bring settlement of protests.

PROTECTION OF INSTREAM USES OF WATER

Historically in California, great emphasis has been given to rights to divert water from streams, but relatively little attention has been paid to the protection of instream beneficial uses of water such as for fisheries and recreation. Terms and conditions designed to protect such uses have been inserted into permits and licenses issued to appropriators and, since 1972, the Wild and Scenic Rivers Act has provided very broad protection to various reaches of certain California rivers by placing them entirely off-limits for most development. But the State Water Resources Control Board has refused to process applications to appropriate water for instream fisheries use, and no effort has been made to develop comprehensive instream flow standards.

The California codes are replete with legislative declarations of the importance of preserving California's unique natural heritage of rivers and streams. The law contains various tools for the protection of instream values. Yet, impairment and loss of instream values continue to grow. This occurs because the existing means for protecting instream values are largely fragmentary and reactive. For example, protests by the Department of Fish and Game in the permit application process provide instream protection only on a case-by-case basis. Existing measures compel consideration of instream values in the decision-making process of various public entities, but they do not compel substantive protection itself. Thus, statutes generally require only that agencies "must consider" or "must take into account" the public interest in the aesthetic, recreational, and fishery uses of the state's waters.

The California Wild and Scenic Rivers Act does provide direct and substantive protection for natural stream resources. But it includes only a few of California's rivers and is essentially an "all-or-nothing" approach. This approach, while appropriate for the rivers included under the Act, is unsuited for the protection of the many streams which must accommodate both instream and offstream uses and equities, which vary widely from stream to stream.

The inadequacy of existing means for protecting instream beneficial uses is dramatically demonstrated by the severe degradation of fisheries which has occurred on many streams. In fact, unless better methods of protection are found, it appears some fishery resources will not survive.

To deal with these problems, the Commission recommends measures for instream protection which are direct, substantive, and comprehensive, and which will be useful for streams on which a substantial degree of water development and use may exist.

The Commission proposes:

1. That comprehensive instream flow standards be set on a stream-by-stream basis by the State Water Resources Control Board; that these standards reflect a careful weighing of the importance of the present or potential instream values of the stream against the present or potential value, economic or otherwise, of the stream for non-instream uses; that the Board comply with these standards in its administrative and adjudicatory decision-making; that instream flow standards be expressed in terms of certain quantities or flows of water which are required to be present at certain points along the stream at certain times of the year to protect fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses; and
2. That programs be developed by the Board, or the Board and other agencies, where it is determined that the limitations on administrative and adjudicatory actions imposed by the instream flow standards are inadequate to achieve the beneficial instream uses of water envisioned by the standards. These programs would be promulgated, following a public hearing, for streams where it appeared to the Board that achieving the standards would require existing water uses to be affected. The programs would include any physical solutions as may be required to avoid or mitigate the impact of achieving the standards on existing uses. Where restrictions of existing water uses are necessary, the programs would provide for the equitable distribution of losses or impairment incurred among all the users on the stream. However, no restrictions could be imposed which would cause substantial harm to any lawful user.

The Commission also recommends that where enhancement of instream values is desired or where the weight of existing or potential economic values prevents substantial stream protection in the standard-setting procedure, the Secretary of the Resources Agency be authorized to purchase water rights.

3. That interim protection be provided by means of instream appropriations of water. Any person could petition for an appropriation of water for instream protection, in the same manner as for traditional appropriations. The petition must contain information regarding the need both for instream protection and for non-instream uses of water, and a weighing of instream and non-instream interests is required of the Board in passing on the petition. If an appropriation were granted, the Board would be required to establish an instream protection standard for that stream within five years. Upon establishment of a standard, the appropriation would terminate. The Board could also establish standards for streams without instream appropriations upon its own motion.

The Commission recommends that most other appropriations for instream use be prohibited. The Commission believes protection of such flows, which serves a broad range of purposes, should be the product of a comprehensive approach undertaken by agencies acting in the public interest. It therefore recommends that instream appropriations not involving physical control be prohibited, except for stock watering purposes, or where existing water rights have been purchased in compliance programs, acquired independently by the Resources Agency pursuant to the new legislation which the Commission proposes, or purchased from users who originally applied the water to out of stream purposes.

