

Farm Water Update

AT THE CROSSROADS OF WATER & GROWING FOOD



MAY 2023

Water Rights Protect All Californians - Farms, Communities, Businesses, and the Environment

Water Rights Protect the Interests of All Californians

A reliable supply of water is the foundation of California's economy, essential to our quality of life, and integral to the future of jobs, manufacturing, farms, and housing.

The right to use water is determined by state laws and regulations. California operates under a dual system that recognizes both riparian rights (property owners adjacent to rivers and streams) and appropriative rights (first in time, first in use). Allocations are determined according to those rights, which means some users get access to water sooner because they have older rights (also known as pre-1914 water rights) or were awarded more senior rights under area of origin laws.

Water rights holders rely on the predictability of water for planning, infrastructure investment, and serving farms, cities, and the environment.

Public agencies hold about 80% of the surface water rights in California and are responsible for delivering that water to Californians as well as generating clean renewable electricity and protecting water quality, fisheries, and other beneficial uses of water.

In wet years, like 2023, most water users can use the water they need and there is plenty of water remaining in the natural environment to protect water quality and fisheries. It is in dry years that all water users rely on our water rights system to help them plan and make investment decisions.

Importance of California Agriculture to Our State and Nation

According to the Water Education Foundation, California has been the nation's leading agricultural and dairy state for the past 50 years and the state's farms generated a record \$51.1 billion in sales value in 2021, accounting for 12.5 percent of the US total. Breaking down the state's agricultural role in the country, California produces about 19 percent of the nation's milk supply, 23 percent of its cheese and 99 percent of all grapes. The state also produces half of all domestically grown fruits, nuts, and vegetables.



Processing tomato harvest near Helm, in the San Joaquin Valley. California grows 90 percent of the U.S.-produced processing tomatoes, supplying manufacturers of pizza and spaghetti sauce, salsa, soups, and many other processed foods.

A 2020 report by two UC Berkeley professors describes the results of an economic analysis of water supply restrictions affecting growers in the San Joaquin Valley. It indicates that over the next 30 years, water supply cuts will lead to the permanent loss of 1 million acres of productive farmland. Fewer healthy foods will be available from California farms. The report estimates that California will permanently lose:

- 86,000 acres of vegetables
- 130,000 acres of fruit-producing trees
- 129,000 acres of wine and table grapes
- 327,000 acres of nuts

These reductions translate into the permanent loss of 85,000 jobs, half of which are off the farm, such as food processing, transportation, wholesale, retail, and ports. They also mean the permanent loss of over \$535 million in tax revenue which, again, is used to provide the services local communities value, like police, firefighters, and teachers.

Population Growth and Current Allocation of Water Supply

From 1900 to 1950, California's population rose from under 2 million to 10 million and reached 34 million by 2000. Although the rate of population growth has slowed recently, California experienced increasing demand for water during a time when very little additional supply of water was added, in large part because development of major water resources infrastructure ceased almost entirely in the 1960s.

Today, roughly 40% of all California water flows through the Sacramento-San Joaquin River Delta, where it remains or flows to the ocean. About 17% is allocated to Central Valley farmers and residents of the Bay Area and Southern California. California's total developed water supply is divided, with about 50% going to environmental projects and programs, 40% to agriculture, and 10% to cities statewide. (PPIC)

Can the Existing Water Rights System Balance Competing Uses?

In California, a water right holder does not own the water. Under Section 102 of the California Water Code, those who hold water rights have the right to beneficially use water, but the state is said to "own" the water.

When there is not enough water to satisfy all water rights holders, riparian rights are senior, and in times of shortage are satisfied before any water can be taken by the oldest appropriative right.

The State Water Board has existing authority to ensure water users are complying with the various water rights laws.

First, the State Water Board has broad administrative enforcement mechanisms under Water Code Sections 1052 and 1831 to address unauthorized diversion. The State Water Board can refer an action for injunctive relief to the Attorney General for unauthorized diversions. The Board has authority under Water Code Sections 1052 and 1825 to investigate the legality of water use, to determine whether a diversion is authorized, and to issue cease and desist orders and fines when warranted.

