

LAWS PROTECTING AREAS OF ORIGIN

By

Porter A. Towner, Chief Counsel,
Department of Water Resources,
The Resources Agency,
State of California*

California's area of origin water laws have been called by some an unwarranted extension of archaic riparianism. The laws have been vigorously attacked as unconstitutional and dog-in-the-manger legislation.

The same laws, however, have been praised by others as legislation defining the natural rights of rural areas, to protect them from their covetous urban neighbors.

Today, I do not propose to attack or defend either of these opposing points of view. Instead, I would like to tell you briefly the history of the area of origin laws, what the laws are, how they have been legally interpreted, and what the Department of Water Resources is doing to see that their intent is carried out.

In the early 1920's California commenced the comprehensive planning of water projects to meet the future needs of the State. The beginning, in 1924, of the driest ten years in the State's history intensified and focused this effort.

*Presented before the Eel River Flood Control and Water Conservation Association, Ukiah, California, October 9, 1964.

It resulted, in 1927, in the first of the major planning reports, Bulletin No. 12.^{1/}

To make it possible for the State to obtain water rights to implement this plan, the Legislature enacted the law,^{2/} now Water Code Section 10500, which provided for the filing of applications to appropriate water for a general or coordinated plan of development. The law became effective on June 29, 1927, and the following day the first group of applications was filed in furtherance of the plan proposed in Bulletin No. 12.

As early as 1925, attempts had been made to provide legislative assurances to counties of origin that necessary water supplies would be reserved for them. These attempts reached fruition in 1931, when the county of origin law, now Water Code Section 10505,^{3/} was enacted. This act provides for the reservation of water supplies for counties of origin when assignments or releases from priority of state applications are made.

^{1/} "Summary Report of Water Resources of California and a Coordinated Plan for Their Development" Bulletin No. 12, Division of Engineering and Relocation of the Department of Public Works (1927).

^{2/} Calif. Stats. 1927, Ch. 286, p. 508.

^{3/} "No priority under this part shall be released nor assignment made of any application that will, in the judgment of the commission, deprive the county in which the water covered by the application originates of any such water necessary for the development of the County." (Calif. Stats. 1931, Ch. 720, p. 1514)

In 1933, the State first obtained legislative authority for the construction of major water projects to meet its rapidly increasing needs. This legislation was the State Central Valley Project Act.^{4/} The act provided that the operation of the Central Valley Project should not deprive areas in which water originates or adjacent areas of water needed for their development.^{5/}

In brief, then, this is the background of the two area of origin water laws. Both laws remain in effect today.

^{4/} Now Part 3, commencing at Section 11100 of Division 6 of the Water Code.

^{5/} Water Code Section 11460. "In the construction and operation by the department of any project under the provisions of this part a watershed or area wherein water originates, or an area immediately adjacent thereto which can conveniently be supplied with water therefrom, shall not be deprived by the department directly or indirectly of the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed, area, or any of the inhabitants or property owners therein.

11461. "In no other way than by purchase or otherwise as provided in this part shall water rights of a watershed, area, or the inhabitants be impaired or curtailed by the department, but the provisions of this article shall be strictly limited to the acts and proceedings of the department, as such, and shall not apply to any persons or state agencies.

11462. "The provisions of this article shall not be so construed as to create any new property rights other than against the department as provided in this part or to require the department to furnish to any person without adequate compensation therefor any water made available by the construction of any works by the department.

11463. "In the construction and operation by the department of any project under the provisions of this part, no exchange of the water of any watershed or area for the water of any other watershed or area may be made by the department unless the water requirements of the watershed or area in which the exchange is made are first and at all times met and satisfied to the extent that the requirements would have been met were the exchange not made, and no right to the use of water shall be gained or lost by reason of any such exchange.

Reservations of water under the county of origin law, Water Code Section 10500, are of relatively limited benefit. They apply only to state applications and no similar protection is required by law with respect to other applications, although the State Water Rights Board has sometimes imposed similar conditions. Further, the protection is limited to water which originates within the county.