The Commission believes its proposal to prohibit most appropriations without physical control should be adopted only if its proposed instream flow standards legislation is also adopted. If this legislation is not enacted, the Commission has concluded that the entire question of instream appropriations should be left to the courts. It would then be for the courts to decide whether the law of appropriative rights requires diversion or control, in light of the public policy need for instream protection.

EFFECTIVE MANAGEMENT OF GROUNDWATER RESOURCES

Integration of water rights into comprehensive water resources management programs has been the most difficult problem dealt with by the Commission. The protection owed to existing private property rights in water must be viewed in the context of the need for adequate preservation of the total water resource in the interest of all Californians, as well as in the interest of private users themselves. Such preservation can be accomplished only with careful management of groundwater as well as surface water resources.

In many parts of California, local water agencies working in cooperation with state and federal water agencies have achieved a reasonable level of management of surface water supplies. Frequently, private rights to the use of these supplies have been successfully integrated into management programs. Although California has extremely serious groundwater problems, management of groundwater has been the exception rather than the rule.

Overdraft is the most commonly recognized groundwater problem in California. Overdraft occurs when the amount of water extracted from a groundwater basin exceeds the long-term average annual recharge to the basin from both natural and imported sources, plus what has been called "temporary surplus". "Temporary surplus" is the amount of water that can be extracted from a basin to provide storage space for wet year runoff that would otherwise be wasted.

Most areas of the state experience overdraft to some extent. Long-term overdraft has amounted to an average of 2.2 million acre-feet every year. More than half of this long-term overdraft occurs in the Tulare Basin hydrologic study area in the southern part of the San Joaquin Valley.

Overdraft is expensive. In terms of direct extraction expenses, power costs, and the related problems overdraft causes or aggravates, the costs are large. Direct costs of overdraft include increased pumping energy costs to lift water a greater distance, costs of deepening wells or of lowering pumps, and costs of sinking new wells. The estimated average pumping depth in the Central Valley is 118 feet, but in some areas pumping depths are in the 500 to 1000-foot range, which has made the water too expensive for many agricultural uses.

There are several types of problems related to overpumping, besides the problem that the groundwater supply in a given area may be exhausted. One example is seawater intrusion into fresh water aquifers, which occurs when groundwater extraction increases to the point that normal seaward movement of fresh water is decreased and seawater moves inland. Subsidence also results from overdraft. Subsidence may occur where the groundwater level in a basin is lowered by overpumping, causing water to be squeezed out of the clay layers so that the layers compact. When this happens, the overlying land surface drops. Nearly one-half of the San Joaquin Valley has suffered some subsidence. Most land surface drops have been from a few inches to a few feet, but subsidence of 28 feet has occurred in one area.

To deal with existing groundwater problems, the Commission recommends that legislation on groundwater management, the adjudication of groundwater rights, and conjunctive use of surface water and groundwater resources be enacted. Because of the various levels and types of existing management programs and the substantial differences in groundwater basin conditions and needs in the state, the proposed legislation allows for flexibility wherever possible.

The basic premise of the Commission's proposed legislation is that local management, if it is properly undertaken, offers the best opportunity for workable and effective control. Local entities should be given the primary responsibility and necessary powers to develop and implement management programs. The proposed legislation anticipates that areas that are already well-managed or that do not have critical groundwater problems will be "inactive", that is, they will not be required to have a designated groundwater management authority or a groundwater management program. Such areas, however, may choose to have the inactive classification revoked in order, for example, to obtain the powers granted to groundwater management authorities. The Commission intends that

the requirements of the proposed legislation not jeopardize working management efforts or require any unnecessary management actions.

The Commission recommends adoption of a single comprehensive groundwater statute. The legislation provides as follows:

1. GROUNDWATER RESOURCES MANAGEMENT REQUIREMENTS

On the basis of investigation and study by the Department of Water Resources pursuant to Water Code Section 12924 (S.B. 1505, Nejedly, 1977), the Legislature may establish groundwater management area boundaries. Local entities in each area without an existing, effective management operation should have the opportunity to cooperate to identify a groundwater management authority for the area, which may take any one of several forms. If local entities fail to agree, then the Board will, subject to legislative review, designate an appropriate groundwater management authority. If no suitable entity can be designated, then a new groundwater management district will be formed.

The local groundwater management authority should have all necessary management powers, as included in the Groundwater Management District Act. The local authority should develop a management program for the area and perform groundwater management functions in accordance with its program. Such programs and performance are subject to evaluation by the Board, but do not require Board approval to be effective. When the Board finds either a groundwater management program or performance pursuant to an established program to be inadequate, it may seek judicial relief through the Attorney General.

