

SUMMARY OF PUBLIC COMMENTS PROVIDED DURING THE FEBRUARY 8, 2022
PLAN FOR WATER WORKSHOP #4

Workshop video available: <https://www.youtube.com/watch?v=4bg6wTeTCaE>

Q: 76:42 (Stewart Feldman) How is fractured rock in the Sierra considered, underflow or subterranean?

R: (District Counsel Dustin Cooper) in most cases it would be considered percolating groundwater that is not regulated as a surface water right and also not regulated by SGMA (Sustainable Groundwater Management Act) because SGMA only applies to the alluvial groundwater basins in the state, at least currently. But that would be governed by a groundwater law which is a series of cases that have arisen over California's history.

So would it be safe to say that in order for surface water rights to apply to underflow, it would have direct connectivity to the surface water itself? In general yes that would be accurate.

Q: (NID Director Rikki Heck) Could you give us an example of the riparian rights? If someone has a riparian right, do they have a right to divert?

R: (Cooper) Yes. Riparian water can be used on any reasonable beneficial use on the riparian property. So it can be diverted and it can be used on the riparian property

Q: 85:16 How are riparian rights measured, and how are they regulated? Do they have a right to a certain amount and how's that regulated?

R: (Cooper) Yes unless it's adjudicated, there is no face value. In other words, it is limited by what's reasonable - it is limited by beneficial use.

Q: 91:25 (Feldman) Are there priorities of riparian rights for agriculture habitat sustainability or other uses?

R: (Cooper) They're basically all equal in priority. There is no preference as to the purpose of use of a riparian water right.

Q: 95:08 (Otis Wallen) Is tailwater at the end of a canal considered abandoned water? And can a person have a riparian right to that abandoned water if they are downstream from the released tailwater?

R: (Cooper) It depends. Is the diversion to the ditch a diversion of natural flow, and the tailwater is just putting back into the natural stream system the natural flow that was diverted? Or is it imported flow? There's not a definitive answer. Most likely both would be eligible for our riparian diversion.

Q: 118:55 (Fisher) Do NID water rights specify the percentages or volume of use for hydro ag domestic etc., or are these purposes simply listed as an accessible purpose on a water right?

R: (NID Operations Manager Chip Close) The purposes are just generally listed as acceptable purposes. There is not a percentage associated with power or domestic or irrigation. Rather, it's just listed as accepted purposes.

Q: 26:45 (Michael Ross) In slide 13 title limitations on all water rights beneficial use, we are informed about the uses of water necessary for the survival or well-being of man, plants and wildlife along with a list of examples. In all the information provided for existing water rights starting on slide 18 title part 3 and NID water rights, there are no beneficial uses listed for plants fish or wildlife under the call on purpose. Is it possible under water right laws to change the list of purpose of our existing water rights to include plants, fish and wildlife?

R: (NID GM Jennifer Hansen) If we were to change our purpose of use for any one of our specific water rights would that require change position with the State Water Board?

R: (Cooper) If it was a post-1914 water right, yes. If it's a pre-1914 water right, NID as a public agency would have to assess CEQA, and then we would need to assess whether there's injury resulting from the change to any other legal user of water.

Q: Is aquifer replenishment considered a beneficial use?

R: (Cooper) Yes and no. The law is a little vague on this, and it depends on who you're asking. In my opinion, yes. In the opinion of some of my colleagues in Southern California, water lawyers, they would say no; that is not a beneficial use

Q: 129:22 With such an inclusion of survival or well-being for plants and wildlife along with estimated rates and volumes be added to the rates and volumes for existing purposes listed. Could that demonstrate the basic need for additional water rights? Could you substantiate non-forfeiture of your water rights if you're not using them all by demonstrating that you are using them all for beneficial use of wildlife?

R: (Cooper) Yes, I think you could.

Q: 147:30 (Michael Ross) Being that the state's water board the legislature and the courts can make changes to surface water rights or allocations, what current changes or likely changes to surface water rights are being discussed now in the state that should be included in the Plan for Water scenario planning development along with climate change?

R: (Hansen) There are a lot of moving dials. There's still a lot that's unknown about climate change. So that is why it's very important that we develop a model that is flexible in the future as we learn more data and the climate change models are updated and regulations change that it can be simply modified as opposed to having been completely redone. But this also speaks to the importance of constantly keeping your models up as opposed to doing them and letting sit on the shelf and revisiting them every five years.

