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Chapter 215: Clarifying the Roles of Water Providers in Southern California

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*Water***Chapter 215: Clarifying the Roles of Water Providers in Southern California***Michelle Chester**Code Section Affected*

Water Code § 71610 (amended).
 SB 1386 (Lowenthal); 2012 STAT. Ch. 215.

I. INTRODUCTION

Southern California's anxiety over their water supply is not unique in the arid southwestern United States.¹ Los Angeles is perpetually running low on water.² The city outgrew the capacity of the nearby Los Angeles River a century ago.³ Today, it depends on aqueducts⁴ and aquifers for its continued existence.⁵ Importing water through aqueducts⁶ requires a significant amount of energy;⁷ in fact, delivering water to Southern California is the state's largest energy expenditure.⁸ Transporting water from its source for use elsewhere, as is necessary to supply Los Angeles County, requires "pumping the water over hills and mountains," which accounts for the large associated energy expenses of

1. MARK T. ANDERSON & LLOYD H. WOOSLEY, JR., WATER AVAILABILITY FOR THE WESTERN UNITED STATES—KEY SCIENTIFIC CHALLENGES 1, 3 (2005), *available at* <http://pubs.usgs.gov/circ/2005/circ1261/> (on file with the *McGeorge Law Review*).

2. Maven, *Where Does Southern California's Water Come From?*, AQUAFORNIA: CAL. WATER NEWS BLOG (Apr. 29, 2008, 8:16 AM), <http://www.aquaforia.com/where-does-southern-californias-water-come-from/> (on file with the *McGeorge Law Review*).

3. *Id.*

4. An aqueduct is an artificial channel used to transport water. *Aqueduct*, MERRIAM-WEBSTER ONLINE STUDENT DICTIONARY, <http://www.wordcentral.com/cgi-bin/student?book=Student&va=aqueduct> (last visited Sept. 4, 2012) (on file with the *McGeorge Law Review*).

5. Maven, *supra* note 2.

6. There are three major projects importing water to Southern California through aqueducts: the Los Angeles Aqueduct, which imports water from Owens Valley; the Colorado River Aqueduct, which imports water from the Colorado River; and the California State Water Project, which pumps water from the San Francisco Bay Delta. *Id.*

7. *Id.*

8. RONNIE COHEN ET AL., NATURAL RES. DEFENSE COUNCIL (NRDC), ENERGY DOWN THE DRAIN: THE HIDDEN COSTS OF CALIFORNIA'S WATER SUPPLY 2 (2004), *available at* <http://www.nrdc.org/water/conservation/edrain/edrain.pdf> (on file with the *McGeorge Law Review*). The California State Water Project, which pumps water two-thousand feet over the Tehachapi Mountains in order to deliver water to Southern California, is the largest single user of energy in California. *Id.* The Project accounts for two to three percent of California's total energy consumption. *Id.*

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water transport.⁹ It has become increasingly clear that groundwater storage in aquifers is essential to sustaining affordable and reliable sources of water for the City of Los Angeles.¹⁰

Aquifers, which are “underground bod[ies] of porous materials,” function as natural water storage units.¹¹ Water districts extract groundwater from aquifers for residential, industrial, and agricultural use.¹² In years of average rainfall, groundwater accounts for thirty to forty percent of California’s water supply.¹³ But Los Angeles County’s ten-million residents¹⁴ have relied so heavily on groundwater that they have left Southern California’s aquifers with severely diminished water levels.¹⁵ Currently, the Southern California Central Basin aquifer stores enough water to meet the water needs of approximately 475,000 families for one year.¹⁶ However, the Basin has the capacity to hold enough water to support an additional 660,000 families.¹⁷ This vast amount of unused groundwater storage space may be the solution to providing cheaper water services and future drought relief to Los Angeles County.¹⁸

The Central Basin’s potential extra storage space has long remained unrealized¹⁹ because the Water Replenishment District of Southern California (WRD) and the Central Basin Municipal Water District (CBMWD) were waging

9. *See id.* (explaining that water transport “can require large amounts of energy”).

10. *See* Press Release, Senator Alan Lowenthal, Sen. Lowenthal Central Basin Water Fairness Bill Passes Senate With Strong Bipartisan Support (May 17, 2012) [hereinafter Lowenthal, Central Basin Press Release] (on file with the *McGeorge Law Review*) (explaining that storing water in aquifers improves water supplies and reliability at a relatively low cost).

