

California's Constitution and Basic Water Legislation

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A state's Constitution and legislation reflect the many concerns and interests of the state's citizens; thus, California's Constitution and legislation demonstrate that water and water rights are extremely important to California residents. Our state's Constitution and legislation work together to define the rights of those residing in the state, as well as to define the rules governing citizens, corporations, and agencies operating here. Since the ratification of California's Constitution, various pieces of legislation have been passed affecting water and water rights.

The California Constitution of 1879 included two articles about water: Article XIV, entitled "Water and Water Rights," and Article XV, "Harbor Frontages, Etc." These Articles addressed topics such as water resources, irrigation, and access to various types of navigational waters (Cunningham, Grodin, and Massey 159).

After a revision to the California Constitution in 1976, most of the existing water-related sections were moved directly into the new version of the Constitution without change. The previously existing Articles XIV and XV were combined into the current Article X, simply entitled, "Water." Only two new sections were added to Article X; the balance, for the most part, was copied from the 1879 Constitution. Article XA., "Water Resources Development," was added to the state Constitution after 1976 (Cunningham, et al. 159).

Three of the seven sections in Article X of the Constitution speak specifically to public access to navigational waters. Much of California's early commerce depended upon using waterways to transport goods; therefore, the right to access to such waterways was addressed early in our state's constitutional history. All three of these sections were originally part of the 1879 Constitution.

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Article X, Section I says, "The right of eminent domain is hereby declared to exist to all frontages on the navigational waters of the State" Section I protects the right of the state to purchase property from private citizens if the property is needed to gain public access to waterways When this Article was originally added to the Constitution, it was understood that, if needed, the power of eminent domain would also apply to the property that had previously been granted to the railroads (Cunningham, et al.160) Section 4 of the same Article notes that citizens or companies possessing tideland cannot prevent access to navigational waters when access is needed for any public purpose Furthermore, citizens or companies who own frontage or tidelands cannot do anything to prevent the public navigation of these waters It is believed that section 4 is rooted in a long history of common law One of the first penal codes on record regarding this issue dates back to 1850, and it states that those who obstructed navigation committed a misdemeanor. Currently, any new development on California's coast is heavily regulated to ensure that the provisions of section 4 are upheld (Cunningham, et al. 165-7).

Section 3 of Article X put rules in place for the sale of tidelands Section 3 states that tidelands that are used for access to navigational waters and are located within two miles of any incorporated city or town may not be sold to private citizens or companies However, section 3 also says that if the State Legislature determines that any such land is not used for access to navigational waters, the tideland may be sold to a locality, private citizen, or company, as long as the buyer adheres to any conditions the State Legislature puts in place for the sale. Prior to the ratification of the 1879 Constitution, there was little distinction between what was defined as "tidelands," which could not be sold to

private parties, and "swamplands," which did not have any restrictions regarding sales

Section 3 was used to define the protected tidelands as being within two miles of towns

or cities where access to navigational waters was in demand (Cunningham, et al 162-5)

Article X, Section 2 addresses the allocation and conservation of fresh water

resources The section states that in the interest of putting state water to the most

beneficial use, landowners only have the right to use a reasonable amount of the water

that is supplied through naturally occurring streams or watercourses on their land.

Section 2 was added to the Constitution in 1928 because both riparian law (i.e., the belief

that those who own land on which waterways exist have the right to control the water) as

well as appropriation law (i.e., the belief that those who do not have waterways on their

property have the right to divert unused water to their land) were being used to settle

cases. Section 2 says that California practices appropriation law, and that water may be

diverted to the property of those who do not have water on their own land if it ensures

that the water will be put to beneficial use (Cunningham, et al 160-2)

Article XA., "Water Resources Development," includes eight sections. Unlike

Article X, which deals with general concerns regarding water access and use, Article

X.A addresses explicit water issues in specific geographic areas

Article XA, Section 2 says that the fish and wildlife in the Sacramento-San Joaquin

Delta, Suisun Marsh, and the San Francisco Bay System west of the delta are protected

by the state This section also advises that the state will protect existing water rights in

the Sacramento-San Joaquin Delta, operate the State Water Resources Development

System, and comply with water quality standards and water quality control plans (State)

The Sacramento-San Joaquin Delta is again addressed in section 5 of the same Article. Section 5 advises that no public agency may use the concept of eminent domain to acquire water rights in the Delta for the purpose of exporting the water. The section further states that this provision does not prohibit the use of eminent domain to acquire land in order to construct water facilities at the same location (State)

Water in the California Wild and Scenic Rivers System is protected with Article XA., Section 3 This article says that water may not be diverted from this system to another hydrologic basin, unless it is approved by either a ballot initiative, or by a two-thirds vote in both houses of the state Legislature (State)

Just as the interpretation of the California Constitution is a continuous process, legislation regarding how, where, and by whose authority California's water is to be dispersed also continues Some of the legislation that is passed determines how the flow of water is to be directed, while other bills are written to ensure that water for human consumption is as safe as possible. The variety of existing legislation reflects the numerous water-related issues that California faces

One of the many pieces of legislation that affects California water rights is the Burns-Porter Act of 1959, also known as the California Water Resources Development Bond Act This Act states that some of the royalties from offshore oil and gas productions are to be used for constructing new northern California water supply projects Owens Valley was one of the inspirations for drafting this legislation (Haddad 42-3). In the early 1900s it was determined that Los Angeles needed to find additional water sources to keep up with the city's population increase The Los Angeles Water Department purchased key land in the Owens Valley and built an aqueduct that diverted water that had previously

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been used to irrigate local farms Statutes were passed in the 1930s declaring that those counties from which water was being diverted had the right to reclaim a reasonable amount of the water from the aqueduct as it was needed The Burns-Porter Act was ratified so funding would be available for new water supply projects that would be built to compensate for the water that was being redirected for local use (Owens)

The Urban Water Management Planning Act of 1983 and the Agricultural Water Management Planning Act of 1986 are similar in that they both require water suppliers to prepare water management plans if the suppliers' sources are large bodies of water The Urban Water Management Planning Act pertains to suppliers for large cities, while the Agricultural Water Management Planning Act was drafted specifically for those who supply rural customers who have more demanding water needs, such as orchards or farms (Costa 260)

The same geographic areas that are addressed in Article XA, Sections 2 and 5 of the California Constitution is also the subject of concern in the Coordinated Operations Agreement of 1986. This agreement established a program for the coordination of effort and the improved communication between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate with regard to the San Francisco Bay and the Sacramento-San Joaquin Delta. This agreement focused on water supply operations, water quality issues, flood control, and the development of a long-term solution for the preservation of fish and wildlife in the region (Bulletin)

The Safe Drinking Water and Toxic Enforcement Act of 1986, better known as Proposition 65, addressed concerns about exposure to toxic chemicals through the consumption of drinking water (Costa 261) Proposition 65 prohibits companies from

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polluting sources of drinking water, and requires that those individuals who are exposed to the toxic chemicals through drinking water are advised of their exposure (Proposition)

The Act, an initiative approved by California voters, required the Governor to publish an annual list of chemicals and toxic agents that are known to cause birth defects (OEHHA)

The issues addressed by state legislation and the California Constitution serve as a reflection of the subject matter that concerns current residents of this state, while also providing a way to learn about the issues that confronted generations of the past.

As a state with an ever-increasing population and one of the most extensive coastlines in the Union, California clearly places the utmost importance on water and water rights, which affect every citizen and company that operates in this state. It is apparent that lawmakers and common citizens alike are actively involved in preserving and protecting California's water resources for all those who have a vested interest in this state

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