

California Groundwater Rights

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General Policies Underlying CA Water Law



Water Belongs to the People of the State

A Water Right is a Usufructuary Right

Prohibition Against Waste or Unreasonable Use

Water Rights Can be Lost Through Non-Use

Changes to Water Rights are Limited by the Underlying Rights to the Water
(water right or contract right)

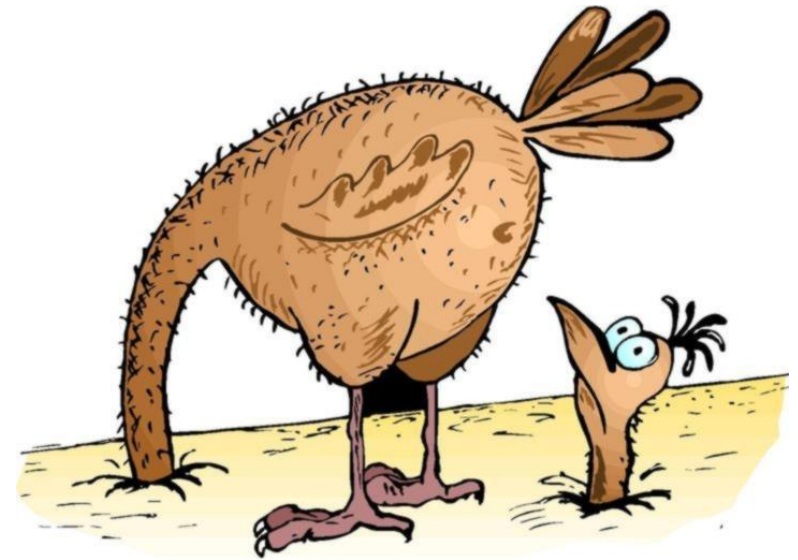
California Water Law: The Basics

Surface Water: Dual System of Water Rights

- Riparianism: Senior Rights
- Appropriation: Junior Rights

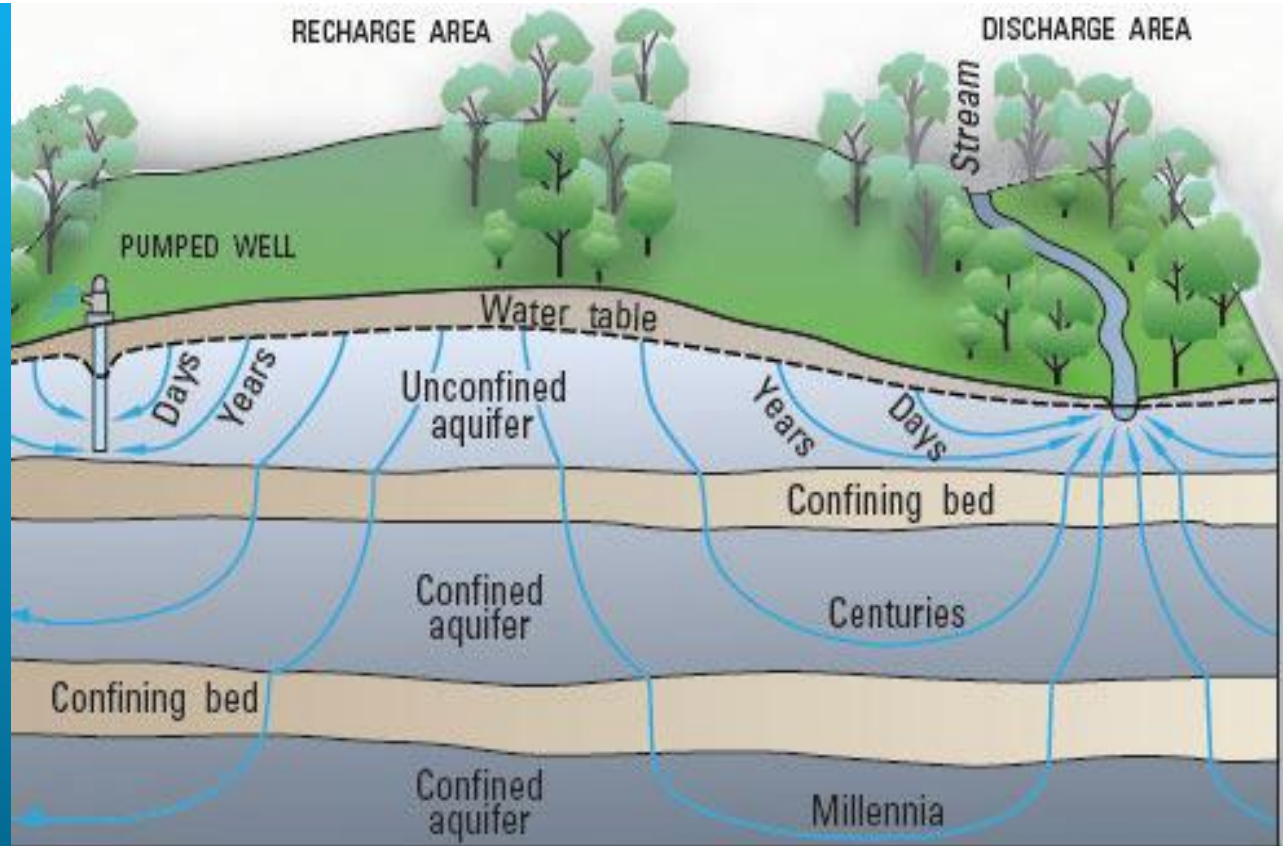
Groundwater: Dual System of Water Rights

