



Discussing Water Rights, A Western Pastime

2015 Presentation for the SSWD

Watermaster Service

MULTI-JURISDICTIONAL ISSUES

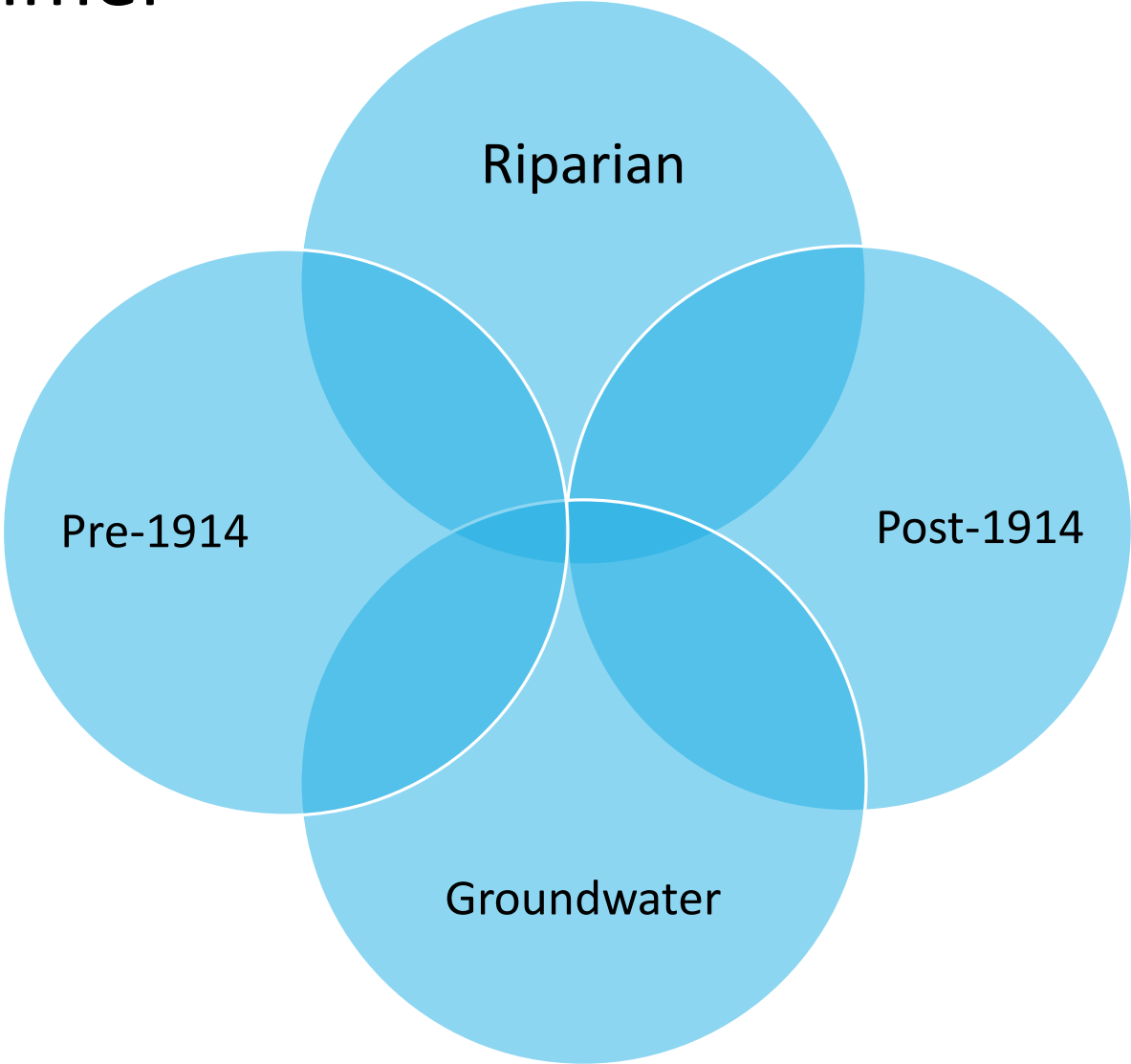
2015 Presentation for the SSWD

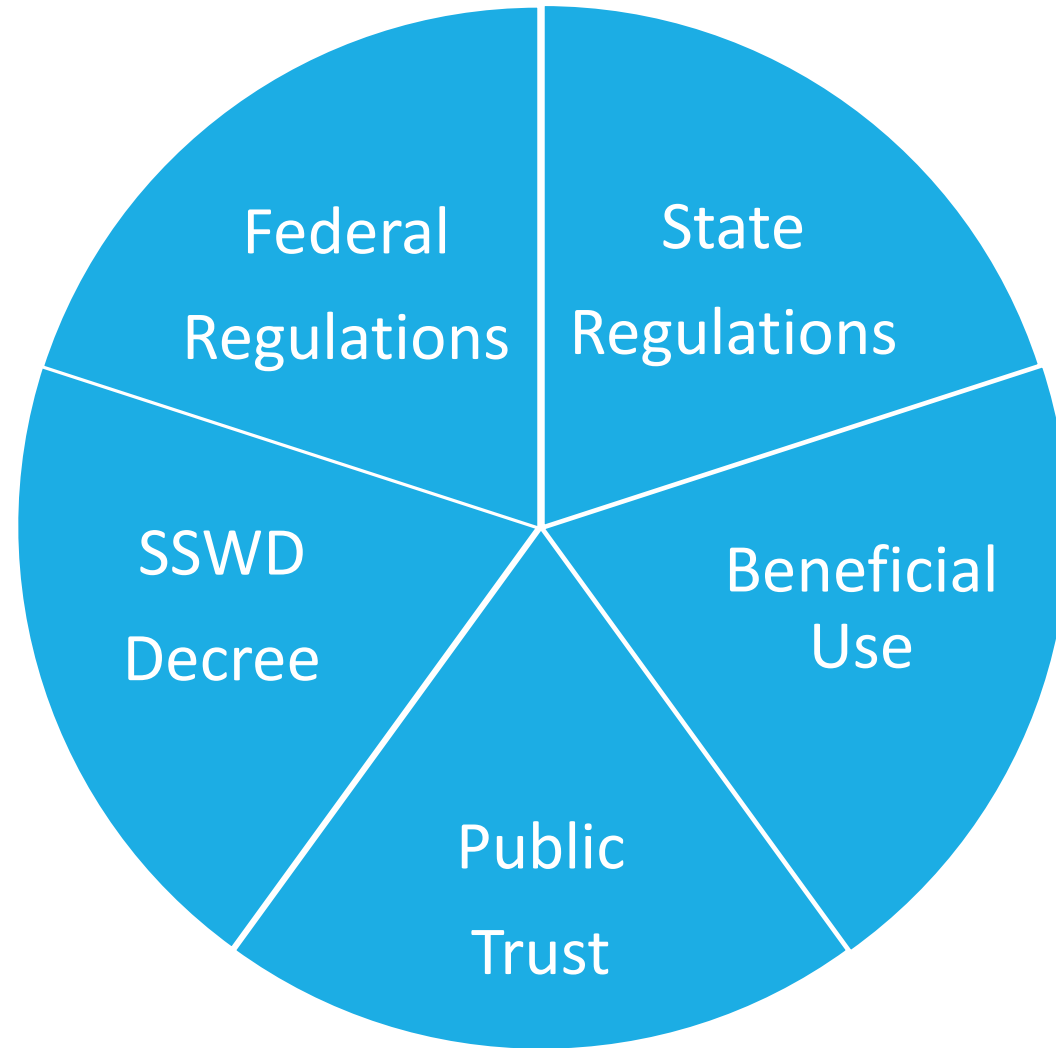


Hammond Reservoir Summer 2014


“California operates under the so-called dual system of water rights which recognizes both the appropriation and riparian doctrines” *People v. Shirokow* (1980) 26 Cal.3d 301, 307