11. *See* JANET M. CARTER ET AL., ATLAS OF WATER RESOURCES IN THE BLACK HILLS AREA, SOUTH DAKOTA 118 (2002) (stating that aquifers are composed of natural substances and are filled with water).

12. Maven, *supra* note 2.

13. *Id.*

14. Sam Allen, *Feud Between 2 Obscure Water Agencies Costs Consumers*, L.A. TIMES (Apr. 25, 2012), <http://articles.latimes.com/2012/apr/25/local/la-me-water-wars-20120425-106> (on file with the *McGeorge Law Review*).

15. Maven, *supra* note 2.

16. *See* SENATOR ALAN LOWENTHAL, MUNICIPAL WATER DISTRICTS: WATER STORAGE BACKGROUND SHEET (Apr. 25, 2012), available at <http://sd27.senate.ca.gov/sites/sd27.senate.ca.gov/files/SB%201386%20municipal%20water%20districts%20water%20storage.pdf> [hereinafter LOWENTHAL, MUNICIPAL WATER DISTRICTS] (on file with the *McGeorge Law Review*) (indicating that the Central Basin’s total allowable extraction is 238,566 acre feet). *See generally* Lowenthal, Central Basin Water Press Release, *supra* note 10 (“An acre-foot of water is approximately 326,000 gallons, enough to meet the water needs of two average families in and around their homes for one year.”).

17. *See* LOWENTHAL, MUNICIPAL WATER DISTRICTS, *supra* note 16 (indicating that the Central Basin’s total usable storage capacity above existing water rights is approximately 330,000 acre feet). *See generally* Lowenthal, Central Basin Water Press Release, *supra* note 10, and text accompanying note 16.

18. Lowenthal, Central Basin Water Press Release, *supra* note 10.

19. *See* Patrick McGreevy, *State Senate OKs Bill to Limit Power of Southland Water District*, L.A. TIMES (May 18, 2012), <http://www.latimes.com/news/local/la-me-water-district-20120518,0,2746808.story> (on file with the *McGeorge Law Review*) (reporting that a dispute between government agencies has left the Central Basin’s groundwater capacity unused).

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a bureaucratic battle for the right to control the region's groundwater storage.²⁰ In its traditional role, WRD "charges a fee for pumping water and uses the money to pay for [the] replenishment" of groundwater in the Central Basin.²¹ CBMWD, by comparison, purchases imported water from the Metropolitan Water District²² and then wholesales the water to "municipal water departments and private retailers."²³ Both WRD and CBMWD claimed the right to manage the groundwater stored in the Central Basin.²⁴ The issue of which agency has this exclusive right remained unresolved because the California Water Code granted both agencies the authority to "store" groundwater in the Central Basin.²⁵

Senator Alan Lowenthal introduced Chapter 215 to resolve the ongoing WRD-CBMWD dispute.²⁶ Chapter 215 grants WRD exclusive authority over groundwater storage in the Central Basin, eliminating the overlapping authority between WRD and CBMWD.²⁷

II. LEGAL BACKGROUND

Before Chapter 215, both the CBMWD and the WRD had the right to store water in the Central Basin.²⁸ CBMWD is organized under the Municipal Water District Law of 1911.²⁹ That law states that a municipal water district may "store . . . any water, including sewage and storm waters . . . in the district."³⁰ WRD is organized under the authority of the Water Replenishment District Act.³¹

20. *Id.*

21. Mike Sprague, *It's Politics: State Senate Approves Bill Taking Groundwater Power from Central Basin Municipal Water District*, WHITTIER DAILY NEWS (May 18, 2012), http://www.whittierdailynews.com/news/ci_20656652/its-politics-state-senate-approves-bill-taking-groundwater (on file with the *McGeorge Law Review*). MWD collects fees for pumping water out of the groundwater basin and then purchases water from another agency to refill the basin. Allen, *supra* note 14.

22. Metropolitan Water District is "a regional wholesaler of groundwater and imported water from the Colorado River and the State Water Project, which it sells to it's [sic] 26 member agencies." Maven, *supra* note 2.

23. Allen, *supra* note 14.

24. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 6 (May 8, 2012).

25. LOWENTHAL, MUNICIPAL WATER DISTRICTS, *supra* note 16.

26. Lowenthal, Central Basin Water Press Release, *supra* note 10.

27. See Sprague, *supra* note 21 (explaining that CBMWD is prohibited from storing and managing groundwater in the Central Basin; therefore, WRD is the only agency with the power to manage and store groundwater in the Basin).