- Overlying Rights: Senior Rights
- Appropriation: Junior Rights



Groundwater

- Overlying
- Appropriative
- Prescriptive
- Adjudicated



Groundwater

SGMA defines groundwater as “water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.”

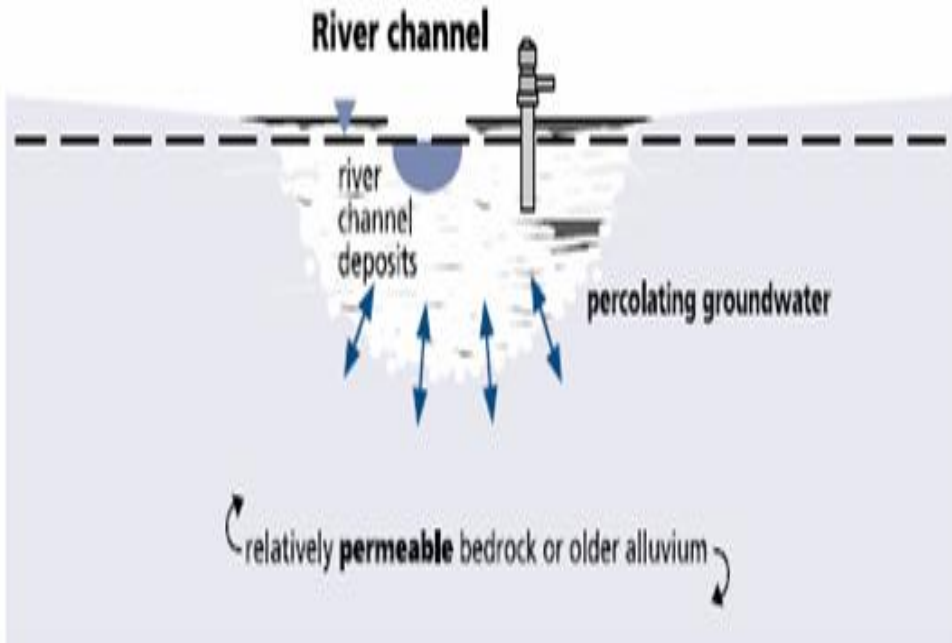
(Wat. Code § 10721(g).)



An Underground Stream?