Water Rights Primer





State Jurisdictions



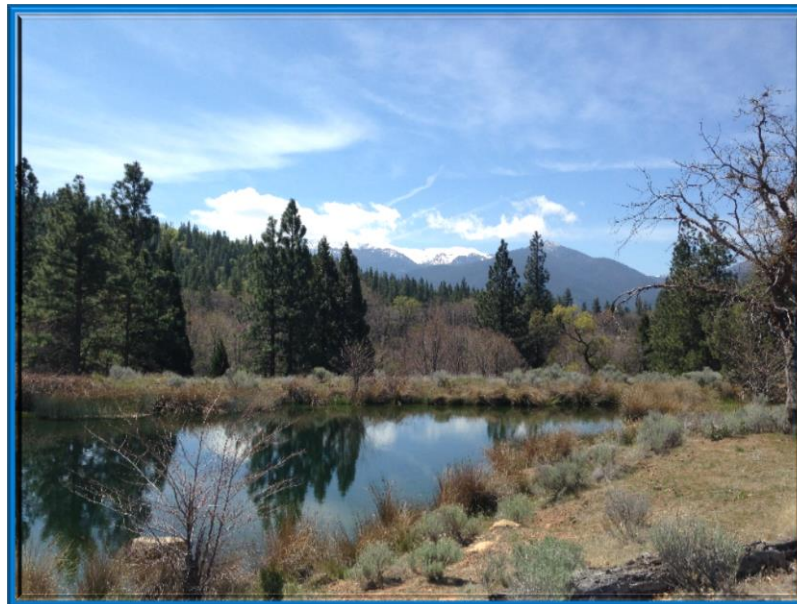
<h2>Executive</h2>	<ul style="list-style-type: none">• Governor• Natural Resources Agency
<h2>Legislature</h2>	<ul style="list-style-type: none">• Water Code• Fish & Game Code• AB 1580
<h2>Judiciary</h2>	<ul style="list-style-type: none">• CA Supreme Court• County Superior Courts

Public Trust Doctrine

- ❖ The state is the trustee for waterways
- ❖ Any member of the general public has standing to raise a claim of harm to the public trust.
- ❖ **If successfully argued, the application of the public trust can, in effect, amend or modify a water right.**

Public Trust Doctrine

The California Supreme Court held that California water law is an integration of both public trust and appropriative right systems, and that *all appropriations may be subject to review if “changing circumstances” warrant their reconsideration and reallocation.* *National Audubon Society v. Superior Court (1983) 33 Cal. 3d 419.*



The difficulty comes in balancing the potential value of a proposed or existing water diversion with the impact it may have on the public trust.

CA DWR: Waterboards





Beneficial Use

Shasta River Adjudication & French Creek Decree:

■ “...the direct conveyance and application of water diverted to beneficial use without intermediate storage...”

Beneficial Use – Water Code & CCR

- ❖ Agriculture
- ❖ Areas of special biological significance
- ❖ Cold freshwater habitat
- ❖ Recreation & Sportfishing
- ❖ Freshwater replenishment
- ❖ Groundwater recharge
- ❖ Industrial service supply
- ❖ Fish migration & spawning
- ❖ Rare & endangered species
- ❖ Wildlife habitat



Beneficial Use?



