

# Presentation on California Water Rights Law

Humboldt Bay Municipal Water District  
Advisory Committee Meeting – June 29, 2009

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# Introduction

- **Purposes of the Presentation**
  - Describe the types of water rights recognized under California law
  - Describe the key elements of water rights
  - Describe the process for acquiring water rights and for losing water rights
  - Describe the process for transferring water rights
- **Goals of the Presentation**
  - Understanding of HBMWD's current situation
  - Understanding how the SWRCB will look upon HBMWD's use of water
  - Encouraging creative thought on how HBMWD can preserve its water rights, now and in the future

# A Quick Overview of California Water Rights Law

- **Types of Surface Water Rights**
  - **Riparian rights – based on the ownership of land adjacent to a river**
  - **Appropriative rights – based on the use of water**
    - **Pre-1914 appropriative rights – not relevant to HBMWD**
    - **Post-1914 appropriative rights – the type of rights owned by HBMWD**

# A Quick Overview of California Water Rights Law

- **Characteristics of an Appropriative Right**
  - **Must take control of the water at a specific point(s)**
    - **Diversion out of a stream**
    - **Storage behind a dam**
    - **Instream flows – by themselves – are not sufficient**
  - **Must place the water to a beneficial use**
    - **Municipal and industrial**
    - **Agriculture (including aquaculture and forestry)**
    - **Environmental uses (tricky)**

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- **Must use the water on a specific parcel(s) of land**
- **Must use the water during a defined season during the year**
- **The use must be reasonable in quantity**
  - **Drowning gophers is not reasonable**
  - **Gathering aggregate is not reasonable**
  - **Excessive losses from an irrigation ditch are not reasonable**
  - **Is a lawn reasonable in Southern California?**

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- **Acquiring a Water Right**
  - **Application to the SWRCB**
    - **Identification of the characteristics of the proposed right**
    - **Demonstration that granting the application:**
      - **Will not injure other water users**
      - **Serves the public interest**
  - **Grant of a Permit**
    - **Permit allows for the diversion of water but is not a permanent right**
    - **Must divert water to demonstrate that the use of water is reasonable, beneficial and in the public interest**

# A Quick Overview of California Water Rights Law

- **Grant of a License**
  - **SWRCB will review diversions in the past and not grant a license for an amount greater than the amount actually put to use**
  - **SWRCB is becoming less willing to extend the period for licensing**
  - **Municipal rights are most likely to have a lengthy development period before licensing**

# A Quick Overview of California Water Rights Law

## Loss of a Water Right

- **What Triggers the Loss of a Right?**
  - **Review by the SWRCB (e.g., permit review)**
  - **Complaint by third party**
- **The Legal Standard/Process**
  - **Prior to 1979, a water right was forfeited if it was not used for three years, without need for a hearing**
  - **Since 1979, a water right is forfeited if it is not used for five years. There must be a hearing if the permittee requests a hearing**
  - **What if use declines and then increases? The law is presently unclear.**

# A Quick Overview of California Water Rights Law

## Water Transfers

- **Types of water transfers: short term (1-year or less) or long-term (more than 1-year)**
- **Process**
  - **Application to SWRCB**
  - **Must demonstrate to the SWRCB that:**
    - **No injury to water right holders**
    - **No unreasonable impacts to fish and wildlife**
    - **No unreasonable impacts to the economy**
  - **Must comply with CEQA, federal Endangered Species Act, etc.**

# A Quick Overview of California Water Rights Law

- **Key benefits and risks of water transfers**
  - **Benefit:** The water is put to use, and so cannot be lost through non-use
  - **Risk:** The buyer becomes dependent on the water and is unwilling to give it up at the end of the transfer period.
    - To avoid this risk, most transfers are for one-year periods
    - A properly drafted water transfer should be able to avoid this risk, but we haven't had enough time to put a long-term transfer to the test.

# A Quick Overview of California Water Rights Law

- **Questions and comments?**