

**Water 101 – The Basics and Beyond**  
**Legal & Institutional Management**  
**Framework**

*Water Education Foundation*  
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Rebecca Smith  
Downey Brand LLP  
rsmith@downeybrand.com

# Building the Framework

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*California's legal and institutional framework comes from...*

- State & Federal Legislation
- Case law
- Agency rulemaking & regulations
- Local ordinances
- State & federal contracts

# Meeting the Actors

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- Legislature
  - State & federal
- State agencies
  - *Including* SWRCB, CVFPB,
- Federal agencies
  - *Including* NMFS, USBR, Corps,
- Local agencies
  - *Including* water districts, cities, counties, GSAs
- Courts
  - State and federal

# State Agencies

- State Water Resources Control Board and Regional Boards
  - **Mission:** “to preserve, enhance, and restore the quality of California’s water resources, ensure their proper allocations and efficient use for the benefit of present and future generations”
  - State Water Resources Control Board (SWRCB) is 5-member board, solely responsible for issuing surface water right permits.
  - SWRCB reviews petitions requesting changes to water rights or challenging Regional Board actions
  - 9 Regional Water Quality Control Boards: semi-autonomous 9-member boards which regulate a “basin” organized by hydrologic regions (map of hydrologic regions on next slide)
  - Regional Boards establish water quality control plans and standards, issue waste discharge requirements and determine compliance with applicable laws

# Government Agencies - State

- Department of Water Resources (DWR)
  - **Mission:** “To manage the water resources of California in cooperation with other agencies, to benefit the State’s people, and to protect, restore, and enhance the natural and human environments”
  - Operates & maintains the State Water Project (SWP), which delivers water to 29 water agencies pursuant to long-term contracts
  - Holds contracts with water users/providers for delivery of SWP water

# Government Agencies – State, cont'd

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- DWR—Division of Safety of Dams: reviews and approves plans and specifications for the design of dams and conducts annual inspections of dams
- Central Valley Flood Protection Board: regulatory authority over state-federal flood control system (levees) and construction activities within flood zones

# Government Agencies – State, cont'd

## ■ California Water Commission

- 9-member Commission advises DWR and approves DWR's proposed rules and regulations
- Responsible for selecting water storage projects for funding under Proposition 1

## ■ Department of Fish and Wildlife (formerly DFG)

- **Mission:** “to manage California’s diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public”
- DFW determines whether a species warrants protection under the CA Endangered Species Act and also acts as the expert agency for CEQA review of projects that may impact state-listed species

# Government Agencies – State, cont'd

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- **Delta Stewardship Council**

- Created by 2009 legislation, to achieve the coequal goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the [Sacramento-San Joaquin River] Delta ecosystem”
- 7-member Council responsible for adopting a legally enforceable Delta Plan (adopted in May 2013)

- **Delta Conservancy**

- Created by 2009 legislation, comprised of 11-member board and 12 advisors
- Primary agency to implement ecosystem restoration projects in the Delta



# Government Agencies - Federal

- **U.S. Bureau of Reclamation**
  - Manages & operates the Central Valley Project (CVP)
  - Contracts with water districts and utilities for delivery of water
  
- **Resource Agencies**
  - **U.S. Fish & Wildlife Service**
    - Determines which terrestrial & anadromous species will be protected under the Endangered Species Act
  - **National Marine Fisheries Service**
    - Similar duties to the FWS, with authority over marine species and habitat

# Government Agencies – Federal, cont.

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## – U.S. Army Corps of Engineers

- Primary authority to implement the Federal Clean Water Act §404

## – USEPA

- Regulatory authority to oversee Federal Clean Water Act

# Water Service Providers

- **Regional and Local Water Districts**
  - CA has a variety of special districts and water districts which provide water service
  - They have a duty to provide water service under reasonable terms and conditions
- **CPUC-Regulated Water Providers**
  - Privately-owned utilities are regulated by the CA Public Utilities Commission
  - Must get Commission's advance approval for all water rates