2. GROUNDWATER MANAGEMENT DISTRICT ACT

A designated groundwater management area should have the option to form a groundwater management district to act as the local groundwater management authority for the area. The powers listed in the Act should also be automatically attributed to every local authority designated pursuant to Part I of the legislation.

3. CONJUNCTIVE USE OF GROUNDWATER AND SURFACE WATER

The doctrines established in case law should be codified, and local groundwater management authorities should have primary control of the use of groundwater basin storage space.

4. GROUNDWATER RIGHTS ADJUDICATIONS

The doctrine of mutual prescription should not be revitalized. Instead, the basis of future groundwater adjudications should be fair and equitable apportionment of rights to extract groundwater, with considerable discretion to be left in the court to avoid races-to-the-pumphouse and other problems. The rules of civil procedure, as they apply in groundwater adjudications, should be improved to reduce the length and cost of adjudications.

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TO REVIEW CALIFORNIA WATER RIGHTS LAW**

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State of California
EDMUND G. BROWN JR., Governor

● **FACT SHEET** **FACT SHEET** **FACT SHEET** **FACT SHEET** ●

Commission's Final Report

NATURE OF THE COMMISSION

- *Advisory to Governor Brown*
- *Twelve members (list of members with biographical information on each attached)*
- *Chaired by Donald R. Wright, retired Chief Justice of California*
- *Members appointed on May 11, 1977*
- *Published background papers on the six major issues considered by the Commission and held seven public workshops statewide*
- *Issued a draft report (August 30, 1978) and held four public hearings on the draft report throughout the state.*

THE COMMISSION'S RECOMMENDATIONS

Legislative changes recommended by the Commission include measures to achieve effective groundwater management, further protection for instream uses, greater certainty for water rights and changes to achieve greater efficiency in water use.

GROUNDWATER – THE CURRENT SITUATION

Today, California uses at least 2.4 million acre-feet of water per year above its dependable supply. (An acre-foot of water is enough to cover an acre of land with water one foot deep.) Most of this deficit is supplied by overdrafting groundwater basins. By the year 2020, greatly increased deficits are projected. During the 1976-77 drought, overdraft increased from an average annual 2.2 million acre-feet to from 4 to 10 million acre-feet.

In many areas of the state, wells ran dry because of well interference by groundwater pumpers with deeper wells and more powerful pumps and there were substantially lowered groundwater tables. In addition to exhausting the supply, serious problems accompany overdraft. These include saltwater intrusion into groundwater basins, higher energy costs to pump the water, and land subsidence which can result in permanent reduction in the basin's capacity and serious harm to surface facilities.

GROUNDWATER RECOMMENDATIONS

- ● Where groundwater management is needed but does not presently exist, local agencies should be required to develop and implement appropriate groundwater management programs pursuant to a strongly stated state policy for groundwater protection.
- ● The process for groundwater management should provide for the following:
 - Designation of groundwater management areas pursuant to work now being carried out by the Department of Water Resources under S. B. 1505 (Nejedly, 1978).
 - Cooperation by local entities to identify a groundwater management authority for each designated groundwater management area.
 - A wide range of powers for local groundwater management authorities.
 - Local responsibility for program development and performance, subject to evaluation (but not veto) by the State Water Resources Control Board, and judicial enforcement of state policies.
- ● Where proper groundwater management now exists, or where critical groundwater problems do not exist, the area should be exempt from any new requirements.
- ● Conjunctive use of groundwater and surface water should be encouraged, with local groundwater management authorities having primary control over the use of groundwater basin storage space.
- ● Groundwater rights adjudications should aim to provide a fair and equitable apportionment of rights to extract groundwater. Adjudications are comprehensive and final determinations of water rights in a groundwater basin.
- ● The groundwater adjudications process should be improved to reduce the length and cost of adjudications.

INSTREAM USES – THE CURRENT SITUATION

Instream uses of water include such uses as fishery, wildlife, recreational, aesthetic, and scenic uses. Despite previous efforts to protect these uses, serious degradation continues to occur. In North Coast rivers, for example, steelhead trout populations have declined 66 percent and silver and king salmon populations have each declined about 65 percent. In some rivers where dams have been erected, fish are now extinct. The overall effects of stream degradation on other recreation activities, such as hiking, rafting, swimming, and camping, as well as aesthetic and scenic losses, are not as easy to measure – but they are equally important.