28. LOWENTHAL, MUNICIPAL WATER DISTRICTS, *supra* note 16.

29. See generally CAL. WATER CODE §§ 71000–73001 (West 2004) (codifying the Municipal Water District Law of 1911).

30. *Id.* § 71610. The Municipal Water District Law of 1911 also provides that a municipal water district may "acquire, control, distribute, . . . spread, sink, treat, purify, recycle, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses of the district, its inhabitants, or the owners of rights to water in the district." *Id.*

31. See generally *id.* §§ 60000–60622 (codifying the Water Replenishment District Act).

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The Act provides that WRD “may . . . store . . . or otherwise manage and control water” in order to replenish the district’s groundwater supplies.³²

The geographic boundaries of WRD and CBMWD also overlap.³³ WRD provides water services for forty-three cities in the southern Los Angeles County area.³⁴ CBMWD serves twenty-four cities in southeastern Los Angeles County, all of which are within WRD’s service area.³⁵

Despite this overlap in space and authority, the agencies generally functioned independently from one another.³⁶ Then, in 2009, southern Los Angeles County considered adopting a water storage plan to take advantage of the Central Basin’s unused water storage space.³⁷ The proposed plan amended a 1960s court judgment³⁸ that determined “who [could] pump groundwater, and the amount of groundwater that can be pumped on an annual basis.”³⁹ The plan’s modification of existing water rights would grant WRD a greater role in groundwater management.⁴⁰ CBMWD challenged the WRD-supported water storage plan, upsetting the harmony between the districts.⁴¹ In 2011, in contradiction to the 2009 water storage plan, CBMWD proposed the Central Basin Groundwater Storage Plan to “acquire water . . . and subsequently store the water in underground aquifers within the Basin that are currently underutilized.”⁴²

32. *Id.* § 60221(e). The Water Replenishment District Act also provides that WRD may “transport, recapture, recycle, purify, treat . . . water for the beneficial use of persons or property within the district.” *Id.*

33. LOWENTHAL, MUNICIPAL WATER DISTRICTS, *supra* note 16.

34. Sprague, *supra* note 21.

35. *Id.* Southeastern Los Angeles County is the only area in California where water district boundaries cross. SE. WATER COAL., MINUTES OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY MEETING OF THE POLICY BOARD 5 (Feb. 2, 2012), available at www.santafesprings.org/civil/filebank/blobload.asp?BlobID=5709 [hereinafter SE. WATER COAL., FEB. 2 MINUTES] (on file with the *McGeorge Law Review*).

36. *See* SE. WATER COAL., FEB. 2 MINUTES, *supra* note 35 (“[T]raditionally, these . . . groups, despite the overlap of authority, [focused] on their primary missions.”).

37. Sprague, *supra* note 21.

38. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 2 (May 8, 2012). In 1962, the legal process of having the Central Basin adjudicated began. *Id.* at 2–3. The adjudication, in which the court released a judgment declaring who had a right to extract groundwater, was meant to limit the amount of water pumped from the Basin. *Id.* at 2. However, the adjudication of the Central Basin “did not directly address groundwater storage for . . . the coordinated and planned management of both surface and groundwater resources in order to maximize the efficient use of the resource.” *Id.* at 3; *see also* Technical Bulletin, Water Replenishment Dist. of S. Cal., A Century of Groundwater Changes in the Central and West Coast Basins 2 (2005), available at http://www.wrd.org/engineering/reports/TB4_Summer_2005.pdf (on file with the *McGeorge Law Review*) (explaining the adjudication of the Central Basin).

39. Press Release, Cent. Basin Mun. Water Dist., The Central Basin Groundwater Storage Plan: A Blueprint for Future Reliability, Frequently Asked Questions (May 2011) [hereinafter Cent. Basin Water Dist., FAQs Press Release] (on file with the *McGeorge Law Review*); *see also* Technical Bulletin, Water Replenishment Dist. of S. Cal., *supra* note 38 (explaining the adjudication of the Central Basin).

40. *See* SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 3 (May 8, 2012) (explaining that that WRD would, in part, replace the Department of Water resources as “watermaster,” meaning it would assist in the administration and enforcement of court judgments).

