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**Primer on Surface-Water Rights**

The following is a very general summary of California surface-water rights. There are many variants of the rules and issues presented here. Please consult an attorney about any specific water-right question.

**Riparian right.** This right allows a landowner whose property adjoins a surface stream to use a reasonable amount of the stream's natural flow on the property. (*People v. Shirokow* (1980) 26 Cal.3d 301, 307; *Phelps v. State Water Resources Control Bd.* (2007) 157 Cal.App.4<sup>th</sup> 89, 116.) If there is not enough natural flow in the stream to serve all riparian uses, then each riparian has a right to a reasonable "correlative" share of the flow. (*Prather v. Hoberg* (1944) 24 Cal.2d 549, 550-560.) Riparian rights have priority over all appropriative rights to a stream's natural flow. (*United States v. State Water Resources Control Bd.*(1986) 182 Cal.App.3d 82, 101 ("US v. SWRCB").)

**Appropriative right.** This right allows anyone to divert water from the stream for use anywhere. (*Pleasant Valley Canal Co. v. Borrer* (1998) 61 Cal.App.4<sup>th</sup> 742, 752-753.) It can include diversion and storage of water use for later use. (*Meridian, Ltd. v. San Francisco* (1939) 13 Cal.2d 424, 449-450.) Among appropriators, their priorities are determined by the dates that they initiated their diversions. (*US v. SWRCB, supra*, 182 Cal.App.3d, at p. 102.) If there is not enough natural flow for each of them, then the first appropriator may take the water to which it is entitled before the second may take any, the second before the third and so forth. (*Id.*) Appropriators are divided into two classes by their priority dates. Before 1914, no state authorization was required. (*People v. Murrison* (2002) 101 Cal.App.4<sup>th</sup> 349, 359.) Since 1914, a state permit has been required. (*Id.*) "Post-1914" rights are subject to ongoing oversight by the State Water Resources Control Board (SWRCB). (*Environ. Defense Fund v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 195-198.) "Pre-1914" rights are not subject to the same SWRCB oversight.

**Reasonable use.** Under Article X, section two, of the California Constitution, all water uses in California must be reasonable. (*Nat'l Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 443.)

**Storage.** Riparian rights do not allow seasonal storage. (*Moore v. Cal. Oregon Power Co.* (1943) 22 Cal.2d 725, 731.) Riparians and other appropriators have no right to water stored by an appropriator. (*SWRCB Cases* (2006) 136 Cal.App.4<sup>th</sup> 674, 738.)

**Water-right changes.** A riparian's past use does not define its right, which depends on his or her current reasonable need for water. (*Tehachapi-Cummings Water Dist. v. Armstrong* (1975) 49 Cal.App.3d 992, 1001.) A riparian's point of diversion can be changed if others are not injured. (*Smith v. Corbit* (1897) 116 Cal. 587, 591-592.) Water use under an appropriative right can be changed as long as there is no injury to another legal user of water. (*SWRCB Cases, supra*, 136 Cal.App.4<sup>th</sup>, at pp. 738-743.) For there to be such an injury, the affected water user must have had the legal right to continue pre-change conditions. (*Id.* at pp. 740-744, 805.) Pre-1914 appropriators do not require SWRCB approval to change their water use. (Water Code § 1706.) The SWRCB must approve changes under post-1914 appropriative rights. (See, e.g., Water Code §§ 1700-1705.)

**Schematic.** Farmer A is a riparian and has priority to the river's natural flow over Farmer B and the Water Agency, even though Farmer A came after the others. The City does not hold a riparian right because it does not use water on its own property, but delivers water to its residents. Farmer B holds a pre-1914 appropriative right that has priority to the river's natural flow over the Water Agency's post-1914 appropriative right. The Water Agency holds appropriative rights to water it stores and can deliver that water to Farmer B and the City even when there is insufficient natural flow to satisfy Farmer A.