

# Meeting Summary

## Russian River Water Forum

### Technical Briefing: Water Rights & Water Management

*Zoom*

*June 22, 2023, 10:30 am to 12:00 pm*

#### Summary

The Russian River Water Forum held a technical briefing on Water Rights and Water Management via Zoom. The meeting was facilitated by Kearns & West, a neutral third party. Presentation slides and a recording of the meeting are available on the project [website](#) at the following links:

- [Russian River Water Rights Brief](#)
- [Eel River Water Rights Slides](#)
- [Map of Russian and Eel Rivers](#)
- [Map of Russian River](#)
- [Recording](#)

The meeting objectives were as follows:

- To gain a common understanding of the major water rights and management issues in the Russian River and Eel River basins.

The meeting agenda and a list of attendees are in Appendices A and B. The meeting had a total of 53 attendees.

The next section provides a summary of the questions, responses, and discussion during the briefing.

#### Meeting Summary

##### Welcome, Introductions, and Agenda Review

Jim provided a welcome to the group and participation guidelines.

##### Presentation: Russian River Water Rights

Ryan Bezerra, Bartkiewicz, Kronick & Shanahan, attorney representing Sonoma Water, presented on Water Rights in the Russian River Basin. He referenced the two-page briefing document and map of the region linked above.

Questions (Q), responses (R), comments (C), and discussion are summarized below.

- (Q) What is technically the water right for the abandoned water that comes out of the Potter Valley project?
  - (R) Water that is imported to a watershed and then effectively released by the water right holder is subject to appropriative water rights. There are two different sets of water rights that can apply to that. There are the water rights from between 1905 — which is when the Potter Valley Project water began to be released into the system — and 1949, which is when the water rights of Lake Sonoma take effect. They may have an appropriative right to that water on a run of the river basis. The second set of rights is the 1949 rights to store and use the water from Lake Mendocino. To the extent that water is stored in the lake they become subject to Sonoma Water and Russian River Flood Control's 1949 water right permits.
- (C) It should be noted that once the abandoned water is chosen not to be released by the entity importing that foreign water, meaning PG&E, there is no effective water right associated with water that is no longer in the stream. Meaning, you only have a water right if the person (PG&E) decides to put that water in stream.
  - (R) There is a lot around the rules of foreign water (water that doesn't arrive there naturally.) The importing agency or water right holder can make changes that may have adverse effects on the water users that have come to rely on the foreign water.
- (Q) Can you explain more about the communication and understanding that emerges between regulators and water right holders. How do water right holders know when stored water is being released? How do those that have access to the 10,000 acre-foot reserve pool know? What is the communication or lack of communication between regulators and water right holders.
  - (R) At this point I don't know that it's clear when those different conditions happen and what the breakpoints are. There was some of that under the water board's curtailments in 2021, but in general it is not clear at this point how those communications exist. It's complicated because there are various tributaries that enter at various places on the Russian River, so that may be a different question for different parts of the river based on tributary inflows.
- (Q) As concerns riparians, you mentioned it was mainly agriculture and the lands adjacent to the river, does that apply to mutual water companies?
  - (R) They are considered riparians, as a collection of riparians, rather than as a separate corporate entity.
- (Q) Will it be important to address the question of exhaustion of the 10,000 acre-foot reservation as part of the RRWF's path towards achieving its objectives?
  - (R) I would think so. The people who hold those water rights have access to stored water in a way that other water right holders do not, and the access to stored water becomes more and more critical as natural and other flows drop.

### Presentation: Eel River Water Rights

Erica Costa, Associate at Berkey Williams LLP, counsel for the Round Valley Indian Tribes, presented on water rights on the Eel basin. Erica's slides are available [\[here\]](#).

Questions (Q), responses (R), comments (C), and discussion are summarized below.

- (Q) As concerns aboriginal and time immemorial fishing rights, we no longer have aboriginal environmental conditions. If you have a fishing right and there are no fish there anymore, is that taken into consideration when looking into a fishing right?
  - (R) It's part of the big picture. Tribes need a minimum flow in order to have a healthy fishery, but there are other aspects of what supports a healthy fishery. There has been a lot of litigation around Indian water rights, and a lot of these things tend to get hashed out in water rights settlements. Litigation is expensive and a long process.
- (Q) There are other federal water rights reserves, such as for ESA species and under the Clean Water Act, could you speak to them?
  - (R) My focus is on Indian reserved water rights. There are Indian reserve water rights but there are also federal government reserve water rights too. If the federal government has land, it also comes with water rights, and those exist on the Eel separately from those held in trust for Tribes. I can't speak to the details of ESA and Clean Water.
  - (R) It's the case that there can be reserved rights for other purposes. The federal government can reserve some of its land for some purpose, and the volume of water necessary to serve those lands. Federal reserved rights for fishing become very intertwined with statutory terms under the Endangered Species Act. *Bailey v. United States* is a useful decision for understanding reserved rights and how the ESA interacts.
- (Q) Have the Tribal governments you've worked with formed an opinion about inter-basin transfer of water being part of a solution? By "solution" I mean the outcome of whatever comes out of this forum and future forums.
  - (R) The Round Valley Indian Tribes are a member of the two-basin solution partnership, they've been working closely with those partners. The Tribes' goal has been to work with their neighbors and see if it's possible to restore the Eel River to a healthy and vibrant fishery, gain security on their water rights and resolve outstanding water rights claims in a way that provides for reliability for both basins.
- (Q) Is the Tribe also a diverter as well as using the water for fishing purposes?
  - (R) The focus here was on water rights as regards fishing or non-consumptive water rights, but there are also claims for consumptive water rights. Those are for diversions to support activity on the reservation such as agriculture.
- (C) I want to remind everyone that the Eel River initiates in Lake County, from the snowpack.

