

ENVIRONMENTAL LAW

CALIFORNIA
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2022 Environmental Law Conference at Yosemite

Modernizing California Water Rights Law

Moderator: Ellen Hanak

Speakers: Clifford Lee, Eileen Sobeck, Cindy Tuck

Conference Reference Materials

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2022 Environmental Law Conference at Yosemite
Session 4. Modernizing California Water Rights Law

Session date and time: October 14, 2022, 9:15 – 10:45

Moderator:

Ellen Hanak, Vice President and Director of the Water Policy Center and Senior Fellow, Public Policy Institute of California (PPIC) Water Policy Center, Chair in Water Policy

Panelists:

Clifford T. Lee, former Deputy Attorney General, California Department of Justice

Eileen Sobeck, Executive Director State Water Resources Control Board

Cindy Tuck, Deputy Executive Director, Government Relations, Association of California Water Agencies (ACWA)

Written materials:

- (1) Summary of [Updating California Water Laws to Address Drought and Climate Change](#). (Planning and Conservation League report by Lee, Clifford et al., 2022)
- (2) Significant California Water Rights Legislation Introduced in the 2021–2022 Legislative Session (Clifford Lee and Cindy Tuck)
- (3) Other Reference Resources for the Panel Discussion (Eileen Sobeck)

1. Updating California Water Laws—Summary

Clifford Lee

(See link to full Planning and Conservation League report [here](#).)

1. Updating Water Rights Administration to Address Drought and Climate Change

- Require State Board adoption of regulations to set up practices and methods for water availability analyses in water rights proceedings that address the effects of climate change on anticipated watershed hydrology
- Improving Surface Water Rights Verification—Board-initiated verification proceeding, burden of proof of claim on claimant, and forfeiture reform
- State Board Interim Relief Authority
- Revisions to the Statutory Adjudication Proceedings—Granting the State Board the authority to initiate and inclusion of interrelated groundwater
- Real Time Monitoring of Diversions and Use—Pilot Projects and Report

2. Implementing the Human Right to Water

- Explore Funding Sources for NGO and Tribal participation in State Board and Regional Board Proceedings modeled after California PUC.
- Require at least one member of the State Board and the Regional Boards to be qualified in the field of water supply or water quality related to environmental justice.
- Implementing the Human Right to Water by imposing a duty upon Groundwater Sustainability Agencies to mitigate for adverse effects due to groundwater extraction on domestic wells.

3. Addressing the Extinction Crisis facing California’s Native Fisheries

- Amendment to Section 5937 of the Fish and Game Code to require consideration of water temperature as well as flow
- December 2023 deadlines for completion of Sacramento River/Delta Plan Update and the Implementation of the San Joaquin River/Southern Delta Plan Update

2. Significant California Water Rights Legislation Introduced in the 2021– 2022 Legislative Session Clifford Lee and Cindy Tuck

- **SB 1205** (Proposal to mandate water availability and climate change regulations) Passed and Ordered Enrolled 8/31/22
- **AB 2108** (Proposal for environmental justice outreach, funding, and accountability in State Water Board proceedings) Passed and Ordered Enrolled 8/30/22
- **AB 2639** (Proposal to set a Bay-Delta Plan Update deadline)
- **AB 2857** (Proposal to require Groundwater Sustainability Plans to include measures to mitigate for harm to domestic wells)
- **AB 2201** (Proposal to prohibit local governments from issuing well permits absent a Groundwater Sustainability Agency determination that the groundwater extraction is consistent with the Groundwater Sustainability Plan)
- **AB 2451** (Proposal to create within the State Water Board a Drought Section for improving drought planning, drought response, and climate resiliency; require the Board to adopt principles and guidelines for the diversion and use of water in coastal watersheds during water shortages; and provide for enforcement through cease and desist orders and civil penalties)
- **SB 1219** (Proposal to set up a committee of state officials and legislative appointees to propose recommendations to modernize state water laws and regulations and laws relating to state and local water agencies)

3. Other Reference Resources for the Panel Discussion

Eileen Sobeck

Water Resilience Portfolio

California's roadmap to building water resilience through a diverse set of actions that will prepare our water systems to support our growing state in a water, more variable climate. View the portfolio at resources.ca.gov/Initiatives/Building-Water-Resilience/portfolio.

California's Water Supply Strategy

California's strategy for a hotter, drier California calls for investing in new sources of water supply, accelerating projects, and modernizing how the state manages water through new technology. View the strategy at resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf.

California Water Boards Drought Information & Updates

Managing and protecting California's water resources is complex—particularly during periods of drought. For current information on the California Water Boards' regional drought response (including water right curtailments), drinking water assistance, emergency funding, water conservation, and more visit waterboards.ca.gov/drought.