Siskiyou County Marijuana Ordinance (April, 2015)

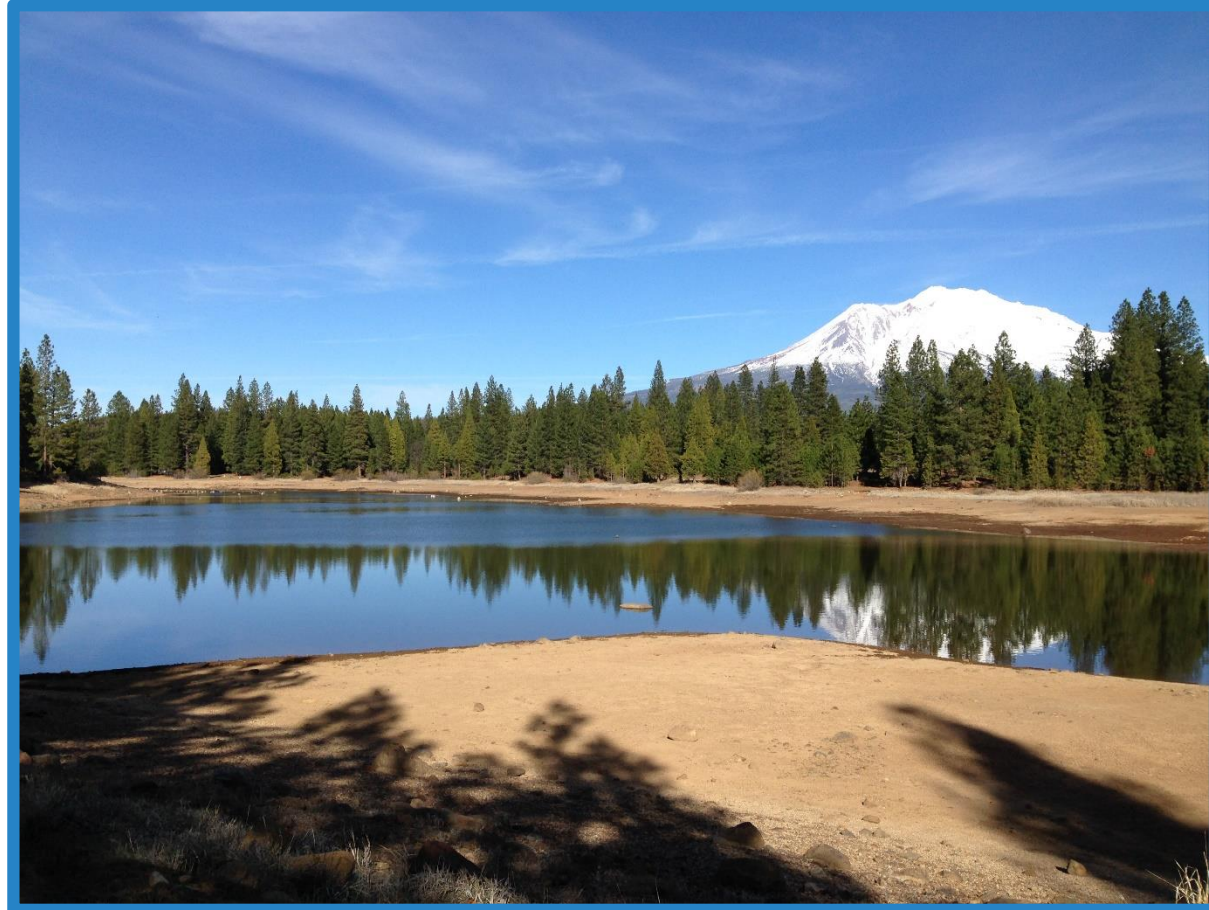
- ❖ The unlawful or unpermitted surface drawing of water for cultivation is prohibited.
- ❖ There is a legally established ***water source*** on the premises, for which all applicable permits ***or approvals for use of said water*** have been obtained.





Safety Concerns

DWR Licenses & Permits



Fish & Game Code 1602

It is unlawful to:

- ❖ Substantially divert the natural flow
- ❖ Substantially change the bed, bank or channel
- ❖ Use material from the streambed
- ❖ Without a permit



June 4, 2015

California 3rd District Court of Appeal



- ❖ Reversed lower court's decision
- ❖ 1602 *does* apply to water diversions

CA Water Code

1707 Permits:

A person entitled to the use of water (riparian, appropriative, etc.) may petition for a change in purpose of use of that water for preservation or enhancement of wetlands, wildlife, fisheries or recreation.

