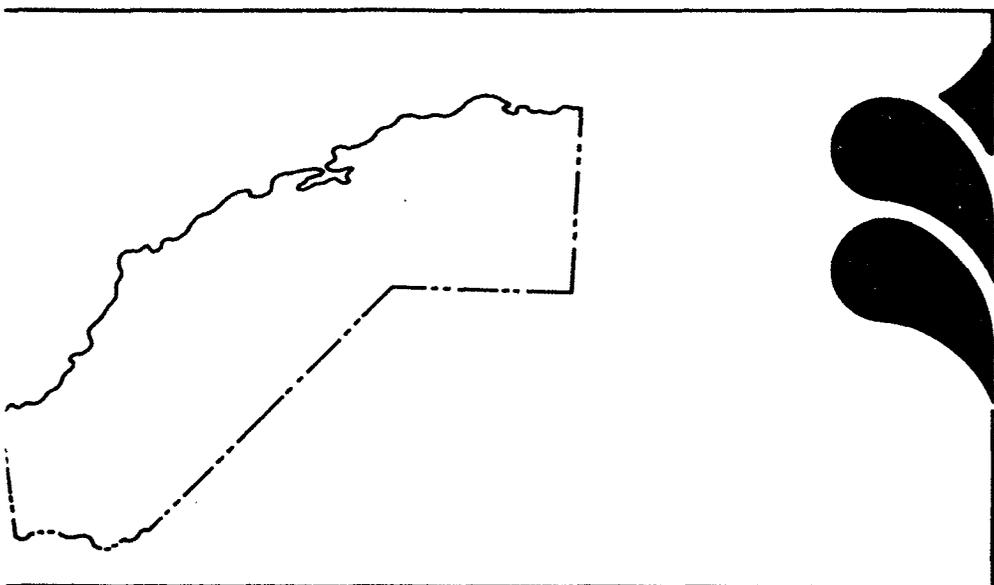


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**Information  
Pertaining to**

# **WATER RIGHTS**

**In California**

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ation concerning procedures for appropriating water is available in the  
 es Control Board publication entitled "How to File an Application to  
 priated Water in California". This publication may be obtained free of  
 e Water Resources Control Board, Division of Water Rights, 2125 19th  
 California 95818. (Telephone: (916) 445-0846)

lifornia Administrative Code, Title 23, Waters, the regulations and  
 ver the administration of water rights and other water related activities  
 esources Control Board may be obtained from the State of California,  
 P. O. Box 20191, Sacramento, California 95820. Current cost of this  
 . A renewal service which provides new and amended regulations  
 .00 per year.

## GENERAL INFORMATION PERTAINING TO WATER RIGHTS

General information pertaining to water rights is offered and assistance of those who may be interested. While correct, it is by no means complete, and those to whom this information is of particular importance or who propose to apply it to their own interests should seek the advice of an attorney or engineer, depending on the information needed.

### WATER RIGHTS INITIATED PRIOR TO DECEMBER 19, 1914

Water rights could be acquired by simply diverting water. The priority of the right related back to the date of the substantial act toward putting the water to beneficial use, if the appropriation was completed with reasonable diligence; otherwise the right does not attach until beneficial use commenced.

Sections 1410 through 1422 of the California Civil Code were amended to establish a permissive procedure for perfecting an appropriation of water. Provisions were made for posting a notice of appropriation at the proposed point of diversion and recording a copy thereof with the County Recorder. If the statutory procedures were followed and the appropriation completed with due diligence, priority of the right is determined by the date of posting, while the priority of an appropriation made in accordance with the Civil Code procedures did not attach until water was actually used.

*1, an appropriative right can be maintained only by continuous use of the water.* Therefore, regardless of the amount of water diverted, the original notice of appropriation, or at the time diversion and the amount which can now be rightfully claimed under an appropriation initiated prior to December 19, 1914, has in general no effect on the actual beneficial use, as to both amount and season of use. The conditions under which an appropriative right may be forfeited and the conditions under which it may be reacquired are set forth on page two of this publication under the heading "Continuation of Appropriative Rights".

