

Golden Gate University Environmental Law Journal

Volume 9

Issue 1 *Symposium Edition: The Waste of Water in
21st Century California*

Article 3

January 2016

In This Edition

Phoebe Moshfegh

Golden Gate University School of Law

Joseph Baskin

Golden Gate University School of Law

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/gguelj>



Part of the [Environmental Law Commons](#), and the [Water Law Commons](#)

Recommended Citation

Phoebe Moshfegh and Joseph Baskin, *In This Edition*, 9 Golden Gate U. Envtl. L.J. 1 (2016).
<http://digitalcommons.law.ggu.edu/gguelj/vol9/iss1/3>

This Introduction is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Environmental Law Journal by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

IN THIS EDITION

PHOEBE MOSHFEGH* & JOSEPH BASKIN**

It is with great pleasure that we introduce *Golden Gate University Environmental Law Journal's* ninth volume, *Symposium Edition*. This edition features articles authored by legal scholars and environmental practitioners with a focus on water and environmental issues affecting California and the West Coast. The idea for this edition stemmed from the 2015 California Water Law Symposium, *Wasted Water: Reasonable Use Law in 21st Century California*. Our authors Tina Leahy, Brian Johnson and Nicholas Jacobs were panelists at this event.

THE WASTE OF WATER IN 21ST CENTURY CALIFORNIA

California has entered its fourth year of an unprecedented drought, which has put tremendous pressure on the state to conserve water, achieve new efficiencies and rethink the policies and regulations that control water distribution throughout California. From wineries dealing with frost protection issues to developing a greater understanding of the Sustainable Ground Water Management Act, practitioners are trying understand new water regulations and how to satisfy their clients' needs while conserving water. *The Waste of Water in 21st Century California*, Symposium edition, features five articles authored by legal experts; state policy leaders and water law practitioners, who influence, shape and serve in the trenches of current water priority debates.

In *Desperate Times Call for Sensible Measures: The Making of the California Sustainable Groundwater Management Act*, attorney and Capitol insider Tina Cannon Leahy gives the reader a ringside seat to the development of the historic groundwater act as only one of its principal technical drafters can. She explains that despite California's status as the

*Editor-in-Chief, *Golden Gate University Environmental Law Journal*; J.D., Golden Gate University School of Law, 2016; B.A., Women, Gender and Sexuality Studies, Washington University in St. Louis, MO, 2012.

**Symposium Edition Editor, *Golden Gate University Environmental Law Journal*; J.D., Golden Gate University School of Law, 2016; B.A., Global Ecology and Politics, College of Santa Fe, 2008.

2 GOLDEN GATE UNIV. ENVIRONMENTAL LAW J. [Vol. 9

last state in the nation to adopt statewide groundwater regulation, the roots of the Act are long and deep. In Part I, she examines the near misses and incremental steps of groundwater regulation in California and shows how this arid state's history of lurching forward in water policy is frequently tied to drought. In Parts II and III, Ms. Leahy recounts how the perfect storm of two successive droughts, an independent Governor, two experienced legislators, their dedicated staffs, and two visionary organizations all came together with stakeholders to achieve what many in the Golden State thought was impossible: statewide groundwater regulation.

In *Reasonable Use on the Russian River: A Brief History of the Frost Protection Rule*, Brian J. Johnson recounts the competing interests that led to the creation of the Frost Protection Rule and the rule's impact on fisheries and the winegrape industry within California's Russian River basin. The rule is an aggressive attempt by the State of California, under the constitutional Reasonable Use Doctrine, to balance water demand for vineyards with streamflow needs for steelhead trout and salmon. In effect, the rule provides that diversions of water for frost protection are unreasonable if viable alternatives exist. Controversy over the rule culminated with the decision in *Light et al. v. State Water Res. Control Bd.*, 226 Cal. App. 4th 1463 (2014), in which an appellate court upheld the rule and reaffirmed the State Water Resources Control Board's broad authority under the Reasonable Use Doctrine. As well as documenting the winegrape industry's quick response to the rule and asking whether the rule is already a success, the author lays out the historical foundations of the rulemaking and provides context for the *Light* decision.

In *A Vineyardist's View on Reasonable Use and Frost Protection Diversions Under California Water Law*, Nicholas Jacobs presents an inside view of the legal proceedings that led to the recent decision in *Light v. State Water Resources Control Board*, 173 Cal. Rptr. 3d 200 (Ct. App. 2014). As lead counsel, Mr. Jacobs presents a comprehensive and detailed account of the California State Water Resource Control Board's Frost Protection Rule as well as his client's legal challenges to its validity. Water is increasingly scarce, and a crucial question centers on the legality of administrative rules governing water use in California. This Article describes the history of the Frost Protection Rule, including its legal challenges in the trial and appellate courts, and predicts the Rule's implications for the future.

In *Not All Water Stored Underground is Groundwater: Aquifer Privatization and California's 2014 Sustainable Groundwater Management Act*, Adam Keats and Chelsea Tu purport that groundwater basins that are poised to implement the recently enacted Sustainable Ground-

water Management Act face two compounding threats: privatization of groundwater sustainability agencies, and water trading through water banking and exchanges. The Paso Robles Groundwater Basin is one basin that is threatened by both privatization efforts as well as the development of water banking. Using Paso Robles as an example, this article aims to shed light on how the Act could enable privately controlled, for-profit groundwater banks, and how their operations will undermine the needs of overlying and environmental uses. As the unprecedented drought continues, California cannot afford to give its remaining groundwater resources to the highest bidder.

In *The Golden Rule of Water Management*, Russell McGlothlin and Jena Acos posit that California follows a “Golden Rule*” of water management; the Golden Rule* is a two-part principle. The rule’s foundation is California’s constitutional requirement that the state manage water to achieve maximum beneficial use and prevent waste of water. However, this requirement has a qualifier—an asterisk—that demands reasonable efforts to structure water management programs to preserve water right priorities formulated from well over a century of the state’s common law. Together these two principles—maximum beneficial use and preservation of water right priorities—constitute California’s Golden Rule* of water management. This article explores the Golden Rule* as a lens to analyze perplexing water management issues and controversies and offers projections concerning future application of the Golden Rule* to water management in California, including pursuant to the recently adopted Sustainable Groundwater Management Act.

As we present the Symposium edition of the *Golden Gate University Environmental Law Journal*, we hope you will find the selection of articles engaging and thought provoking. We would like to thank our faculty advisors, Professor Paul Kibel and Professor Jennifer Pesetsky, for their support in publishing this edition. We would like to extend a special thank you to Deanne Morton for her wonderful editing skills and commitment to improving the Environmental law Journal. Additionally, we would like to thank the 2015 outgoing board of the Environmental Law Journal for their guidance and tremendous help with this edition. Also, this edition could not have succeeded without the hard work of our student editors and devoted authors. Finally, we would like to thank the faculty and staff of Golden Gate University School of Law, particularly Dean Rachel Van Cleave, for their dedication to and support of legal scholarship within the environmental law community and among our students.