*Not required under Decree, but Court may require



Endangered Species Act (Federal)

Section 7(a)(2) of the ESA prohibits agency action that is “likely to jeopardize the continued existence” of any endangered or threatened species or “result in the destruction or adverse modification of its critical habitat.”



CESA

F&GC 8200:

CDFW responsible for the administration of the California Endangered Species Act (CESA) and for cooperation with the National Marine Fisheries Service (NMFS) in its administration of the federal Endangered Species Act (ESA).

CDFW is also the trustee agency for the fishery resources of the State of California.



Fish Passage

**ARTICLE 4. Conduits and Screens: Diversions
Less Than 250 Cubic Feet per Second [6020 -
6028]**

(Article 4 enacted by Stats. 1957, Ch. 456.)





Clean Water ACT Section 404

Regulates discharge of dredged or fill material into waters of the United States

California Dept. of Fish & Wildlife (2008)

- ❖ The Scott and Shasta watersheds were designated “high priority” watersheds.
- ❖ Scott River & Shasta River Instream Flow Study Plan Development
- ❖ Collaboration with interested parties
- ❖ Evaluation of instream and out-of-stream water use



North Coast RWQCB

- ❖ Grazing

- ❖ Marijuana cultivation

- ❖ Agricultural/irrigation

- ❖ **Scott River TMDL**

- ❖ Sediment & temperature associated with ag runoff

- ❖ **Shasta River TMDL**

- ❖ Sediment, nutrient load, & temperature associated with ag runoff

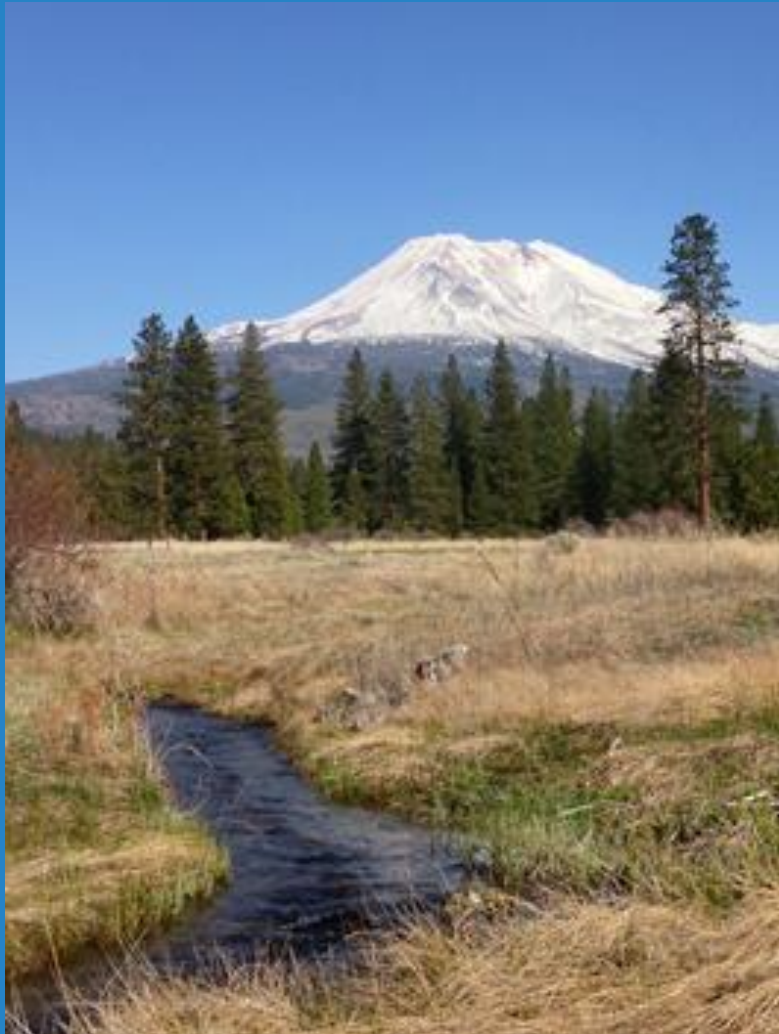
- ❖ Waivers

Future Areas of Conflict?