It is now possible to successfully assert an appropriative right which was established prior to December 19, 1914, where the validity of the right is established by evidence which is required of both the original appropriation and the maintenance of the right by continuous and diligent application of the water to beneficial use. (See Water Code Sections 1202(b) and 1240.) Evidence consists of oral testimony of persons who have knowledge of the relevant facts. As the years pass, such testimony, and the recollection of individuals, may become difficult or impossible to obtain.

impossible to secure. At least a partial remedy for this situation may be found in the procedure for perpetuation of testimony set forth in Section 2017 of the Code of Civil Procedure.

A record of water use under "Pre-1914 Appropriative Rights" should be established by filing a Statement of Water Diversion and Use. (Please refer to page 10.)

#### APPROPRIATIVE RIGHTS INITIATED SUBSEQUENT TO DECEMBER 19, 1914

The two methods of appropriation existing prior to the effective date of the Water Commission Act, i.e., December 19, 1914, are no longer available for appropriating water from surface streams, other surface bodies of water or from subterranean streams flowing in known and definite channels. An appropriation of such water now requires compliance with the provisions of Part Two, Division Two, of the Water Code.

The various steps which must now be taken in order to initiate and acquire an appropriative water right are described under the heading "General Information Pertaining to Applications to Appropriate Water," on pages 13 through 17.

#### LOSS OF APPROPRIATIVE RIGHTS

*By Abandonment.* To constitute abandonment of an appropriative right, there must be concurrence of act and intent, the relinquishment of possession, and the intent not to resume it for a beneficial use, so that abandonment is always voluntary, and a question of fact. (1 Weil, 3d ed., 604, 605.)

*By Nonuse.* In the *Smith v. Hawkins* decision of 1898 (110 Cal. 122, 42 P. 527; 120 Cal. 86, 52 P. 139), the court declared five years to be the period for loss by nonuser, and the following language is quoted from that decision: "We say nonuser as distinguished from abandonment. If an appropriator has, in fact, abandoned his right, it would matter not for how long a time he had ceased to use the water, for the moment that the abandonment itself was complete his rights would cease and determine \* \* \*. The question presented, therefore, is not one of abandonment, but one of nonuser merely, and, as such, involves a construction of Section 1411 of the Civil Code. . . . Upon this point the Legislature has made no specific declaration, but, by analogy, we hold that a continuous nonuser for five years will forfeit his right."

By legislative enactment effective July 27, 1917, a new section numbered 20a was added to the Water Commission Act (now Water Code Section 1241), which section provides for loss of appropriative rights after three years nonuse. This section applies only to an appropriative right acquired after December 19, 1914. Certain exceptions are found in Sections 1241.5 and 1241.6 of the Water Code.

## RIPARIAN RIGHTS

There is no California statute defining riparian rights, but a modification of the common law doctrine of riparian rights has been established in this State by decisions of the courts and confirmed by the provisions of Section 3, Article XIV of the State Constitution (see Water Code Section 100, 101). Lands within the watershed of a natural watercourse which are traversed thereby or border thereon, with the exceptions and limitations hereinafter indicated, may be riparian and each owner thereof may have a right which is correlative with the right of each other riparian owner to share in the reasonable beneficial use of the natural flow of water which passes his land. No permit is required for such use. The Board's policy is to consider natural flow as not including return flows derived from use of ground water, or water seasonally stored and later released. In its administration of the Water Code the board is governed by the following considerations relative to the doctrine of riparian rights as applied to this State:

1. The riparian right exists by reason of ownership of land abutting upon a stream or body of water and affords no basis of right to use water upon nonriparian land. (*Rancho Santa Margarita v. Vail*, 11 Cal. 2d 501, 81 P. 2d 533.)
2. In order to divert water under claim of riparian right, the diverter must use the water on riparian land, but need not own the land at the point of diversion. That is, such diverter may divert at a point upstream or downstream from his land so long as permission is granted to use that point of diversion, and intervening land owners between the point of diversion and the place of use are not adversely affected by such practices. (*Turner v. James Canal Co.*, 155 Cal. 82, 99 P.520 (1909).)
3. A parcel of land loses its riparian right when severed from land bordering the stream by conveyance unless the right is reserved for the severed parcel. The riparian right may also be destroyed when purportedly transferred apart from the land by grant, contract or condemnation. Once lost, it cannot be restored.
4. As between riparian owners, priority of use establishes no priority of right, i.e., one cannot claim superior right merely because he used the water first. (*Pabst v. Firmand*, 192 Cal. 124, 211 P. 11.)
5. The riparian right is neither created by use nor lost by nonuse.
6. If there is insufficient water for the reasonable beneficial requirements of all riparian owners, they must share the available supply. Apportionment is governed by various factors, including each owner's reasonable requirements and uses. In the absence of mutual agreement, recourse to judicial determination may be necessary.

