

# California Groundwater Rights Developments

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# Water Rights 101



# California Water Rights

- Surface water rights administered under prior appropriation
  - Application secures priority date
  - Permit authorizes development of water right—inchoate
  - License issued when beneficial use proven—vested right
- No permit system for groundwater (unless underground channel)
  - Correlative rights for overlying landowners
  - Appropriative rights possible for non-overlying owners
  - Rights determined in decades-long adjudications



# Public Trust Doctrine

- Previously applied to submerged lands owned by state upon admission to union—cannot convey outright as subject to public trust over navigable waters
  - See *Illinois Central Railroad v. Illinois*, 146 U.S. 387 (1892)





- ***Nat'l Audubon Soc'y v. Superior Court of Alpine Cnty.***  
**(Mono Lake Case)**

- 658 P.2d 709 (Cal. 1983)
- In early 20<sup>th</sup> century, City of L. A. acquired vast water rights through farm and ranch acquisitions on eastern side of Sierra Nevada Mountains
- Water is carried about 200 miles first from Owens River, then Mono basin
- Mono Lake supports brine shrimp, which supports Pacific Flyway
- Declining lake levels led to application of public trust doctrine to vested water rights

# Sustainable Groundwater Management Act

- Cal. Water Code §§ 10720 – 10737.8 (AB 1739, SB 1168, and SB 1319)
- 2014 legislation to address record drought and severe overdraft
- Local Groundwater Sustainability Agencies to create plans
  - Focus on preventing overdraft, bring pumping and recharge into balance
  - Groundwater Sustainability Plans subject to approval of SWRCB
  - How are GSAs established?
  - Have any GSPs been approved?



# ***Environmental Law Foundation v. State Water Resources Control Board***

- *26 Cal. App. 5<sup>th</sup> 844, 237 Cal. Rptr. 3d 393 (3<sup>rd</sup> Dist., 2018)*
  - *Rev. den. Nov. 28, 2019*
- **Held:** Groundwater rights subject to public trust doctrine if hydrologic connection to navigable surface waters
  - County must consider when issuing well permits
  - SGMA does not preempt application of public trust principles
- What is the effect on California water rights administration?
  - How does county permit review relate to SGMA planning?
  - Does county public trust finding preempt GSAs or SWRCB?
  - How does case affect conjunctive management of surface and groundwater?



# Thanks!

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