Second, Water Code Section 1058.5 grants the State Water Board authority to adopt emergency regulations in drought years to implement the water rights priority system and to prevent unauthorized diversion of water.

Third, all water rights holders who divert water, under any basis of right, are required to measure the water they divert and report that information to the State Water Board, and the State Water Board may issue fines for diverters who fail to timely file such reports.

Fourth, Water Code Section 1051 authorizes the State Water Board to investigate stream systems, and other code sections authorize the State Water Board to determine all rights to water of a stream system.



The Tuolumne River provides habitat for spawning salmon and reliable water supplies for senior water rights holders in agricultural and urban areas across Central California.

Environmental, environmental justice, and fishery organizations believe the water rights system should be reformed to adapt to the effects of climate change—that more water should remain in rivers and streams for environmental purposes, including to benefit threatened and endangered fisheries. They support granting the State Water Board broad new powers to reduce diversions in all water years rather than only in times of drought.

Water rights holders believe broad new authority for the State Water Board would dramatically reduce the value of a water right, including its volumetric reliability, and would make it impossible for water rights holders to serve Californians.

Infrastructure Investment Supplies Water for all Beneficial Uses

To function, our water system relies on an intricate system of canals, pipes, levees, water treatment plants, and more. That critical infrastructure is built and maintained by water agencies and their customers. If we take away water supply reliability through unexpected curtailments, regardless of the water year type, we also make it more challenging to repair existing infrastructure and build more to meet growing demand. This uncertainty erodes the ability to predict future water sales, which is the revenue stream needed to pay for the projects. And because our water delivery system is more than 50 years old, and the demands of climate change require additional infrastructure, investment is critical right now.

Lack of infrastructure impacts the environment as well. The partnerships between water agencies and local farmers that have been responsible for science-based fish habitat restoration, building fish ladders and weirs, providing spawning habitat for salmon and other improvements that protect and enhance the ecosystem provides just one example. Without a reliable water supply, these investments are less likely.

California Has a Critical Shortage of Affordable Housing

Every eight years, the state sets a target for the number of homes needed for each income level to meet the housing needs of all Californians. California must plan for more than 2.5 million homes over the next eight-year cycle, and no less than one million of those homes must meet the needs of lower-income households. This represents more than double the housing planned for in the last eight-year cycle.

Building all types of housing requires being able to identify a water supply not just for today, but 20 years into the future. Section 66473.7 of the Government Code requires a proposed residential development of more than 500 dwelling units to have a demonstrated



California's critical housing shortage could be further complicated by increasingly uncertain access to water supplies

"sufficient water supply" before approval by a city or county. A sufficient water supply means the total water supplies available during normal, single-dry, and multiple-dry years within a 20-year projection must meet the projected demand. Stripping away the reliability of water supply threatens the state's ability to meet the essential housing need it has identified.

Protecting Water Supply Reliability is Essential for All Californians

Whether it is communities providing water to their residents, farmers who make planting decisions to stock our grocery stores, water for the environment, business, and industrial uses, and even meeting our clean energy goals – all water users need to know how much water they can rely on. And it is important to remember that no matter who holds the water rights, both the California Constitution and the California Water Code protect all uses deemed beneficial by the state, require those uses be balanced, and protect against water being wasted.

Our existing water supplies cannot satisfy all demands during drought. The Legislature can amend existing law to provide for swifter and more effective action by the State Water Board in such times. Incremental changes in the authority granted to the State Water Board can achieve meaningful changes in behavior without fundamentally altering the water rights system. The illegal use of water can be met with more significant financial penalties that will serve as a deterrent to bad behavior.

Valley Ag Water Coalition | Bob Reeb bobr@water-warrior.com

The mission of the Valley Ag Water Coalition is to represent the collective interests of its San Joaquin Valley member agricultural water companies and agencies in California legislative and regulatory matters by providing leadership and advocacy on issues relating to the development and delivery of a reliable farm water supply.

California Farm Water Coalition | Mike Wade mwade@farmwater.org

CFWC is a non-profit, educational organization that provides fact-based information on farm water issues to the public.