7. As between riparian owners one of them may take the whole supply if necessary for strictly domestic use, that is, for so-called "natural uses \* \* \* arising out of the necessities of life on the riparian land, such as household, drinking, water for domestic animals." (1 Wiel, 3d ed., Water Rights in the Western States, page 795; *Deetz v. Carter*, 232 Cal. App. 2d 851; but see *Prather v. Hoberg*, 24 Cal. 2d 549, 150 P. 2d 405, re an equitable apportionment where the use is commercialized as for resort purposes and is therefore not strictly domestic.)

8. The riparian owner is subject to the doctrine of reasonable use which limits all rights to the use of water to that quantity reasonably required for beneficial use and prohibits waste or unreasonable use, or unreasonable methods of use or diversion. (Sec. 3, Art. XIV, Const. of Cal., *Peabody v. City of Vallejo*, 2 Cal. 2d 351, 40 Pac. 2d 486; *Tulare Irr. Dist. et al v. Lindsay Strathmore Irr. Dist.*, 3 Cal. 2d 489, 45 Pac. 2d 972; *Rancho Santa Margarita v. Vail*, 11 Cal. 2d 501, 81 P. 2d 533.)

9. A riparian right may be impaired or lost through prescription. Refer to the following section, "PRESCRIPTION".

10. The riparian right attaching to a particular parcel of land is subject to appropriative rights established by diversion upon vacant public domain before the first valid steps were taken to acquire said parcel of land from the United States, whether diversion was made at points upstream or downstream.

11. The riparian right cannot be transferred for use upon another parcel of land.

12. The riparian right does not apply to foreign water, i.e., water originating in a different watershed cannot be used under claim of riparian right. (*E. Clemens Horst Co. v. New Blue Point Mining Co.*, 177 Cal. 631, 171 P. 417; *Crane v. Stevinson*, 5 Cal. 2d 387, 54 P. 2d 1100; *Rancho Santa Margarita v. Vail*, 11 Cal. 2d 501, 81 P. 2d 533.)

13. Water cannot be stored and withheld for a deferred use (other than regulatory storage) under claim of riparian right. (*Seneca Consol. Gold Mines Co. v. Great Western Power Co.*, 209 Cal. 206, 287 Pac. 93; *Colorado Power Co. v. Pac. Gas & Electric Co.*, 218 Cal. 559, 24 P. 2d 495; *Moore v. California-Oregon Power Co.*, 22 Cal. 2d 725, 140 P. 2d 798.)

A record of water use under riparian claim should be established by filing a Statement of Water Diversion and Use. (Please refer to page 10.)

#### PRESCRIPTION

A right secured by appropriation does not depend upon use for any given length of time. It is complete immediately upon full beneficial use being made of water pursuant to permit. However, it is subordinate and subject to all prior vested rights, whether appropriative or riparian. This limitation may be removed under certain circumstances by continuous use adverse to prior

rights for five years and failure of the owners of the prior rights to file legal action to protect themselves during that time. Their cause of action then becomes barred by the statute of limitations and thereafter the right of the subsequent appropriator is no longer subject to them. This result is called a prescriptive right to the use of water.

In order for an appropriation or riparian claim to ripen into a prescriptive right as against the owner of a riparian or a prior appropriative right, the use must be continuous and uninterrupted for a period of five years during all of which time it must be open and notorious, exclusive, under claim of right, hostile and adverse to the title of the prior owner, and an invasion of the latter's right which he has had an opportunity to prevent by legal action, and such taxes as are assessed must be paid. Absence of any of these conditions is fatal to the acquisition of a prescriptive water right.

Because a water user ordinarily has no concern with the use of water by others after it has passed his land or point of diversion, and therefore has no legal right to prevent downstream use, it is a well-established rule that a prescriptive water right cannot ordinarily be acquired against an upstream user.

A right cannot be acquired by prescription to use a greater quantity of water than is reasonably necessary for the beneficial purpose served, regardless of the amount actually used, in accordance with the constitutional amendment of 1928 (Art. XIV, Sec. 3).