- ❖ Riparian Rights
- ❖ CESA – TES
- ❖ Purpose of Use
- ❖ Water quality
- ❖ Groundwater extraction/depletion



Riparian

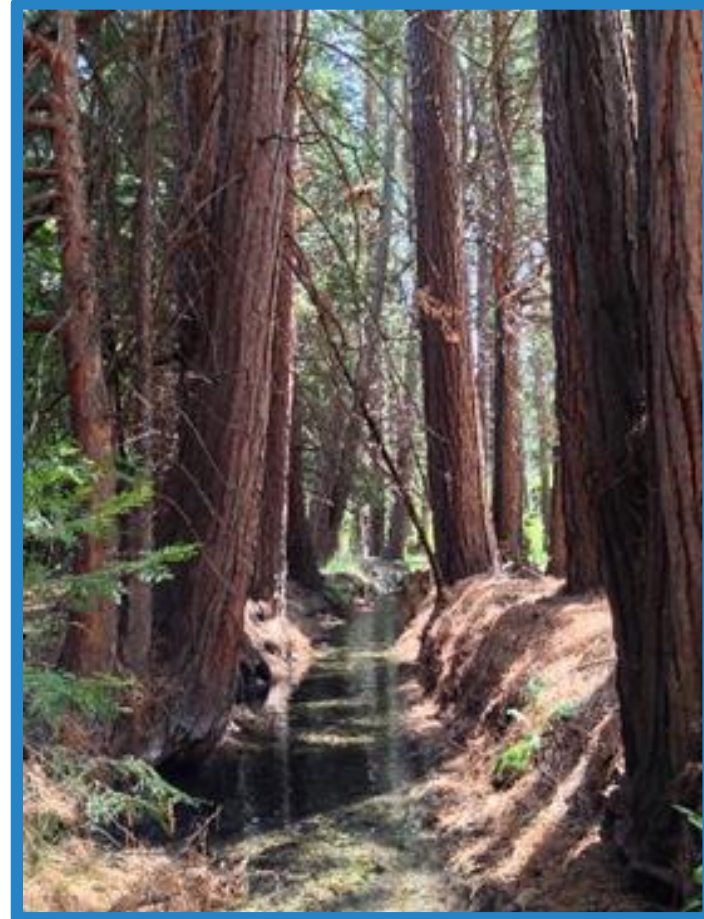


- ❖ A riparian right is subject to those appropriative rights that were perfected, as the result of the diversion of water, prior to the date of vesting of the riparian right, which is when the grant from the United States government was obtained.
- ❖ Otherwise a riparian right is generally superior in right to an appropriative right.

