

A Research Guide to California Water Law

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A. Introduction

(1) Definition of water law

"Water Law" defies a simple definition. It typically refers to a wide variety of topics that address the ownership, allocation, use and quality of water.¹ In the early days of California statehood, water law existed primarily as a way of settling disputes between competing users, but it is now a complex intersection of private rights and public policy, where state and federal interests in the management and preservation of water resources have been increasingly asserted. Indeed, because of the recent rise of environmental concerns and legislation, one scholar has stated: “. . . in many respects, water law in California today *is* primarily environmental law.”²

(2) Types of water

California law recognizes several types of water. This is important since the rights surrounding water depend upon its classification.³

Surface water – the common definition is that surface water is water in a river or stream, as well as water in a lake, pond or other surface enclosure, the essential characteristic being that the water is above ground. California law, however, makes distinctions which vary from this common understanding. In *Keys v.*

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¹ A useful definition that stresses governmental goals is found in Roderick E. Walston, *California Water Law: Historical Origins to the Present*, 29 Whittier L. Rev. 765, 765 (2008): “California water law is a distinct body of law with a distinct history but is informed by recent congressional enactments that establish national goals and limit the reach of state law. Therefore, broadly speaking, California water law is an amalgam of state and federal laws that establish both local and national goals in the field of water regulation.”

² Gregory S. Weber, *The Role of Environmental Law in the California Water Allocation and Use System: An Overview*, 25 Pac. L.J. 907, 910 (1994).

³ Commentators sometimes offer different ways of classifying water. “The five most common classifications are (1) surface water in watercourses, (2) groundwater flowing in defined underground streams, (3) percolating or diffused groundwater, (4) diffused surface water, and (5) springs.” A. Dan Tarlock, *Law of Water Rights & Resources*, § 2:4 (Westlaw 2016). A remarkable 19 types of water are identified in Rogers, Harold E. & Alan H. Nichols, *Water for California: Planning Law & Practice*. San Francisco: Bancroft-Whitney, 1967, at p.265. There has also been a growing recognition in recent years that groundwater and surface water can be hydrologically connected, thus making this distinction somewhat arbitrary.