41. Sprague, *supra* note 21.

42. Press Release, David Hill, Water Resources and Planning Manager, Cent. Basin Mun. Water Dist.,

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The Southeast Water Coalition,⁴³ concerned by CBMWD's potentially expanded power under their Groundwater Storage Plan, sponsored legislation to clarify which agency, WRD or CBMWD, had authority over groundwater.⁴⁴ Lowenthal introduced Chapter 215 in early 2012⁴⁵ to "amend the State Water Code to remove the overlapping authorities" of CBMWD and WRD.⁴⁶

III. CHAPTER 215

Pursuant to Chapter 215, a municipal water district may not manage the importation or storage of groundwater if the district (1) is located in a county with more than eight-million people, and (2) includes eighty percent of its area within the boundaries of a water replenishment district organized under the Water Replenishment District Act.⁴⁷ Furthermore, such a district may not store groundwater unless it (1) contracts with an independent party who has the right to extract groundwater or (2) obtains a court order.⁴⁸

IV. ANALYSIS

Chapter 215 only affects the CBMWD;⁴⁹ it is the only district located in a county with a population greater than eight-million people that also has eighty percent of its area included within the boundaries of a water replenishment district organized under the Water Replenishment District Act.⁵⁰ WRD became the sole authority of groundwater management and storage in southeast Los Angeles County after Chapter 215 was enacted.⁵¹ However, Chapter 215's

Notice of Preparation for a Program Environmental Impact Report (Feb. 22, 2011) (on file with the *McGeorge Law Review*).

43. The Southeast Water Coalition is "a joint powers authority to protect the Central Groundwater Basin." SE. WATER COAL., MINUTES OF THE SOUTHEAST WATER COALITION JOINT POWERS AUTHORITY MEETING OF THE POLICY BOARD 1 (Jan. 19, 2012), available at www.santafesprings.org/civica/filebank/blobdload.asp?BlobID=5674 (on file with the *McGeorge Law Review*).

44. SE. WATER COAL., FEB. 2 MINUTES, *supra* note 35, at 5.

45. Press Release, Water Replenishment Dist. of S. Cal., California Senate Committee Takes Major Step Toward Protecting Ratepayers (May 8, 2012) [hereinafter Water Replenishment Dist., Major Step] (on file with the *McGeorge Law Review*).

46. SE. WATER COAL., FEB. 2 MINUTES, *supra* note 35, at 5.

47. CAL. WATER CODE § 71610 (amended by Chapter 215).

48. *Id.*

49. See Sprague, *supra* note 21 (explaining that CBMWD is banned from storing and managing groundwater).

50. See generally WATER § 71610 (amended by Chapter 215) (specifying the criteria for an affected district).

51. Press Release, Water Replenishment Dist. of S. Cal., In a Bipartisan Vote, California State Senate Unites to Protect Water Ratepayers (May 17, 2012) (on file with the *McGeorge Law Review*).

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enactment prompts the question of whether the WRD is the appropriate agency to manage groundwater storage in the Central Basin.⁵²

A. *The Fight for Groundwater Rights*

Since the creation of WRD in 1959,⁵³ the agency has been tasked with managing the amount and quality of groundwater in southern Los Angeles County.⁵⁴ Given its historical role in the region, WRD believed that it was in the most advantageous position to control the region's groundwater management and storage.⁵⁵ A dozen other agencies and cities falling under the overlapping authority of WRD and CBMWD agreed with WRD.⁵⁶

CBMWD's proposed Groundwater Storage Plan—the most recent attempt by the District to name itself overseer of groundwater in the Central Basin—disrupted fifty years of recognition and respect WRD enjoyed in the realm of groundwater rights.⁵⁷ CBMWD claimed its Groundwater Storage Plan would protect and manage the Central Groundwater Basin in a safe and efficient manner in order to maintain a dependable water supply.⁵⁸ However, the plan was “opposed by the vast majority of groundwater producers and water agencies” in the Central Basin.⁵⁹ Jim Glancy, Vice-President of the Central Basin Water Association, dubbed the plan “ill-conceived and . . . legally indefensible.”⁶⁰ Robert Beste, Public Works Director, criticized the plan as an ineffective attempt by CBMWD to enter “the groundwater arena, in which it has no authority, experience nor expertise.”⁶¹

CBMWD's expansion into groundwater rights, a departure from its primary role of importing water,⁶² was perhaps an attempt to preserve the agency's utility in the face of a waning desire to fund imported water projects.⁶³ According to Jim Glancy, California must “reduce [the] consumption of imported water and

52. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 6 (May 8, 2012).

53. *Id.* at 2.

54. Press Release, Water Replenishment Dist. of S. Cal., *supra* note 51.

55. *Id.*

56. See SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 8 (May 8, 2012) (listing the various cities, boards, and associations that support the new law).

57. Letter from Robert J. Beste, Pub. Works Dir., City of Torrance, to Honorable Mayor and Members of the City Council, City of Torrance (May 1, 2012) (on file with the *McGeorge Law Review*).

