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Sources of California Water Law

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"Water law is an oral tradition." This is how a senior attorney at the California Department of Water Resources (DWR) described it to an inquiring summer associate. Elegantly put, and accurate as far as the lack of treatises or practice books on the subject is concerned. Unlike other specialties in law, few important water law cases come down in a year. The rule of thumb is that a good case is issued about every twenty years. The DWR Office of Chief Counsel is fortunate to have on staff retired attorneys who have been with the Department – no kidding! – since the late 50's, soon after the Department's formation in 1956; consequently institutional memory is an important source of the law for our attorneys. The DWR Law Library has a representative collection on water law, including the national multi-volume *Waters and Water Rights* treatise, published by Lexis-Nexis and the one-volume *Law of Water Rights and Resources* by A. Dan Tarlock, published by Thomson/West. The attorneys often rely on the soon-to-be-updated 1995 *California Water* by Arthur L. Littleworth. The veterans, like the attorneys mentioned above, still consider the venerable 1956 *California Law of Water Rights* by Wells A. Hutchins to be the bible of water law in the state and keep a copy in their offices.

I direct new attorneys and summer associates to the pocket part of the first volume of the West's Annotated Water Code (Volume 68 of West's Annotated California Codes), which begins with an essay entitled "Overview of California Water Rights and Water Quality Law" by William R. Attwater and James Markle, retired Chief Counsel and Senior Attorney at the California State Water Resources Control Board (SWRCB). I also suggest reading the articles in Volume 19, Number 4 (July 1988) of the *Pacific Law Journal*, a symposium devoted to "Revisiting California Water Law," written by well-known names in the California water law world. In fact, law review articles are a good source of water law and related legal theories like the public trust doctrine in California and the West. Another good source is the SWRCB website. Its resolutions, water rights decisions, water rights orders and water quality orders are at the website. Click on <http://www.swrcb.ca.gov/documents.html>.

A series of six papers produced by the staff of the Governor's Commission to Review California Water Rights Law in 1977 is still well used by DWR attorneys. These papers were not published in a bound volume or submitted to a law review because they were deemed at the time to be valuable only to Commission members as they prepared their report. How wrong that was! These papers have been copied, recopied, spiral bound and hard bound in the 29 years since they were written to preserve them for those who want to know, for example, the difference between riparian and appropriative water rights, and exactly if or how groundwater is regulated in this state. These papers are cataloged in MELVYL and available at most UC libraries. Four of them and the Final Report of the Commission are located at the SWRCB's website in the pdf format. The Index to the Board's publications is at <http://www.swrcb.ca.gov/general/publications/index.html#Gg>. The 25th Anniversary of the Commission's Final Report was celebrated with a new symposium on California Water Rights Law held at the McGeorge School of Law last November, the proceedings of which will be published in a forthcoming issue of the *McGeorge Law Review*.

For current topical awareness of statutes, cases, and pending litigation, a subscription to *California Water Law and Policy Reporter* by Argent Publications is a must, available in a print newsletter or online version at www.argentco.com. An online subscription gives the user searchable access to the archives. The May 2006 issue contained a detailed analysis of the recent opinion in State Water Resources Control Board Cases (2006) 39 Cal.App.4th 674, authored by Justice Ronald Robie of the 3rd District Court of Appeal. Justice Robie is a former member of the SWRCB and the director of DWR under Jerry Brown. The case became final on May 17 when the Supreme Court denied review. This is the most comprehensive water rights and water quality law case to be decided since the so-called Racanelli decision, *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82.

Because water law is an amalgam of history and policy as well as law, no law library water collection is complete without one or two histories of water in California and the West. These give context and depth to understanding current legal disputes arising from the scarcity of this precious resource amid the development of the most populous state in an arid region. Among these are Erwin Cooper, *Aqueduct Empire* (1968), Marc Reisner, *Cadillac Desert* (1986), and Norris Hundley, *The Great Thirst* (2001), which are good reads as well as valuable background for water law professionals. The DWR Law Library's most recent acquisition of this type is Steven P. Erie's *Beyond Chinatown* (2006), hot off the Stanford University Press. And finally, follow the practice of historians who recommend fictional works as background material to scholarly study by renting or buying *Chinatown*, the great 1974 movie starring Jack Nicholson and Faye Dunaway.

Background Information: The Department of Water Resources (<http://www.water.ca.gov>) owns and operates the State Water Project, which delivers water to its contractors in the Bay Area, Central Valley and Southern California. It is organizationally located within the cabinet level California Resources Agency (<http://www.resources.ca.gov/>). The State Water Resources Control Board (<http://www.swrcb.ca.gov/>) regulates water quality and water rights in the State through the issuance of permits and is part of the California Environmental Protection Agency (<http://www.calepa.ca.gov/>). To see where DWR and the SWRCB fit in state government, you can view the State's Organization Chart at http://www.cold.ca.gov/Ca_State_Gov_Orgchart.pdf.

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