

Dan Walters: Drought shows need to untangle California water rights

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There is absolutely nothing in California government – or its politics – more complicated and contentious than water rights.

Who has what rights to extract and use how much water from which California rivers and aquifers is an almost impenetrable thicket of state laws, regulatory decisions, judicial actions and, in some cases, royal decrees dating back to the pre-statehood era of Spanish and Mexican rule.

As California endures its fourth year of severe drought, however, clarifying those rights – and perhaps modifying them – has become an important, if infinitely difficult, political chore for Gov. Jerry Brown and the Legislature.

They took a first step last year by enacting the state's first-ever system of regulating groundwater. But deciding what can be pumped from aquifers – particularly in times of drought – begins with calculating who already holds groundwater rights.

In some regions (mainly in the southern portion of the state), those rights have been “adjudicated” – verified by special lawsuits. But the process can be lengthy; adjudication of rights in Southern California's Antelope Valley has been going on for 15 years with no end in sight.

Ron Robie, an appellate court justice in Sacramento and Jerry Brown's first water resources director 40 years ago, observed in one water case before him that such lengthy procedures are “good for the lawyers (but) you're also costing a lot of money to the people who have the rights.”

Each legislative house has passed a bill to speed up groundwater adjudication, but true to water-politics tradition, they're in conflict. The Assembly's bill is backed by farm groups and opposed by environmentalists while the Senate's has the opposite cast of stakeholders.

As complex as politics of groundwater rights may be, they are child's play compared to those governing use of surface water from rivers and the reservoirs that control their flows.

Surface rights come in many gradations of validity, depending largely on when they were originally acquired, with a major dividing line between those granted before 1914, when the state assumed the power to allocate them, and afterward.

The senior rights, some dating to the pre-statehood era, had long been seen as inviolable, but the state curtailed water deliveries to many of their holders during the severe drought that hit California during Brown's first governorship, and has done it again this year.

Given what's already happening on groundwater, some water districts with those senior rights see curtailment as a step toward permanently reducing or even erasing their long-held privileges and have sued to challenge the State Water Resources Control Board's authority.

Years, or even decades, of political and legal wrangling are looming. But defining groundwater and surface water rights is long overdue, even were there no drought, and necessary if California is to allocate its limited water supplies fairly and efficiently.