Since enactment of the Water Commission Act (effective December 19, 1914), it has not been possible to secure a right to appropriate or use water (other than as a riparian or overlying owner, or appropriator of percolating ground water or stockponds that comply with Article 2.5, commencing with Section 1226, of Chapter 1 of Part 2 of Division 2 of the Water Code), without first obtaining a permit from the State (see Water Code Section 1225 and *Crane v. Stevinson*, 5 Cal. 2d 387, 54 P. 2d 1100). It would appear to follow that although one who now uses water without a permit for a sufficient period of time may, under certain circumstances, foreclose objection by those who have been adversely affected, he does not thereby acquire a right to prevent diversions by others which deplete the supply of water available to him. Although California courts have not been called upon to determine this precise question, in view of the uncertainty in this respect and because in any event a prescriptive right can be finally determined only by a court of competent jurisdiction, it is the policy of the board to disregard a claim to water subject to the permit procedure which is based only upon use initiated subsequent to 1914 unless it is supported by a permit.

VESTED APPROPRIATIVE AND RIPARIAN RIGHTS NOT AFFECTED  
BY FILING AN APPLICATION

An existing valid riparian or appropriative right will be neither strengthened nor impaired by a permit to appropriate water issued to the owner of such rights (*See Barr v. Branstetter*, 42 Cal. App. 725, 184 P. 409). However, an application to appropriate water may be filed by such owner in the following instances: (1) to initiate a right to additional unused water where there is water available for further appropriation in excess of that covered by the existing right; and (2) to establish a new right to water already in use by applicant where the validity of the existing right has not been adjudicated, or is in doubt. In either event, the priority of the right acquired by beneficial use under the permit will be the date of filing the application--it will not relate back to the time of the first use under a former claim.

The California Administrative Code, Title 23, Section 653 requires an applicant for a permit to appropriate water who claims an existing right to the use of the water sought to be appropriated, to state in writing that he will not exercise his claim of existing right so long as any permit or license issued to him remains in effect. This provision is in recognition of the fact that a permit should be issued only for unappropriated water and that water which is being used pursuant to an existing right is not unappropriated, whether the right is being exercised by the applicant or by another person.

DISPUTES OVER THE USE OF WATER

The right to use water is a property right and may be protected against infringement in the same manner as any other property right--i.e., by appropriate court action. The board does not have authority to determine the validity of vested water rights, other than appropriative rights initiated December 19, 1914 or later, although it may assist the courts in doing so in the manner explained in the following paragraphs captioned "Determination of Existing Rights." The Board will investigate and take appropriate action on a written complaint received from a person affected by (1) a violation of a permit or license issued by the Board, or (2) waste or unreasonable use of water, or (3) illegal diversion or use. (See Title 23, Chapter 3, Subchapter 2, Article 17.3 of the California Administrative Code and Water Code Section 275 et. seq. and Water Code Section 1050 et. seq.)

When a complaint of an illegal diversion or use is filed, the Board will take action under Section 1052 of the Water Code, which provides: "The diversion or use of water subject to the provisions of this division other than as authorized in this division is a trespass, and the board may institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined." It is, however, not the policy of the board to initiate court action except in a

clear instance of unlawful use of water. Generally, where there is a bona fide dispute as to the facts, or where circumstances indicate an adjudication is required, action by the board under Section 1052 is not considered appropriate.

#### DETERMINATION OF EXISTING RIGHTS

Sections 2000 and 2001 of the Water Code provide that, in case a suit is brought in the superior court involving the determination of water rights, the case may, in the discretion of the court, be referred to the board for investigation as referee. Under this procedure all water rights of whatsoever character may be included. Such a determination may be initiated by filing a suit in the superior court by one or more claimants, naming as defendants all other claimants to the waters of the source. The court may, in its discretion, order reference of the case to the board for investigation and report as referee.

Section 2525 of the Water Code provides for the initiation of proceedings for the determination of all rights to the water of any stream, stream system, lake or other body of water except percolating underground water. It is required that a petition signed by one or more claimants of the right to the use of water from the source involved be filed with the board. The procedure outlined in Sections 2500 to 2900, inclusive, of the Water Code must be followed.

If a determination is undertaken under either of these procedures, the board makes a thorough investigation of the stream system and water rights involved. In general, such investigation will include measurements of the water supply and of all diversions from the stream system, a survey of all diversion systems and areas irrigated therefrom, and a determination of the duty of water for irrigation and other uses.