INSTREAM RECOMMENDATIONS

- Comprehensive instream flow standards should be set on a stream-by-stream basis by the State Water Resources Control Board. In making any water right decisions, the Board would have to comply with these standards.
- Where the instream flow standards adversely impact existing water uses, programs to implement the standards should be developed following a public hearing. Physical solutions to avoid or mitigate the impact of instream flow standards on existing uses should be encouraged. Such solutions could include changing a point of diversion in order to provide flows to protect an additional section of a stream.

Where it is necessary to restrict existing uses, the losses should be equitably distributed among all the users on the stream. However, no substantial harm should be suffered by any legal user of water as a result of a compliance program.

- The Secretary of the Resources Agency should be given the authority to purchase water rights for instream uses.
- Interim protection should be provided by means of instream appropriations of water. Any person should be able to petition the State Water Resources Control Board for an appropriation, following the same procedure as for other appropriations. If the Board grants an appropriation, it would be required to establish instream flow standards for that stream within five years.
- Once comprehensive instream flow standards are authorized for a stream, in most cases rights to appropriate water should not be permitted for fishery or other instream use where there is no diversion or other physical control of water.

CERTAINTY OF WATER RIGHTS – THE CURRENT SITUATION

There are areas of the state where downstream water right holders are uncertain as to the actual amount of water which will be available to them under their rights, since there may be no enforceable restrictions on the amount of water which may be taken by upstream water right holders.

CERTAINTY OF WATER RIGHTS RECOMMENDATIONS

- ● Greater use of an improved process for the comprehensive and final determination of water rights on a stream (this process, known as “statutory adjudication”, is primarily an administrative process conducted by the State Water Resources Control Board). Some of the recommendations for improvements are:
 - To allow the State Water Resources Control Board to initiate the process
 - To include interconnected groundwater
 - To have the state assume a greater portion of the costs.
- ● Strengthening of existing requirements to report to the State Water Resources Control Board on water diversion and use.
- ● Clarification of the law on acquisition of water rights by prescription (acquiring the legal right to use water based on a history of past use).

EFFICIENT WATER USE – THE CURRENT SITUATION

Under current law, water right holders who conserve water are penalized. If water is not used for a specified number of years, the water right holder may lose the right. In addition, where water is taken illegally, lengthy court action is necessary. From the economic point of view, water often could be used more efficiently by transferring it to an area where its use would produce greater economic benefit.

EFFICIENT WATER USE RECOMMENDATIONS

- ● The State Water Resources Control Board should be given the authority to order unauthorized diversions of water or violations of the terms and conditions of a water right permit stopped. If the order is violated, the Board should be able to obtain civil penalties and request the courts to stop or reduce the diversion.
- ● A water user who conserves water should not lose the right to the amount he conserves.
- ● Anyone who salvages water should have first priority to the extent of the amount salvaged. Water is salvaged when, for example, a ditch is lined or vegetation is removed.
- ● Voluntary transfers of water rights should be encouraged as long as the interests of third parties and areas of origin are properly protected.

BACKGROUND INFORMATION

TYPES OF CALIFORNIA WATER RIGHTS UNDER CURRENT LAW

- RIPARIAN WATER RIGHTS accompany ownership of land adjacent to a watercourse. The available natural flow is shared by all riparian landowners on the watercourse who can make reasonable use of it. Water diverted under this right is limited to use on riparian land within the watershed. In most situations riparian water right holders have a better claim to available water than do non-riparians.
- PRE-1914 APPROPRIATIVE RIGHTS are rights to surface waters acquired before the Water Commission Act of 1913 established the present permit and license system. This appropriative right was originally established by putting the water to beneficial use. In most cases, these rights follow riparian rights in priority.
- POST-1914 APPROPRIATIVE RIGHTS are rights to surface waters established by the Water Commission Act of 1913 and are the most important form of water right in California today. These rights are administered by the State Water Resources Control Board through a permit and license system and allow use of a fixed quantity of water.
- GROUNDWATER RIGHTS – Owners of land overlying a groundwater basin have “correlative” or equally shared rights to the groundwater in the basin, as long as they put that water to overlying use. Groundwater that is surplus to the needs of the overlying owners can be appropriated by others.