# Other Agencies

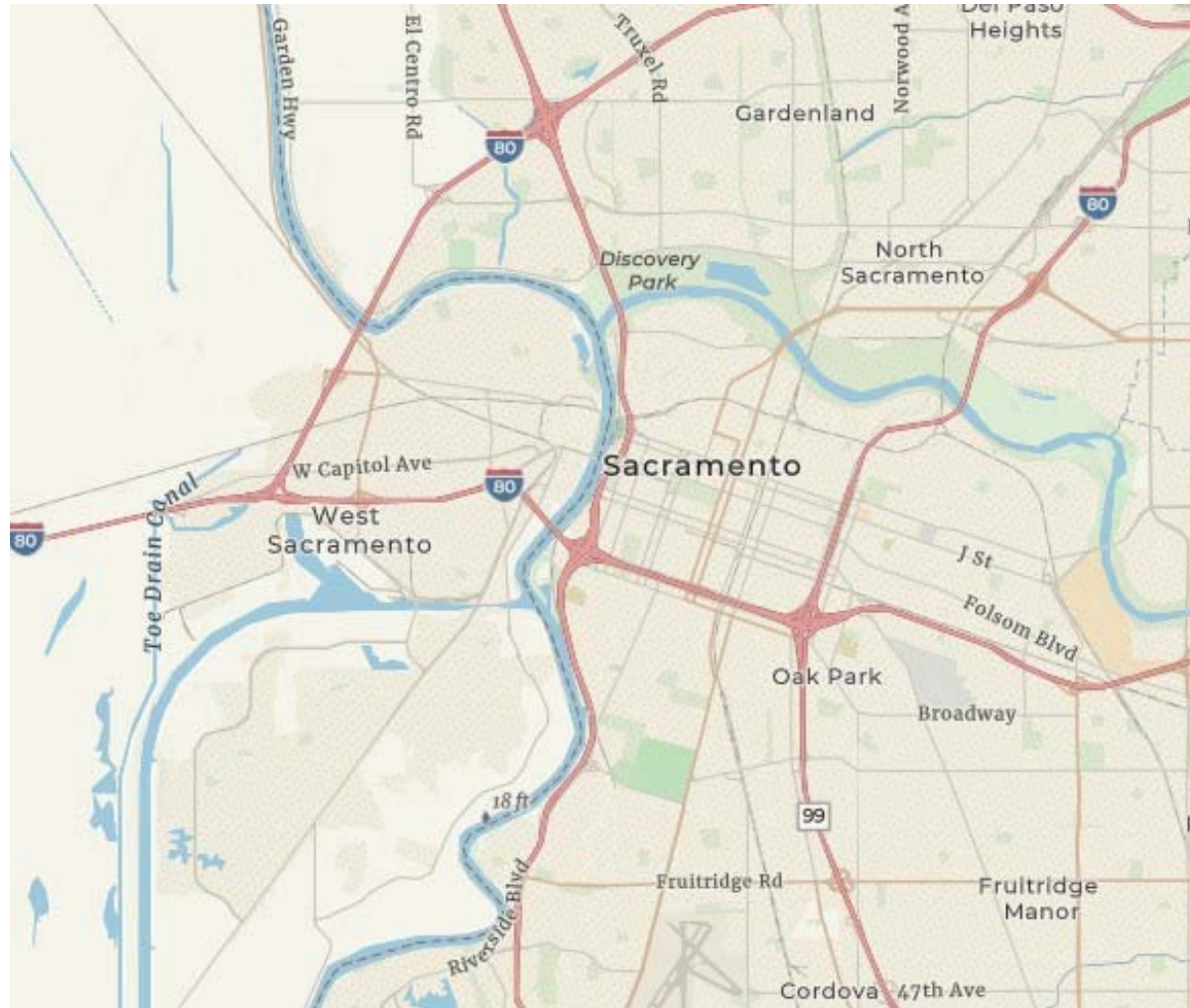
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- Flood Protection Boards
- California Water Commission
- Public Lands Commission
- Groundwater Sustainability Agencies (GSAs)
- Local Agency Formation Commission (LAFCO)
- Division of Safety of Dams
- Coastal Commission

# California's Water Infrastructure



# Local & Regional Management



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# State and Federal Legislation

- **Federal Statutes**

- Federal Reclamation Laws
- Federal Clean Water Act
- Federal Safe Drinking Water Act
- Federal Endangered Species Act
- National Environmental Policy Act

- **California Statutes**

- Porter-Cologne Water Quality Control Act
- California Safe Drinking Water Act
- California Endangered Species Act
- California Environmental Quality Act
- Delta Reform Act
- Fish & Game Code Section 5937 and Public Trust Doctrine
- Sustainable Groundwater Management Act

# Environmental Review Laws

- National Environmental Policy Act
  - 42 USC § 4321 *et seq.* (1970)
  - Council on Environmental Quality (CEQ) regulations
    - 40 CFR § § 1500-1508
- Federal agency decision on discretionary action
- Environmental impacts
  - Environmental Impact Statement (EIS)
  - Alternatives
  - Mitigation