After due notice to all parties, the board prepares findings which are submitted to the court. The court itself hears those who may be dissatisfied with these findings and enters a decree establishing the various rights involved and setting forth the relative priority, amount, purpose of use, season of diversion, point of diversion and place of use of each right. Appeals from such decree may be taken in the same manner and with the same effect as in other civil cases.

By virtue of the above procedures, the board may supplement with effective and expeditious methods the work of the courts in determining water rights. These procedures lead to a complete and final determination of all the water rights involved, and, should necessity arise, a watermaster may be appointed to administer the stream and insure distribution of the water as decreed.

A copy of the regulations and information pertaining to determination of rights to the use of water in California may be obtained on request.

## APPROPRIATION OF UNDERGROUND WATER

The jurisdiction of the board to issue permits and licenses for appropriation of underground water is limited by Section 1200 of the Water Code to "subterranean streams flowing through known and definite channels."

If it is proposed to use ground water on nonoverlying land, and the source of the water is a subterranean stream flowing in a known and definite channel, an application pursuant to the Water Code is required. A statement of Water Diversion and Use should be filed for use of water from a subterranean stream on overlying land. (Refer to page 10.)

Underground water not flowing in a subterranean stream, such as water percolating through a ground water basin, is not subject to the board's jurisdiction and applications to appropriate such water, regardless of use, should not be submitted. Owners of lands overlying a ground water basin or other common source of supply have the first right to withdraw water for reasonable beneficial use on their overlying lands. The right of each owner is equal and correlative to the right of all other owners similarly situated, and in case of insufficient water to fully supply the requirements of all, the available supply must be equitably apportioned. In these respects overlying rights are closely similar to riparian rights pertaining to surface bodies of water.

Surplus water not presently required for beneficial use on overlying lands and which may be withdrawn without creating an overdraft on the ground water supply may be appropriated for use on nonoverlying lands subject however to future requirements on overlying lands. Such appropriation is accomplished simply by use--no permit is required.

Acceptance by the board of an application to appropriate underground water does not necessarily imply that it is considered that the board has jurisdiction, and such an application may subsequently be rejected if it becomes apparent that the water which it sought to appropriate is not flowing through a known and definite channel.

Part 5 of Division 2 of the Water Code, commencing with Section 4999, requires every person who extracts ground water in excess of 25 acre-feet per annum (with certain exceptions) to file a notice with the board on forms provided by the board. This requirement applies only in the Counties of Los Angeles, Ventura, San Bernardino, and Riverside. Copies of the board's rules together with further information concerning this law may be obtained on request.

Every person who intends to dig, bore, or drill a water well, or who intends to deepen or re-perforate any such well, must file a notice of intent with the Department of Water Resources on forms furnished by the department and containing such information as is required by the department. A report

of completion must also be filed with the department on forms furnished by the department and containing information required by it (Water Code Sections 13750, 13751). These requirements also apply to any person who converts, for use as a water well, any oil or gas well originally constructed under the jurisdiction of the Department of Conservation pursuant to the provisions of Article 4, Chapter 1, Division 3 of the Public Resources Code. Further information or forms may be obtained from the Department of Water Resources, Division of Planning, P. O. Box 388, Sacramento, CA 95802.

#### SPRING WATER

Courts have held that water in springs and standing pools which have no natural outlet belong to the owner of the land on which they are located (*see State v. Hansen*, 189 Cal. App. 2d 604). Such water may be used by him without obtaining a permit.

If a spring contributes to a flowing stream, either by surface or subterranean means, the doctrine of correlative rights applies between the owner of the spring and those riparian to the stream. Likewise, the right of the owner of a spring is correlative with those having rights in ground waters that supply the spring. A statement of Water Diversion and Use should be filed for such use (refer to page 10).

#### NO ASSISTANCE RENDERED IN SECURING RIGHT OF ACCESS TO POINT OF DIVERSION OR RIGHT OF WAY

The Board will not assist in the matter of securing right of access to the stream or other source of supply, or in securing rights of way for ditches and conduit lines. In accepting an application or in issuing a permit, the board does not affirm that applicant or permittee has right of access to the source of supply or necessary rights of way. While the board will accept an application for filing before right of access has been secured, it may refuse to approve the application when it appears the applicant will be unable to secure such right. (See Title 23, Chapter 3, Subchapter 2, Article 16 of the California Administrative Code.)