GENERAL COMMENTS

- All appropriative water right holders are subject to the “first in time, first in right” principle. This means that, between water right holders, whoever has the older water right has priority to the water. When the quantity of water is limited, the older or senior right must be satisfied before someone with a right of lower priority can begin to take water.
- The state’s water right system is administered by the State Water Resources Control Board. Since December 1914 all new appropriations of surface water have required a permit from the Board or one of its predecessors. In issuing a permit, the Board routinely inserts terms and conditions to protect the public interest and the existing water rights of other users of the source.
- All water rights are subject to the Constitutional requirement that the water use be a reasonable beneficial use.

**GOVERNOR'S COMMISSION
TO REVIEW CALIFORNIA WATER RIGHTS LAW**

- CHAIRMAN DONALD R. WRIGHT: Born Placentia, CA, 1907; graduate Stanford University, Harvard Law School; one of three original incorporators of Legal Aid Society of Pasadena; member many educational, charitable, and cultural organizations. Chief Justice, Supreme Court of California 1970-77. Resides in Pasadena.
- VICE CHAIRMAN CHARLES J. MEYERS: Born Dallas, TX, 1925; graduate Rice University, University of Texas, Columbia University; dean of Stanford University Law School; member American Law Institute, American Bar Association, Texas Bar Association; member Board of Advisors, Ecology Law Quarterly, Environmental Law Reporter. Resides in Stanford.
- MEMBER IRA J. CHRISMAN: Born Modesto, CA, 1910; cattleman, diversified rancher; served 16 1/2 years on California Water Commission, nine years its chairman; former president Mineral King Savings and Loan Association; currently serving as member of the California Water Advisory Panel. Resides in Visalia.
- MEMBER JAMES A. COBEY: Born Frostburg, MD, 1913; graduate Princeton University, Yale Law School and Harvard Graduate School of Business Administration; former California State Senator; chairman emeritus Advisory Council, University of California Water Resources Center; authored water legislation; helped organize the Western States Water Council and one of California's three initial delegates; since 1966 associate justice, California Court of Appeal, Second Appellate District, Division Three, Los Angeles. Resides in Pasadena.
- MEMBER DAVID E. HANSEN: Born Sacramento, CA, 1938; graduate University of California, Davis, Iowa State University; associate professor of agricultural economics at the University of California, Davis; member University Task Force on Critical Issues for California Agriculture in the 1980's with responsibility for study of water issues; member State Board of Food and Agriculture. Resides in Dixon.
- MEMBER ARTHUR L. LITTLEWORTH: Born Anderson, CA, 1923; graduate Yale University, Stanford University and Yale Law School; attorney practicing in the field of water rights. Recipient of many civic and educational awards; instructor and panelist in seminars and conferences concerning water-related matters. Resides in Riverside.
- MEMBER MARY ANNE MARK: Born New York City, NY, 1942; graduate Stanford University; civil engineer presently associated with the U.S. Corps of Engineers; active member of ASCE Water Policy Committee, Water Committee of Commonwealth Club of California; Associate Water Resources Coordinator for California and Nevada of Sierra Club since 1974. Resides in Palo Alto.
- MEMBER VIRGIL O'SULLIVAN: Born Colusa, CA, 1918; graduate University of California, Berkeley (Boalt Hall); active farmer and lawyer experienced in water law, reclamation law, and water district organization; State Senator 1958-66. Resides in Williams.
- MEMBER ARLISS L. UNGAR: Born Los Angeles, CA, 1935; graduate Stanford University; member League of Women Voters; Department of Water Resources Delta Environmental Advisory Committee, University of California Water Resources Center Advisory Council, State Water Resources Control Board Wastewater Reclamation Policy Task Force. Resides in Lafayette.
- MEMBER THOMAS M. ZUCKERMAN: Born Oakland, CA, 1942; graduate Amherst College, University of California at Berkeley (Boalt Hall); attorney specializing in water law; formerly with the County Counsel's office for San Joaquin County. Resides in Stockton.

EX-OFFICIO MEMBERS:

- JOHN E. BRYSON: Born New York City, NY, 1943; graduate Stanford University, Yale Law School; founding attorney, Natural Resources Defense Council, Washington, D.C.; chairman of State Water Resources Control Board since April 1976. Resides in Carmichael.
- RONALD B. ROBIE: Born Oakland, CA, 1937; graduate University of California, Berkeley, University of the Pacific, McGeorge School of Law; member State Water Resources Control Board 1969-75; member Western States Water Council; Director of California Department of Water Resources since March 1975. Resides in Sacramento.