The area of origin law is much broader in its coverage since it applies to areas or watersheds in which water originates and adjacent watersheds which are susceptible of convenient service from the areas of origin. It is not limited to water appropriated under state applications. It has limitations, however, as to those to whom the law is made applicable. It is part of the State Central Valley Project Act, and by its terms it is made applicable to the operator of the project, and it has also been made applicable^{6/} to works constructed under the Burns-Porter Act. This law, therefore, clearly applies to the State in operating the State Water Project which is to be constructed and operated under the provisions of both the Burns-Porter Act and the Central Valley

6/ Water Code Section 12931.

Project Act. Water Code Section 11128^{7/} also states that the area of origin law is applicable to the United States in the operation of the federal Central Valley Project. The law does not apply, however, to water developments by any other public or private agencies.

In 1955, just as the State was unveiling The California Water Plan and seeking appropriations to commence construction of the State Water Project, the area and county of origin laws were brought into dramatic focus by two opinions of the Attorney General.^{8/}

These opinions ruled in favor of the constitutionality of the area and county of origin laws. The Attorney General held, among other things, that, even though water had been put to use through an export project constructed by the State, it could be recaptured whenever needed by the area of origin. His phrasing of this proposition was as follows:

^{7/} 11128. "The limitations prescribed in Section 11460 and 11463 shall also apply to any agency of the State or Federal Government which shall undertake the construction or operation of the project, or any unit thereof, including, besides those specifically described, additional units which are consistent with and which may be constructed, maintained, and operated as a part of the project and in furtherance of the single object contemplated by this part."

^{8/} 25 Ops. Cal. Attorney General 8 (1955); and 25 Ops. Cal. Attorney General 32 (1955).

"In the circumstances specified in the statute, Water Code sections 10505 and 11460 would require that water which had been put to use in the operation of the Central Valley Project in areas outside the county of origin, or the watershed of origin and areas immediately adjacent thereto, be withdrawn from such outside areas and made available for use in the specified areas of origin." 9/

At this point, the problem presented by the area of origin laws virtually brought progress on the State Water Project to a stop. The urban and valley agricultural interests, which would receive major deliveries under the project, were reluctant to have the State proceed if the project water could be recaptured by areas of origin. The resulting controversy has been termed the North-South fight, the areas of surplus vs. areas of deficiency, and the Assembly-Senate dispute. It looked like an insoluble mess. In three legislative sessions, 1956, 1957 and 1958, more than fifty constitutional amendments or other legislative proposals were advanced as solutions to the impasse. In general, these sought to establish a mechanism for dividing the water between the areas of origin and the areas of deficiency. Half a dozen committees of attorneys, legislators, and other high officials studied these proposals in detail, but agreement could not be reached.

In 1959, Governor Brown rang the bell on the controversy by offering a simple and direct solution. This solution which was developed by the Legislature in the Burns-Porter Act, was based on the realization of two basic truths. First, within California there is sufficient water, actual precipitation of rain and snow, to meet the needs of

both the areas of origin and the areas of natural deficiency. Secondly, the real problem in making this water available is one of providing adequate financing so that projects can be constructed to furnish water supplies to all areas and at the same time provide flood control, power production, recreation and fish and wildlife enhancement, and other benefits. The Burns-Porter Act solved the problem by providing an assured system of financing for the initial conservation and export features of the State Water Project and by providing offset bonds for the development of local projects and the replenishment of water supplies in the Delta as areas of origin developed and utilized water now flowing there. In addition, the act provided \$130 million for local projects under the Davis-Grunsky program.

The Department of Water Resources has maintained the position since its creation in 1956, that it is bound to carry out and implement the county and area of origin laws both as a legal requirement and as a matter of policy. This has not been a grudging concession, but a policy of recognition of the importance and urgent needs of the areas where the State's water originates and the determination to meet these needs as fully as possible. This policy was set forth fully and clearly by the Director William E. Warne more than three and one-half years ago^{10/} in the following terms:

^{10/} An Address before the Northern Coastal Counties Supervisors Association, Santa Rosa, California (February 24, 1961).