It is worthy of note that all patents issued by the United States Bureau of Land Management on homestead entries, enlarged homestead entries and stock raising entries are issued "subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts."

#### SUPERVISION OVER DAMS

Division Three of the Water Code requires that construction or enlargement of any dam over a certain height and storage capacity shall not be commenced without having first obtained written approval of the plans and specifica-

tions from the Department of Water Resources. The Department of Water Resources will ordinarily require a statement that the Board is satisfied as to the adequacy of the water right before approving plans and specifications for a dam.

Dams that are subject to supervision are as follows:

- (1) Dams that are 25 feet or more in height from downstream toe to spillway level provided they store more than 15 acre-feet of water.
- (2) Dams that store 50 acre-feet or more of water provided they are more than 6 feet in height from downstream toe to spillway crest.

For further information in connection with construction or enlargement of any dam, address such a request to the Department of Water Resources, Division of Safety of Dams, P. O. Box 388, Sacramento, CA 95802.

#### PROVISIONS OF FISH AND GAME CODE

Reference is made to Article 2, Chapter 3, Part 1, Division 6 of the Fish and Game Code (Sections 5900 et seq.). Thereunder "dam" includes all artificial obstructions (Section 5900) and the owner of the dam is required to allow sufficient water to pass downstream at all times in order to keep fish below in good condition (Section 5937). For further information relating to the requirements of the Department of Fish and Game contact your local Game Warden or write to the Department of Fish and Game, 1416 Ninth Street, Sacramento, CA 95814.

#### STATEMENTS OF WATER DIVERSIONS AND USE

In 1965, Part 5.1 was added to Division 2 of the Water Code, requiring all diverters of surface water, with certain exceptions, to file a statement of water diversion and use with the Board. The law applies to water diverted under claim of riparian right and to appropriations initiated prior to the effective date in 1914 of the Water Commission Act. Forms may be obtained on request. One purpose of the law is to make a public record of all surface diversions not already on file with or known to the Board. The following types of diversions are excluded from the requirements of the law:

- (a) From a spring that does not flow off the property on which it is located.
- (b) Covered by an application, permit, or license to appropriate water on file with the board.
- (c) Included in a notice filed under the recordation of ground water extractions law (Part 5 of Division 2 of the Water Code) in the Counties of Riverside, San Bernardino, Los Angeles and Ventura.

(d) Regulated by a watermaster appointed by the Department of Water Resources.

(e) Reported by the Department of Water Resources in its hydrologic data bulletins.

(f) Included in the consumptive use data for the delta lowlands published by the Department of Water Resources in its hydrologic data bulletins.

(g) Included in annual reports filed with a court or the Board by a watermaster appointed by a court or pursuant to statute to administer a final judgement determining rights to water, which reports identify the persons who have diverted water and give the general place of use and the quantity of water which has been diverted from each sources.

(h) For use in compliance with the provisions of Article 2.5 (commencing with Section 1226) of Chapter 1 of Part 2 of Division 2 of the Water Code concerning stockponds.

A statement should be completed for diversions during a calendar year and should be filed before July 1 of the following year. Supplemental statements are required at three-year intervals thereafter.

The main purpose of this law is to create a central repository for records of diversions and uses of water. It enables water users who cannot now do so to record their diversions and uses with the State and enables the Board to notify them of applications by others to appropriate water which might affect their supply. The information collected will be helpful in protecting vested rights of diverters and determining whether unappropriated water exists for new applications. Over a period of years the filings will also provide a valuable record of use.

Statements should be filed with the Board in duplicate on the forms provided by the State. After the statement has been received, an identification number will be assigned and a copy returned for the diverter's records. Future correspondence concerning these statements should refer to the identification number.

#### STOCKPOND RIGHTS

A statute enacted by the State Legislature in 1974 declares that the owners of stockponds having a capacity of not more than 10 acre-feet as of January 1, 1975, that were constructed prior to 1969 have a valid water right. Prior to January 1, 1975, a right for seasonal storage of water in a

reservoir of any kind could be obtained only by appropriating the water through the application-permit-license procedure, and this is still the only legal way to obtain a water right for stockponds constructed after January 1, 1969, or which are larger than 10 acre-feet.