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TO REVIEW CALIFORNIA WATER RIGHTS LAW

P. O. BOX 100 • SACRAMENTO, CALIFORNIA 95801

January 24, 1979

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GOVERNOR'S WATER RIGHTS COMMISSION RELEASES FINAL REPORT

Fundamental reforms in state law governing the acquisition and use of water in California were proposed today by a blue ribbon commission appointed by Governor Brown during the 1977 drought. In making its recommendations, the Commission concluded the first comprehensive review of California water rights law in more than half a century.

Based upon 18 months of study, the Commission found that new legislation is needed to protect California's dwindling groundwater supplies and to improve valuable instream uses of water, such as for fish and wildlife needs, recreation and aesthetics. The Commission also recommended legislative changes to achieve greater efficiency in water use and provide greater certainty for water rights.

The last systematic evaluation of California water rights law was in 1912.

Commission Chairman Donald R. Wright, retired Chief Justice of California, characterized the Commission recommendations as "a moderate approach to some very difficult problems." He said, "We need stronger laws than we now have, particularly to manage our valuable groundwater resources and protect significant instream uses. Without new laws to give us better management of our water resources, we risk major disasters in some parts of the state." He noted the law sets the framework for water use by hundreds of thousands of farmers, businesses and cities throughout the state.

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The Commission's report warned that California faces extremely serious groundwater problems, of which groundwater overdraft is the most obvious. Where critical groundwater problems exist, the Commission recommends that local agencies be required to develop and undertake management operations that would make the most beneficial use of groundwater supplies while at the same time conserving the resource.

The recommended legislation would allow the State Water Resources Control Board to evaluate the adequacy of the local groundwater management plans, and, if necessary, initiate court action to compel compliance.

In calling for additional instream protection, the Commission reported that in some streams fish have become extinct and in others the fish population has dropped as much as 66 percent.

Under the Commission recommendations, the State Water Resources Control Board would be authorized to adopt comprehensive instream flow standards on a stream-by-stream basis. The standards would require that at designated times of the year, certain quantities of water be maintained in specific parts of the stream to protect beneficial uses such as fishery, wildlife, recreational, aesthetic, and scenic uses. Until the flow standards are developed, interim protection would be provided by allowing instream appropriations of water for these uses.

The Commission also recommended changes in legislation to encourage efficient use of water by protecting the water rights of those who conserve water and by allowing water to be transferred from one area to another.

To make water rights more certain, the Commission recommended increased use of an improved statutory adjudication process. This process, in use in California for over fifty years, provides for the final and comprehensive determination of individual water rights on a stream. In many instances under current law, water right holders do not know how much water they are entitled to use.

In developing its recommendations, the 12 member Commission published background papers on the major issues under consideration and held seven public workshops throughout the state. The Commissioners also held four public hearings following release of a draft report last August, and has considered the comments of more than two hundred individuals and organizations submitted on the draft report.

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The undersigned statewide organizations concerned with the management and use of California water resources today stated that they were "dismayed" that their comments to the Governor's Commission to Review California Water Rights Law have apparently fallen on deaf ears. "While we have not had an opportunity to review the Commission's final report in any detail, our understanding of the document indicates that principle issues of concern to us remain unchanged.

"The Commission's suggestions for new state involvement in groundwater management still fail to recognize the simple fact that it is not possible to solve our groundwater problems without severe economic disruption and loss of agricultural production unless supplemental surface water supplies are made available to replace water supplies lost by reductions in pumping. If we reduce groundwater pumping to solve the estimated 2.2 million acre-foot annual overdraft problem, approximately 700,000 acres of prime agricultural land would be taken out of production. This means a loss of more than \$700 million annually in direct farm income and a total loss to the economy of about \$3 billion each year.

more

"Additionally, we continue to be gravely concerned over the Commission's recommendations regarding instream water rights, its recommendations which would deprive holders of riparian water rights of their basic property rights, and many of its other recommendations which affect the stability of water rights.

"It appears to us that the Commission's recommendations will result in substantial additional costs to state and local taxpayers. Moreover, it will necessarily result in expansion of the State bureaucracy to carry out the programs of vastly increased state regulations of the lives and property of the people of California."

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Association of California Water Agencies

Agricultural Council of California

California Cattlemens' Association

California Chamber of Commerce

California Farm Bureau Federation