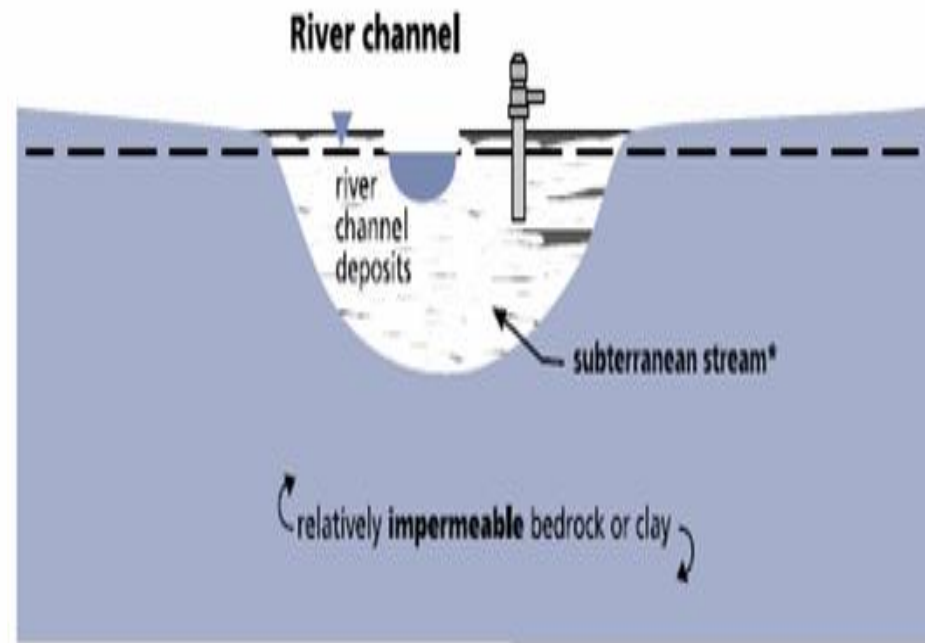
Not Exactly.....

Percolating Groundwater



SUBJECT TO SGMA

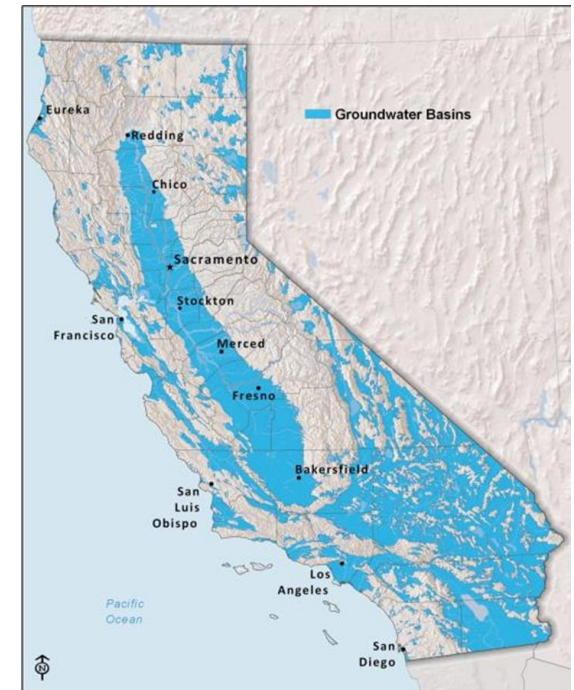
Groundwater Flowing within Known and Definite Channels



NOT SUBJECT TO SGMA

Groundwater: Overlying Rights

- **Definition:** Right to Extract Water From Underlying Groundwater Basin for Use on Overlying Land
- **Characteristics:**
 - Analogous to Riparian Rights to Surface Water
 - Senior priority right (as compared to appropriative right)
 - Only limited by correlative nature and reasonable/beneficial use requirement
 - Right may be inchoate (e.g., not fully developed/exercised)



Groundwater: Appropriative Rights

- **Definition:** Non-Overlying Owners Allowed to Extract Surplus Water Not Being Used by Overlying Owners
- **Characteristics:**
 - Analogous to Appropriative Rights to Surface Water
 - Key Difference: Permit Not Required to Initiate Extraction and Use
 - Subordinate to Present Cumulative Needs of Overlying Owners (i.e., junior priority right)
 - As Between Appropriators: Rule of First in Time, First in Right Applies
 - Non-Use Subject to Forfeiture