The State Water Resources Control Board will receive claims of rights for such stockponds and applications for certification of such rights. The priority of the right is the date the pond was constructed provided the claim is filed with the Board between January 1, 1975 (the effective date of the law), and December 31, 1977. However, the priority of the right will be subject to other stockpond water rights on which certificates have been issued by the Board with an earlier priority, to appropriative water rights with an earlier priority initiated prior to December 19, 1914, to water right permits or licenses issued prior to January 1, 1975, and to riparian rights. If the claim is not filed until after December 31, 1977, the priority of the right will be the date the claim is filed. The law excludes ponds that were the subject of water rights litigation between private parties prior to January 1, 1974.

Before a certificate of validity of the stockpond right is issued, the Board will verify the location of the pond, its capacity, and that it is used primarily for stockwatering purposes. In some cases, this will require field investigation.

The original certificate will be filed with the Board and will be available for public inspection. A copy of the certificate will be mailed to the owner of the stockpond. So that the records may be reasonably current, a statement of continued existence of the pond and its use for stockwatering will be solicited from the owner once every five years. If the Board determines that the water has ceased to be used primarily for stockwatering, it may revoke the certificate after notice and an opportunity for hearing.

A reasonably accurate estimate of the capacity of a pond or small reservoir can be computed by use of the "one-third rule" as follows:

pond capacity in acre-feet =  $1/3$  height of dam to spillway crest,  
in feet, multiplied by the surface area of pond when full, in acres.

GENERAL INFORMATION PERTAINING TO APPLICATIONS  
FOR PERMITS TO APPROPRIATE UNAPPROPRIATED WATER

The following information describes the statutory procedures for acquiring appropriative water rights. It is intended as a guide for persons who propose to take water from a surface or underground source or who are uncertain as to the validity of their present taking. Those who are not already familiar with the procedure should carefully read this information.

WHO SHOULD FILE AN APPLICATION

Since December 1914 the appropriation of water in surface streams and other surface bodies of water and in subterranean streams flowing through known and definite channels has been governed by the Water Commission Act (Statutes 1913, Chapter 586). The provisions of this act are now contained in Division Two of the Water Code.

Anyone who intends to divert water from surface waters or subterranean streams either directly to use on land which is not riparian to the source, or to storage in a reservoir for later use on either riparian or nonriparian land, should apply for a permit from the board as the first step toward securing an appropriative water right. Likewise, anyone who intends to divert water that would not naturally be in the source, for direct use should apply for a permit. For information concerning riparian rights, see pages three and four of this pamphlet.

WHO SHOULD NOT FILE AN APPLICATION

Underground water is not subject to the permit procedure unless it is the underflow of a surface stream or is otherwise flowing in a subterranean stream with a known and definite channel. One who proposes to pump ground water (with the exceptions noted) should not file an application. Anyone who pumps ground water in the Counties of Riverside, San Bernardino, Los Angeles and Ventura, with certain exceptions, is required to file a notice with the Board (see Section 4999 of Division 2 of the Water Code).

As previously stated, a permit is not required for the proper exercise of a riparian right. Diverters of surface water, with certain exceptions, are required to file a statement of water diversion and use with the board (see page 10).

PURPOSE OF FILING

The purpose of filing an application for a permit is to secure a right to the use of unappropriated water, i.e. water that is available and is not already in use under prior and existing rights. Also, the purpose of filing is to establish a record of the right sought under the application so that its status in relation to other rights may be more readily determined.

One who takes and uses water, without possession of a valid right or first obtaining a permit, does so at his own risk and is subject to possible court action to enjoin his use.

An application should not be filed in order to adjust a dispute which has arisen over water. *Permits issued by the board cannot serve to ratify or confirm existing rights claimed by the applicant.* The waiver of an existing claim of right pursuant to California Administrative Code, Title 23, Section 653, will not assure that unappropriated water is available.

#### WHEN TO FILE

An application should be filed well in advance of construction of diversion works. An application should not be filed until a definite plan has been formulated for construction of a project for use of water within a reasonable time in the future. What is reasonable depends on the size of the project and the circumstances of each case. In every case the applicant should be prepared to commence construction work within the time ordered by the board and thereafter to complete construction and use of water with diligence. For most privately owned projects designed to serve the individual needs of the applicant, the board will require actual construction to commence within a few months after issuance of permit. *It should be emphasized that the filing of an application cannot serve to reserve water for an indefinite future use.* Requests for undue delay in final disposition of an application will be denied.