Q: (Ross) Are we looking at likely impacts the advances in big data and technology such as those used in remote sensing from satellite or drone imagery for what is or not reasonable use? As an example, the open et platform and other emerging technologies and remote sensing are already having an impact on water to land surveys.

R: (Hansen) The answer is yes. One of our challenges with remote sensing is that they have had some very good success with operations specific to actual water use on a crop-by-crop basis in the Central Valley. There's two things that lend that area to being successful using that technology that does not duplicate itself in our particular district. One is that down there they obviously have less tree cover right; we do have a tree-cover issue. Secondly the remote sensing technology is going to be more advanced even the next five years. The technologies are just advancing at such a rapid pace.

Q: 156:16 (Dianna Suarez) Are pre-existing indigenous water rights considered? What about rights of nature -- nature's water rights?

R: (Hansen) Remember these are rights to divert water as opposed to the natural right, the natural ability for water to be in the stream. This speaks to appropriative rights; if you're not appropriating the water there is no right given, per the given law.

R: (Cooper) The other interests that she listed are addressed in a number of different spots in in water law.

Q: 158:27 (Macon) There's also likely significant difference between crop options available to NID customers versus Central Valley production

R: (Hansen) That's very true

Q: 176:46 (Keiko Mertz) What else might 5634, which is the application, be used for?

R: (Hansen) There are other project ideas. The purpose of the Plan for Water is to flush out future demand -- any future supply that may be needed or may not be needed, and then to come up with a suite of ideas or potential projects to address any needs that were identified.

Q: 177:27 (Mertz) Are there any restrictions on using 5634 for another project?

R: (Hansen) If the purpose of use for the project is consistent with the legal beneficial uses. I think you'd probably be okay. But mind you, you still have to go through the whole application process, and that would change your application right and your CEQA requirements.

Q: 177:53 (Feldman) How and when is CEQA applied or relevant to the application process?

R (Hansen) It comes in at different points. With any petition for change of use or something, you're required to do CEQA whether you're pre-1914 or not.

For example, for our 5634 CEQA is also required -- it's basically required any time there's a change of use that they wouldn't have any type of impact on the environment.

Q: 178:40 what if there is not water there?

R: (Cooper) What if we were in a drought situation and the water that was contemplated as part of the water right just simply did not exist? Well, you can't divert what you what's not there, first of all. There's a physical and practicality or impossibility. Second, the more realistic scenario is there's a downstream party that is senior to your water right and that's when the State Water Board implements the curtailment process; and they curtail in reverse order a priority so the juniors, the most recent permits and licenses, are curtailed first and they keep curtailing back in time until water supply and water demand equal out.

Q 180:22 (Dianna Suarez) Is there a problem with over-allocation of water?

R: (Hansen) That's always an interesting question. Is anybody accounting for all of the water that's currently tied up in water rights plus that which is in the state's portfolio of water rights that's yet to be licensed?

(Cooper) Yes and no. This is this is actually a hot button issue and, depending on who you ask, you would get wildly different answers. There's something like 200 million acre-feet of precipitation in an average year in California. And there's not nearly that much water developed under water rights. That being said there are areas of the state, in my opinion, that are over-allocated. In light of climate change and in light of dire fishery issues in the Bay Delta watershed, there may need to be some revisiting. But that's why the priority system works. I always get nervous when folks talk about "we got to change the water right system," because the water right system it provides certainty. Your communities developed around the water right system. It's part of the fabric of your community, and if you start making changes to something as fundamental as water rights it could have very large impacts. I am totally in favor of the state implementing the water rights system, and when folks need to be curtailed for a lawful reason they ought to be curtailed.

Q: 183:21 (Fisher) Would an acquired license on the water right at the Parker Dam project prohibit neighboring water districts and future pursuit of the Garden Bar project?

R: (Cooper) The Garden Bar project is based off of the same state portfolio of water rights. The concept would have utilized this same state-filed water right.

Q: 184:39 (Macon) Are there legal and/or geological differences in groundwater recharge of fracture walk versus alluvial aquifer systems?

R: (Hansen) From the geological perspective, the answer is yes. From the legal perspective, it would just be the regulation of the modeling. I'm not aware of any groundwater regulation that's specific to fracture rock versus some type of sedimentary rock.