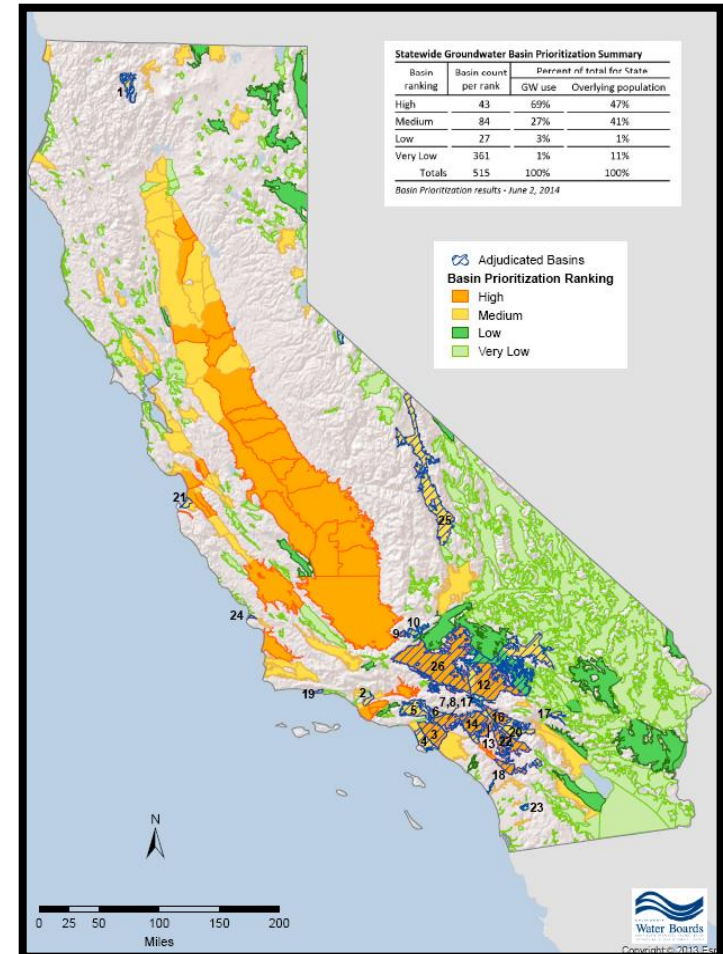


Groundwater: Prescriptive Rights

- **Definition:** Water right acquired through adverse possession of someone else's water right
- **Required Elements:**
 - Adverse + Hostile: Existence of overdraft conditions necessary; actual deprivation immaterial
 - Open + Notorious: Water rights holders must have notice of overdraft
 - Actual Use: Prescriptive rights based on actual use (lowest quantity of water extracted over 5 year period)
 - Continuous + Uninterrupted: Must be 5 continuous years of overdraft conditions; single year of surplus breaks continuity requirement
- **Note:** *Public entity appropriators immunized from loss of rights by prescription*

Groundwater Regulation on the Rise: SGMA Adopted in 2014

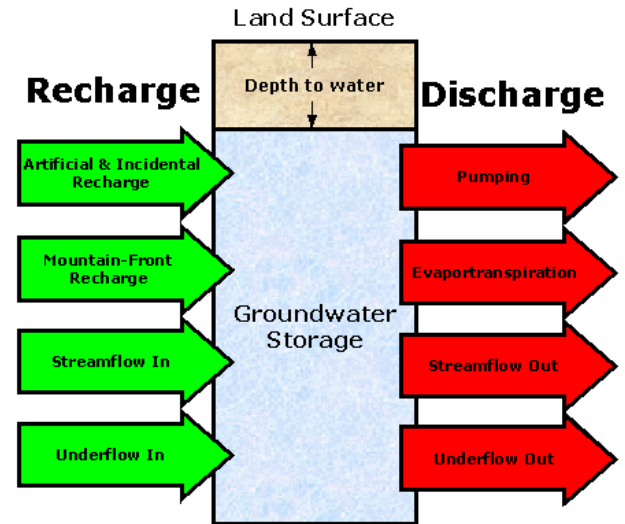
- Fundamentally changes groundwater management
- Provides local/regional agencies with authority to sustainably manage groundwater basins within their jurisdiction
 - Groundwater Sustainability Agencies
 - Groundwater Sustainability Plans
- Authorizes state intervention
- Sets goals and deadlines



Safe Yield v. Sustainable Yield

Safe Yield is defined as “the maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result.” (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278.)