"I would like to emphasize that the department, in carrying out the mandate of the Burns-Porter Act and in its general activities is keenly aware of the needs and interests of the areas of water origin. It has requested that the state applications needed for the export features of the State Water Facilities be made subject to a general reservation for the counties of origin. In addition, under the terms of the Burns-Porter Act itself, it is bound by the provisions of the Central Valley Project Act, including Water Code Section 11460, to protect watersheds and areas of origin.

"Besides these legal protections, however, the department has taken positive action to make water available in the northern areas where most of it originates."

Since that time, the Department has continued its program of meeting the needs of the areas of origin. In March, 1961, state applications were assigned for the State Water Project. All of them contain a general reservation for all areas in which the water to be appropriated under them originates.^{11/}

The Department has also taken direct action to make water supplies available in areas of origin. The Burns-Porter Act authorized the construction of five projects in the upper watershed of the Feather River, the area in which a substantial portion of the water for the State Water Project originates.

^{11/} The assignment dated March 12, 1961, was made subject, ". . . To the following reservations and conditions:
"(1) The prior rights of any county in which the water covered by the application originates to the use of such water as may be necessary for the development of the county, as provided in Section 10505 of the Water Code:
". . ."

Frenchman Dam has now been completed and is providing irrigation water and recreational benefits. Antelope Valley Dam is also in operation and is providing recreation opportunities and releases for streamflow maintenance to enhance fishing conditions. Grizzley Dam, on which construction has commenced, will provide municipal water to Plumas County and will create Lake Davis for recreational use. Two additional units, Abbey Bridge and Dixie Refuge Dams and Reservoirs, are planned for future construction for recreation and fish and wildlife enhancement.

The Davis-Grunsky Act program is also providing substantial assistance to areas of origin. Loans are available for qualifying projects, and grants may be obtained for recreation and fish and wildlife benefits. The majority of the agencies that have qualified for Davis-Grunsky assistance are in the northern areas of origin or adjacent areas.

In our water supply contracting program for the State Water Project, we have also recognized the needs of areas of origin. Yuba City, Butte County, and Plumas County, all clearly within the area of origin, have contracted for a total of 39,800 acre-feet of project water. Other agencies, which may be in protected adjacent areas, have contracted for even larger amounts of project water. Moreover, all of our water supply contracts have expressly recognized that areas of origin may have superior rights to those of other water supply contractors in case of shortage.^{12/}

12/ Water Supply Contracts, Articles 18A and 18C.

Oroville Dam will provide substantial direct benefits to the surrounding areas of origin. When completed, it will provide a very high degree of flood control protection to areas along the Feather River, and even this winter limited protection will be afforded by the portion of the dam that has been completed. It is also becoming apparent that it will be one of the major recreational attractions of Northern California.

One of the major contributions of the Department to the water supply picture for areas of origin is its continuing planning program. Plans of this Department have formed the basis for a number of locally constructed projects in these areas.

I know many of you are familiar with our North Coastal Area Investigation (Bull. No. 136), Mt. Shasta City-Dunsmuir Area Investigation (Bull. No. 100), and Sacramento Valley-East Side Investigation (Bull. No. 137-1). These, and other investigations, are continuing. To implement these plans, over one hundred state applications have been filed by the Department to appropriate water -- mostly in areas of origin. As I pointed out earlier, the law requires that the assignment or release from priority of any of these state applications shall be conditioned on adequate protection for the counties where the water originates.

Some of the Department's plans will culminate in the financing and construction of new projects by the State. Offset bonds, equal to the amount of water utilized from the California Water Fund, are set aside to construct these projects. The projects will be designed to assure that areas of origin can develop and utilize water now tributary to the Delta without adversely affecting the export features of the State Water Project. The Burns-Porter Act provides that such projects shall "meet local needs", including flood control. These projects are to be located in the Sacramento Valley or the North Coastal Area. Local needs are further defined to include developments "necessary to conserve or develop water which is tributary to the stream on which any of the facilities" are constructed. Full multiple-purpose development, is therefore contemplated, including recreation and fish and wildlife enhancement.

I sincerely hope that my discussion has adequately explained the area of origin laws and conveyed our clear intent to carry them out. I hope that it also indicates to you that the Department of Water Resources recognizes and respects the needs of the areas of origin and intends to help in meeting them.