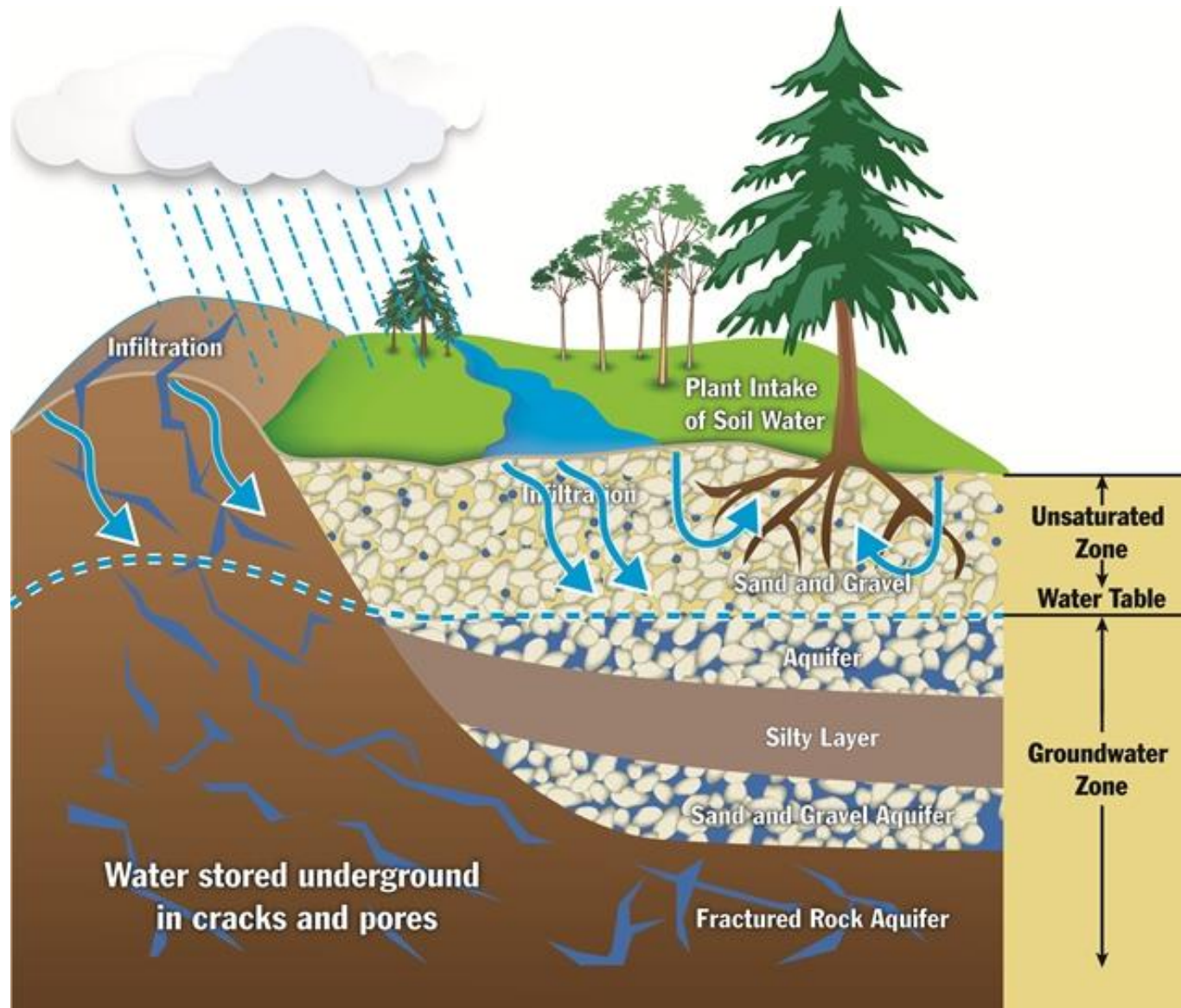
❖ Haight v. Costanich (1920) 184 Cal. 426; 194 P. 26

❖ Pleasant Valley Canal Co. v. Borrer (1998) 61 Cal.App. 4th 742, 72 Cal.Rptr. 2d 1

Recent California court decisions suggest that unexercised riparian rights can be subordinated to longstanding downstream appropriative rights