Sustainable Yield means “the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.” (Wat. Code § 10721(w).)



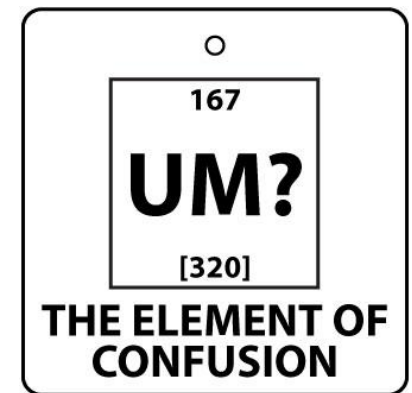
Expanded Local Agency Authority Under SGMA

- Significantly Expanded Authority to Regulate Groundwater:
 - Conduct Investigations and Register Wells
 - Acquire Property/Water Rights
 - Measure and Require Reports for Extractions/Storage Diversions
 - Manage Extractions (i.e., set allocations)
 - Assess Fees
 - Undertake Enforcement Actions
- What about Water Rights?



SGMA Cannot Alter Water Rights

- “A limitation of extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.” (Wat. Code § 10726.4(a)(2).)
- “Nothing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.” (Wat. Code § 10720.5(b).)



Pumping Allocations under SGMA

- SGMA grants a GSA broad authority to establish groundwater extraction allocations:
 - Impose spacing requirements on construction of new wells (Wat. Code § 10726.4(a)(1))
 - Impose reasonable operating regulations on existing wells (Wat. Code § 10726.4(a)(1))
 - Regulate, limit, or suspend extractions from wells (Wat. Code § 10726.4(a)(2))
 - Regulate, limit, or suspend construction of new wells, enlargement of existing wells, or reactivation of abandoned wells (Wat. Code § 10726.4(a)(2))
 - Authorize temporary and permanent transfers of groundwater extraction allocations (Wat. Code § 10726.4(a)(3))
 - Establish rules to allow carry-over of unused groundwater extraction allocations (Wat. Code § 10726.4(a)(4))
 - Otherwise establish groundwater extraction allocations (Wat. Code § 10726.4(a)(2))



Examples of Allocation Methods

Method	Description	Advantages	Disadvantages
Pro Rata Allocation per Overlying Acre	Divides available groundwater proportional to property size	<ul style="list-style-type: none"> Recognizes correlative nature of groundwater rights Simple in approach and calculation 	<ul style="list-style-type: none"> Creates inequities for those who have invested in use of groundwater Ignores legal limitations on use
Pro Rata Allocation per Irrigated Overlying Acre	Allocates each irrigated acre a specific quantity of groundwater	<ul style="list-style-type: none"> Acknowledges existing pumping Simple in approach and calculation 	<ul style="list-style-type: none"> Does not consider unexercised groundwater rights Does not recognize historic use Ignores legal limitations on use
Allocation Based on Fraction of Historic Pumping	Allocates water based on historic groundwater use	<ul style="list-style-type: none"> Potential to reduce conflict among existing pumpers 	<ul style="list-style-type: none"> Requires data re historic use (not always available) Ignores correlative nature of groundwater rights Ignores disproportionate impacts on basin
Comprehensive Allocation Method	Allocates groundwater based on CA law to extent practical and preserves relative priority of water users	<ul style="list-style-type: none"> Consistent with CA groundwater law Best chance of surviving judicial scrutiny 	<ul style="list-style-type: none"> Complicating and time-consuming Requires substantial stakeholder engagement

Examples of Allocations from Adjudications

Basin Adjudication	Allocation Provisions
Santa Maria Basin	Overlying landowners unrestrained . Appropriators pay for and receive benefits of developed water supply
Mojave Basin	Quantified, transferable rights.
Antelope Valley Basin	Participating parties allocated quantified, transferable rights.
Chino Basin	Agricultural users allocated a pooled rights. Overlying industrial users allocated quantified rights. Appropriators allocated quantified, transferable rights.

Questions?





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