#### UNAPPROPRIATED WATER AND RESPONSIBILITIES OF PERMITTEES

All applications are for permits to appropriate *unappropriated* water, and all permits are issued subject to vested rights. In order for the board to approve an application, unappropriated water must be available to supply the applicant. Water in many streams has already been fully appropriated during the dry seasons of the year. If there is doubt whether unappropriated water is available, the board's staff should be consulted before an application is filed.

Since the flow of water in most streams is variable and cannot be predicted with accuracy, approval of an application and issuance of a permit does not guarantee that unappropriated water will always be available in the full amount specified in the permit. In some cases there may be times during the authorized diversion season when no unappropriated water will be available. The holder of a permit should be prepared to accept responsibility for diverting *only to the extent and at such times as will not impair the prior rights of others*, regardless of the amount or season named in his permit. Likewise, he must defend his right if it is attacked by others. A water right is a property right and the owner has the same obligation to defend it against encroachment as in the case of any other kind of property.

#### OUTLINE OF ESSENTIAL STEPS

The Water Code and the Regulations adopted pursuant thereto prescribe a definite procedure for the initiation and consummation of rights to appropriate water. The essential steps are the following:

- (1) An application is filed with the State Water Resources Control Board on a form provided. If the application is not complete, failure to complete it within the time allowed by the board will result in cancellation.
- (2) Notice of application is issued by the board and is posted or published by the applicant, depending on the size of the project.
- (3) If protests are received which cannot otherwise be adjusted, a hearing or an investigation under proceedings in lieu of hearing is held. At the discretion of the Board, a hearing may be held on an unprotested application.
- (4) The application is also reviewed and analyzed for possible environmental impacts as required by the California Environmental Quality Act of 1970.
- (5) If an application is approved and permit fees paid, a permit is issued. A reasonable time is allowed within which to begin construction of the diversion works, complete the construction, and make full beneficial use of the water. These times may be extended upon request therefor and a showing of good cause in support thereof. Failure to comply with the time requirements or other permit terms will be investigated by the Board and findings against the permittee may result in revocation of the permit.

All permits are issued SUBJECT TO PRIOR RIGHTS and the permittee is required to respect all prior rights when diverting under his permit.

- (6) When construction and use of water are complete to the full extent contemplated, an inspection is made for possible issuance of a license. To the extent that beneficial use of the water has been made, as to both amount and season as specified in the terms and conditions of permit, a license may be issued.

A license has no time limit and continues as long as proper use is made of the water and required reports are submitted.

Statutes provide that under certain conditions a license may be lost through a three-year period of nonuse.

## PREPARATION OF APPLICATIONS

The State Water Resources Control Board publishes a pamphlet entitled "How to File an Application for Unappropriated Water in California" which will be of assistance in completing the blanks of an application form. When an application fails to comply with provisions of the Water Code, the application will not be accepted for filing.

### TABLE OF EQUIVALENTS

1 *cubic foot per second (cfs)* expresses a rate of flow of water equivalent to the following:

- = 7.48 U.S. gallons per second.
- = 448.8 U.S. gallons per minute.
- = 646,317 U.S. gallons per day.
- = 1.98 acre-feet per day.
- = 40 standard (statute) miner's inches.
- = 28.32 liters per second

1 *acre-foot* is equivalent to a volume of water which will cover one acre to a depth of one foot.

- = 43,560 cubic feet.
- = 325,851 U.S. gallons.
- = 1,233.45 cubic meters

*Theoretical horsepower* is a power unit which may be calculated by multiplying vertical fall of water in feet by the amount of water in second-feet and dividing the product by 8.8.

1 *theoretical horsepower* is equivalent to the following:

- = 550 foot-pounds per second.
- = 746 watts.

1,000,000 U.S. gallons per day equals 1.55 cubic feet per second.

1,000,000 U.S. gallons per day equals 43.81 liters per second.

1,000,000 U.S. gallons equals 3.07 acre feet.

1,000,000 U.S. gallons equals 3786 cubic meters.

### CHANGES IN OWNERSHIP

It is necessary for the Board to be able to communicate with an applicant, permittee, or licensee. Applicants should promptly advise the Board of changes in ownership or address.