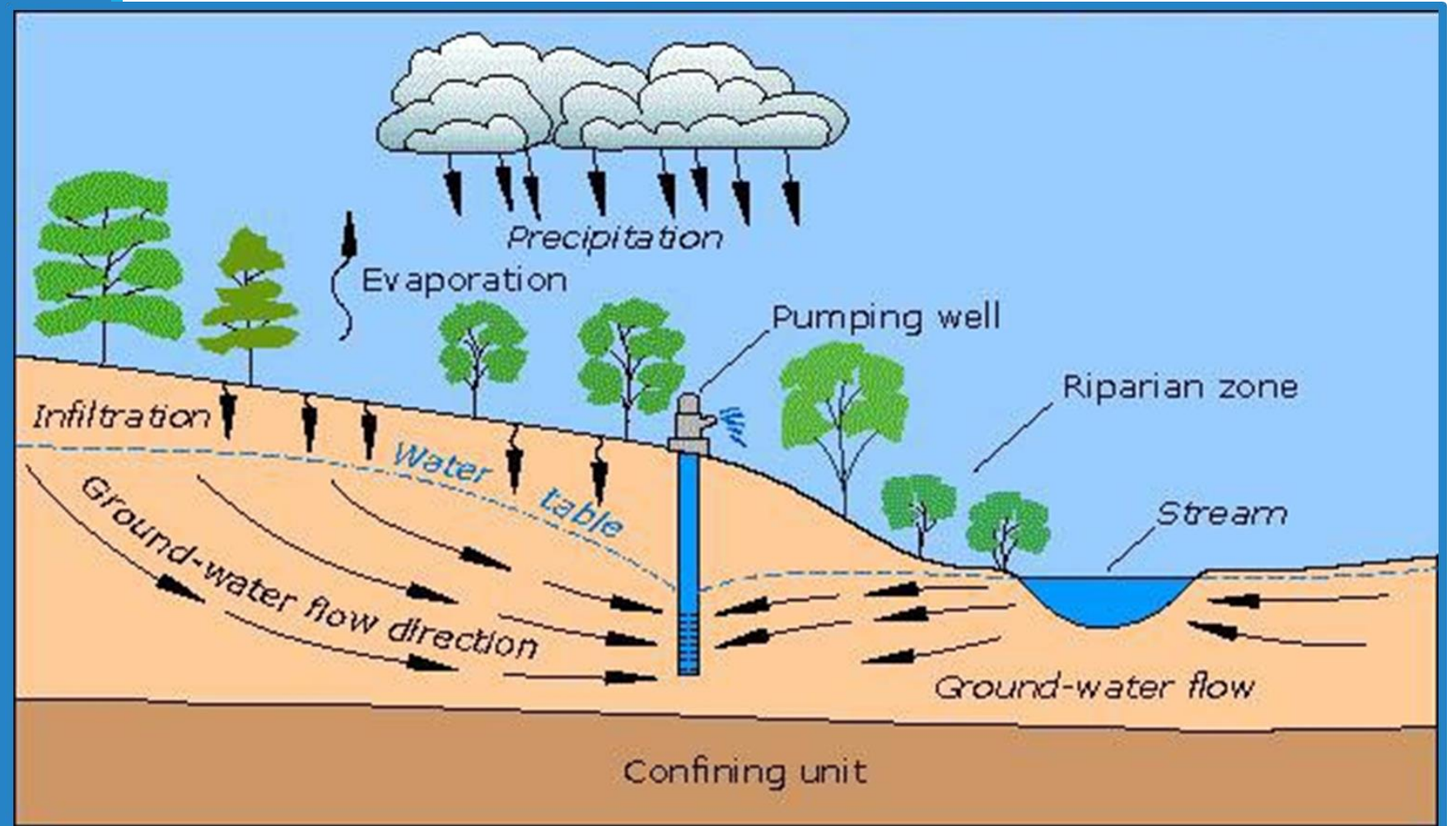


Groundwater Recharge



Groundwater & Surface Water Interactions

- ❖ Streams
- ❖ Aquifers
- ❖ Wells
- ❖ Recharge



Siskiyou County Groundwater Management Plan

❖ Basin Designations:

- ❖ Scott – medium priority
- ❖ Shasta – medium priority



❖ Connectivity & Geology:

- ❖ Scott – alluvial plain/basin
- ❖ Shasta – volcanic/lava tubes



What is the District's role in:

- ❖ groundwater and surface water interactions?
- ❖ the County's marijuana ordinance as it pertains to surface water diversions?
- ❖ the California Endangered Species Act –Threatened or endangered species?