# Environmental Review, continued

- California Environmental Quality Act (CEQA)
  - Public Resources Code § 21000 *et seq.* (1976)
  - CA Code of Regulations (CCR) 15 CCR § 15000 *et seq.*
  - Project: activity undertaken, approved, or financed by a state or local government agency
  - Environmental Impact Report (EIR), Mitigated Negative Declaration (MND), Negative Declaration (ND)
  - Alternatives
  - Mitigation Monitoring and Reporting Program (MMRP)
- Water and Land Use: identify water supply for project, Water Code § 10910 *et seq.*

# Federal Endangered Species Act

- 16 USC §§ 1531- 1544 (1973)
  - Governs listing of species as endangered or threatened, and designation of critical habitat
- Section 7
  - Requirement that Federal agencies "conserve" threatened and endangered species
  - Requirement that Federal agencies "consult" with USFWS or NMFS to ensure that any discretionary action carried out by them is not likely to jeopardize the continued existence of a listed species or adversely modify critical habitat
  - If the action would cause "jeopardy," the agency must develop "reasonable and prudent alternatives to the proposed action
  - Typically, consultation is accomplished through a Biological Opinion

# Federal ESA (cont'd)

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- Section 9
  - Take prohibition
  - Habitat modification as take
- Section 10
  - Incidental Take Statements (ITS)
  - Habitat Conservation Plan (HCP)

# California Endangered Species Act

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- California Fish & Game Code § 2050 et seq. (1984)
- Similar to Federal ESA and administered by the Dept. of Fish & Wildlife (DFW)
- Requires state agencies to consult with DFW to ensure that their actions will not jeopardize listed species

# Porter-Cologne Water Quality Control Act

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- California Water Code §13000 *et seq.* (1969)
- Grants SWRCB authority over CA water quality
- Establishes 9 Regional Water Quality Control Boards (RWQCB) by water basin
  - Water quality control plans, Certificates, NPDES permit
  - Implement CWA, Section 401 and Section 404

# California's Hydrologic Regions

- Region 1: North Coast
- Region 2: San Francisco Bay
- Region 3: Central Coast
- Region 4: Los Angeles
- Region 5: Central Valley
- Region 6: Lahontan
- Region 7: Colorado River Basin
- Region 8: Santa Ana
- Region 9: San Diego