58. Cent. Basin Mun. Water Dist., FAQs Press Release, *supra* note 39.

59. Letter from Robert J. Beste, *supra* note 57.

60. Press Release, Water Replenishment Dist. of S. Cal., California Supreme Court Rules in Favor of WRD and Ratepayers (May 14, 2012) (on file with the *McGeorge Law Review*).

61. Letter from Robert J. Beste, *supra* note 57.

62. Allen, *supra* note 14.

63. See Water Replenishment Dist., Major Step, *supra* note 45 (explaining that California must expand its local groundwater storage capacity and decrease reliance on imported water to reduce water rates).

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increase the flexibility of local groundwater resources.”⁶⁴ CBMWD’s plan reflects the agency’s recognition of its declining importance as imported water increases in price and decreases in availability.⁶⁵

But according to CBMWD, the Groundwater Storage Plan was proposed to protect a much broader segment of Los Angeles County residents—water ratepayers—from WRD’s mismanagement of groundwater reserves.⁶⁶ CBMWD accused WRD of failing “to do its job, allowing the groundwater table to decline, and allowing portions of the basin to fall to very low levels,” while simultaneously imposing unfairly high rates for water services.⁶⁷ The accusations were not unfounded; a 1999 state audit found WRD had “managed its infrastructure projects poorly and amassed an excessive reserve fund by overcharging ratepayers.”⁶⁸ Art Aguilar, the Central Basin general manager, declared that WRD “is not the agency you want running storage in the [Central Basin].”⁶⁹

B. The Need for Resolution

Regardless of whether WRD should manage the Central Basin’s groundwater, Chapter 215 was necessary to end the costly inter-agency conflict.⁷⁰ WRD and CBMWD were opponents in five different lawsuits in 2012 alone, and together have spent over \$4.1 million in legal fees since 2008.⁷¹ To fund their legal battles, both agencies have more than doubled their water service fees.⁷² “Without [Chapter 215],” Senator Lowenthal stated, the continued power struggle between WRD and CBMWD would lead to “more litigation, more costly legal fees, and higher water rates for our region . . . Enough is enough.”⁷³ Chapter 215 ended the power struggle between WRD and CBMWD, hopefully to the benefit of California ratepayers.⁷⁴

64. *Id.*

65. *See id.* (quoting Jim Glancy, who stated that clarifying agency roles is important as “imported water becomes less reliable and rates rise”).

66. *See* Cent. Basin Water Dist., FAQs Press Release, *supra* note 39 (stating that the plan’s purpose is to provide all residents with a reliable water source and to resolve the “threats to the integrity of the Central Groundwater Basin,” specifically WRD’s management of the basin).

67. *Id.*

68. Allen, *supra* note 14.

69. Sprague, *supra* note 21.

70. *See* Lowenthal, Central Basin Water Press Release, *supra* note 10 (stating that CMWD would continue to bring litigation if the bill were not in place).

71. Allen, *supra* note 14.

72. *See id.* (reporting that WRD’s rates for groundwater pumping increased from \$115 per acre-foot in 2004 to \$244 in 2012, and CBMWD’s rates for water services increased from \$37 per acre-foot in 2004 to \$90 in 2012).

73. Lowenthal, Central Basin Water Press Release, *supra* note 10.

74. *See* Water Replenishment Dist., Major Step, *supra* note 45 (Chapter 215 “provides necessary clarity regarding the roles of existing water agencies. . . . This clarity . . . avoids wasteful redundancy, the costs of

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V. CONCLUSION

Mismanagement of groundwater in the Central Basin could have dire consequences for Los Angeles County's water security.⁷⁵ Leaving water storage space in the Central Basin unused could result in rises in water service costs and water shortages in drought years.⁷⁶ Chapter 215 seeks to ensure the proper management of groundwater resources in the Central Basin, but it remains to be seen whether the WRD will ultimately resolve Los Angeles County's groundwater management issues.⁷⁷

which are passed onto ratepayers.”).

75. See Cent. Basin Mun. Water Dist., FAQs Press Release, *supra* note 39 (noting that excessive groundwater pumping could result in the catastrophic collapse of the Central Groundwater Basin).

76. See Lowenthal, Central Basin Water Press Release, *supra* note 10 (taking advantage of the unused groundwater storage space in the Central Basin may lead to cheaper water services and future drought relief for Los Angeles County).

77. See SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1386, at 6 (May 8, 2012) (reporting that WRD and CBMWD each believe they are best suited to manage groundwater storage in the Central Basin).