Water Rights Drought Effort Review (WARDER)

As California faced a dry 2019-2020, the State Water Board conducted interviews with water users and managers to gather input on the Board's water rights actions during the precious drought and solicit recommendations for water rights priorities during a future drought. Participants included individuals, urban water agencies, irrigation districts, advocacy groups, non-governmental organizations, tribal governments, and others. To read a summary of the comments and recommendations, visit bit.ly/WARDER.

Updating Water Rights Data for California (UPWARD)

The State Water Board is revamping California's water rights data management system. The project, Updating Water Rights Data for California (UPWARD), is underway and updates are available at waterboards.ca.gov/upward.

Water Foundation Recommendations: Updating Water Rights Data in California

The Water Foundation facilitated a series of dialogues about how UPWARD can enhance water resilience in the face of ongoing climate change. The dialogues sought to identify areas of alignment around the most urgently needed data reforms and resulted in recommendations about priority data needs, including areas that UPWARD should address to improve water decision-making. Access the recommendations at bit.ly/waterfdn_UPWARD.

Modernizing California Water Rights Law

Speaker Biography's

Moderator:

Ellen Hanak, Vice President and Director of the Water Policy Center and Senior Fellow, Public Policy Institute of California (PPIC) Water Policy Center, Chair in Water Policy



Bio: Ellen Hanak is vice president and director of the PPIC Water Policy Center and a senior fellow at the Public Policy Institute of California, where she holds the Ellen Hanak Chair in Water Policy. Under her leadership, the center has become a critical source of information and guidance for natural resource management in California. She has authored dozens of reports, articles, and books on water policy, including *Managing California's Water*. Her research is frequently profiled in the national media, and she participates in briefings, conferences, and interviews throughout the nation and around the world. Her other areas of expertise include climate change and infrastructure finance. Previously, she served as research director at PPIC. Before joining PPIC, she held positions with the French agricultural research system, the President's Council of Economic Advisers, and the World Bank. She holds a PhD in economics from the University of Maryland.

Speakers:

Clifford T. Lee, former Deputy Attorney General, California Department of Justice



Bio: Clifford T. Lee received his B.A. from the U.C. Berkeley in 1973. He received his J.D. from the U.C. Davis School of Law in 1976. From 1977 to 1978 he was a staff attorney with the Governor’s Commission to Review California Water Rights Law and authored the Commission staff papers “Legal Aspects of Water Conservation in California” and “The Transfer of Water Rights in California.” From 1979 through 2019, he was a deputy attorney general with the Natural Resources Law section of the California Department of Justice. He represented the State of California in the State Water Resources Control Board Cases (2006) 136 Cal.App. 4th 674. He was one of the two lawyers awarded the California Lawyer magazine’s 2007 Attorney of the Year Award in environmental law. From 1995 through 2015 he was a member of the Hastings School of the Law adjunct faculty. He is the author of “Federalism and Water: The California Experience,” published in 2020 by the Golden Gate University Environmental Law Journal. In 2021, he received the Lifetime Achievement Award in the field of environmental law from the Environmental Law section of the California Lawyers Association.

Eileen Sobeck, Executive Director State Water Resources Control Board



Bio: Eileen Sobeck has nearly 40 years of government service, and more than two decades of executive and management experience leading professional staff in complex organizations. She is currently the Executive Director of the California State Water Resources Control Board, a position she has held since September 2017.

Previously, she had experience with several federal agencies with missions that touch on many of the same science-based, public resource challenges the State Water Board faces.

Most recently, she was the National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for Fisheries at the U. S. Department of Commerce (2014-2017). Prior to her work at NOAA, she was the Department of Interior's Acting Assistant Secretary for Insular Affairs (2012-2014), and Deputy Assistant Secretary for Fish and Wildlife and Parks (2009-2012). Ms. Sobeck is a lawyer by training and spent 25 years at the U. S. Department of Justice, ultimately serving as Deputy Assistant Attorney General for Environment and Natural Resources (1999-2009).

Ms. Sobeck spent the bulk of her professional career in Washington, D.C., but she grew up in Davis, and is a graduate of Stanford Law School.

Cindy Tuck, Deputy Executive Director, Government Relations, Association of California Water Agencies (ACWA)



Bio: Cindy Tuck leads ACWA's Government Relations Team. This team represents the interests of ACWA's public water agency members before Congress, federal agencies, the California Legislature and State agencies. Prior to joining ACWA, she served as Undersecretary at the California Environmental Protection Agency (Cal/EPA). As Undersecretary, she was the senior policy advisor to the Cal/EPA Secretary and served as Cal/EPA's liaison to the State Water Resources Control Board and as the Secretary's alternate on the Ocean Protection Council and the Strategic Growth Council. She has decades of experience in water and environmental legislative and regulatory policy development. Cindy holds a Bachelor of Science degree in Civil Engineering and a Master of Science degree in Environmental Engineering – both from the University of Illinois. She holds a law degree from McGeorge School of Law. Cindy is a licensed Professional Engineer in California and a member of the California State Bar. She is an alumna of Leadership California. Cindy enjoys travel and photography.