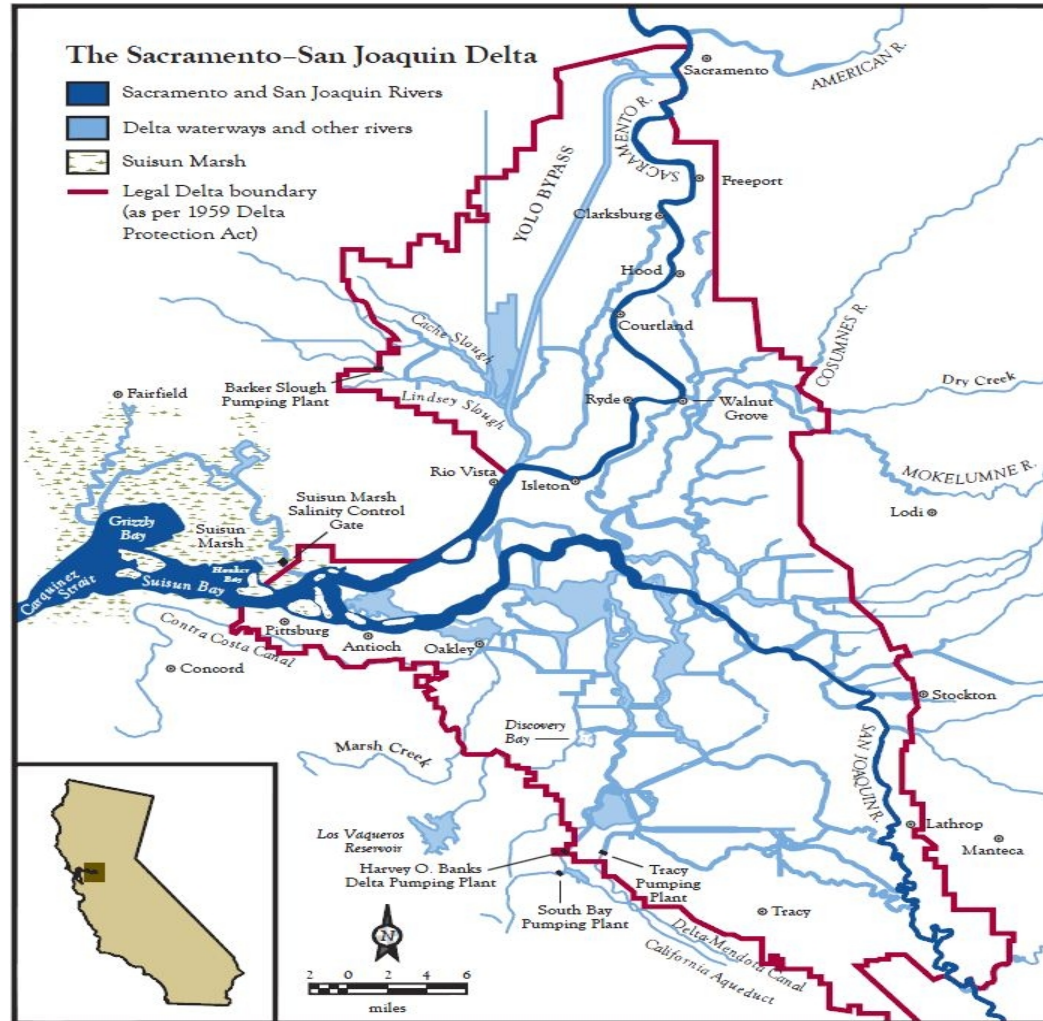


# Delta Reform Act of 2009

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- Established Delta Stewardship Council (Council), Delta Watermaster position, Delta Independent Science Board and Delta Science Program
- Required Council to develop Delta Plan to achieve “coequal goals” of reliable water & ecosystem restoration
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- The Delta Plan = long-term management plan containing regulatory policies and nonregulatory recommendations for “covered” government actions

# San Joaquin-Sacramento River Delta





# Clean Water Act

- Law: CWA (33 USC § 1251 et seq. (1972)
  - Pollutant discharge to Waters of the United States
- Agencies share administration and enforcement authority
  - Environmental Protection Agency (EPA)
    - National Pollution Discharge Elimination System (NPDES)
  - U.S. Army Corps of Engineers (USACE/ Corps)
    - Section 401, Section 404

# Clean Water Act

- 33 U.S.C. § 1251 et seq. (1972)
  - Prohibits the discharge of pollutants into the “waters of the United States” without a permit (either a “section 404” permit or NPDES permit)
- Authorizes the Environmental Protection Agency (EPA) to implement water quality and wastewater standards
- Allows States to implement the National Pollutant Discharge Elimination System “NPDES” program as a State program

# Clean Water Act (cont'd)

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- In CA, NPDES Permit is combined with State's Waste Discharge Requirement (to meet federal and state water quality standards)
- NPDES Permits include effluent limits, best management practices, monitoring & reporting requirements, etc.
- *Current Issue:* What is a "Water of the United States?"

# Safe Drinking Water Act

- 42 U.S.C. § 300f et seq. (1974)
- Authorizes the EPA to set water quality standards for drinking water
- Regulatory and oversight authority over “public water systems” and drinking water is delegated by EPA to the SWRCB, Division of Drinking Water
  - Public Water Systems
    - System for provision to public of water for human consumption
    - 15 + connections, or 25+ people

# Dam Operations/Sufficient Flows

- Fish & Game Code § 5937: “The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.”
- Fish & Game Code § 5946 requires Water Board to condition water right permits on compliance w/ § 5937
- *Current Issue*: the Water Board’s obligation/authority to enforce § 5937; compliance with § 5937 & meeting consumptive water demands

# Public Trust & Reasonable Use

- Public Trust Doctrine
  - Roman Law
  - Mono Lake decision
  - Continuing obligation for the State to supervise water uses
  - *Scott River* litigation – Does the public trust doctrine apply to groundwater?
  
- Article X, Section 2 of the California Constitution
  - Waste and unreasonable use
  - Placing the water resources of California to the fullest use of which they are capable
  - What's unreasonable?
    - Swimming pools in Los Angeles
    - Alfalfa in the desert
    - Fall X2

# Laws and Doctrines Covered Elsewhere

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- CA Constitution: Reasonable Use, Article X, Section 2
- Sustainable Groundwater Management Act (SGMA)
- Ocean and Fisheries Protection and Management Laws
- Timber Harvest Plans
- Water Code: Section 1211 (Recycled Water)
- Fish & Game Code: Section 1602, Streambed Alteration Agreements
- Fish and Game Code: Section 5937, 5946 Dam Operations/Flow
- Water Rights
- Water and Land Use/ Development Requirements
- Public Trust Doctrine, *National Audubon Society v. Superior Court*

# Key Takeaways

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- Network of legal requirements and actors, acting simultaneously
  - Legislative
  - Case law
  - Regulatory
- Federal, State, and local
- Applicable “thread” varies according to actor, geography, water source, and project



# Discussion

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**Thanks!**

**Please feel free to call or email with questions**

**Rebecca Smith**

**Downey Brand LLP**

**(916) 520-5281**

**[rsmith@downeybrand.com](mailto:rsmith@downeybrand.com)**