### Additional Discussion

- (C) We should put together a collective memo on water rights that could be viewed as objective. It's important to understand that the pre-1914 right that PG&E currently owns, if transferred to an entity that wanted to divert water, would fulfill the modeled water need for Lake Mendocino and the Russian River -- especially in PVID -- during the winter months alone. That right shows that a continued diversion is possible. Any continued diversion may be subject to public trust litigation. The state owns in trust water associated with every river in California. No one owns any water in California, they have the right to use it. Pulling water from one river to another calls public trust issues into consideration.
  - (R) Environmental interests, consumptive interests, recreational interests. Public trust is largely an issue of environmental interests. Public trust is an important legal concept, or

an interest covered by a variety of legal concepts. Let's hope we don't have to delve too much into that through court litigation.

- (Q) You've talked about the Tribal claims. What's the process by which a Tribe might establish what exactly its water rights might be in terms of specific quantities?
  - (R) The traditional way of quantifying a water right is through the federal court system and having a federal court decree. For a lot of Tribes nationally there is a lot of upside to a negotiated settlement rather than going through the court system. Stream adjudication processes are long and expensive and don't come with funding. Settlements waive the Tribes' claims but give them immediate funding for development of water resources.
- (C) It's important for us to remember that when we're discussing appropriative and riparian water rights it's hard to understand what the rights actually are. There are restrictions on each water right that make them really difficult to understand. Not only is the face value of the water rights difficult to understand, the actual reported usage on water rights is also hard to measure and no one is tracking it with great clarity. Understanding the right and the actual usage is very complicated, and it needs to be understood and parsed out.
- (C) California has not had a significant number of adjudications recently. A significant lift is necessary to provide the kind of information that Beth is talking about in order to provide a foundation for these conversations. That's going to be a task, unsure about the shape of it at this time. In my experience, state board staff have been willing to help.

### Next Steps, Future Meetings, and Action Items

Jim discussed some next steps, including upcoming technical briefings and scheduling for the first Water Rights working group meeting. Jim adjourned the meeting at 11:58 a.m.

## Appendix A: Meeting Agenda

Time	Topic	Presenter
10:30 am	Welcome, Introductions, and Agenda Review	<ul style="list-style-type: none"> <li>• Jim Downing, K&amp;W</li> </ul>
10:40 am	Russian River Basin Presentation Part One	<ul style="list-style-type: none"> <li>• Ryan Bezerra, Bartkiewicz Kronick &amp; Shanahan representing Sonoma Water</li> </ul>
10:45 am	First Q&A Session	<ul style="list-style-type: none"> <li>• Ryan Bezerra, Bartkiewicz Kronick &amp; Shanahan representing Sonoma Water</li> <li>• Jim Downing, K&amp;W</li> </ul>
10:50 am	Russian River Basin Presentation Part Two	<ul style="list-style-type: none"> <li>• Ryan Bezerra, Bartkiewicz Kronick &amp; Shanahan representing Sonoma Water</li> </ul>
11:00 am	Second Q&A Session	<ul style="list-style-type: none"> <li>• Jim Downing, K&amp;W</li> </ul>
11:05 am	Eel River Basin Presentation	<ul style="list-style-type: none"> <li>• Erica Costa, Berkey Williams Law representing Round Valley Indian Tribes</li> </ul>
11:20 am	Q&A Session	<ul style="list-style-type: none"> <li>• Erica Costa, Berkey Williams Law representing Round Valley Indian Tribes</li> <li>• Jim Downing, K&amp;W</li> </ul>
11:55 am	Final Remarks	<ul style="list-style-type: none"> <li>• Jim Downing, K&amp;W</li> </ul>
12:00 pm	Adjourn	

## Appendix B: All Attendees, Alphabetized

<b>Name</b>	<b>Membership</b>	<b>Affiliation</b>
Pam Bacigalupi	PG Member or Alternate	Farm Bureau
Ryan Bezerra	Presenter	BKS. Counsel to Sonoma Water.
Jennifer Burke	PG Member or Alternate	Russian River FC&WCID
Matt Clifford	WG Member	Trout Unlimited
Redgie Collins	WG Member	CalTrout
Erica Costa	Presenter	Berkey Williams. Counsel to Round Valley Indian Tribes
Eddie Crandell	WG Member	Lake County
Terry Crowley	WG Member	City of Healdsburg
Grant Davis	Other WG	Sonoma Water
Jim Downing	Facilitation Team	Kearns & West
Ann DuBay	Other	Sonoma Water
Steven Elliott	Other	Potter Valley Irrigation District
Tom Fischer	Facilitation Team	Kearns & West
Adriane Garayalde	PG Member or Alternate	RRC/Agriculture
Adam Gaska	WG Member	RVCWD
Dayna Ghirardelli	PG Member or Alternate	Sonoma County Farm Bureau
Mary Grace Pawson	WG Member	City of Rohnert Park
Scott Greacen	Other	Friends of the Eel River
Michael Harty	Facilitation Team	Kearns & West
Monica Huettl	Public	Mendo Fever
Tom Johnson	Other WG	IWPC Consultant
Bree Klotter	PG Member or Alternate	RVCWD/Water Supplier
Frank Lynch	WG Member	Lake Pillsbury Alliance
Laurel Marcus	WG Member	California Land Stewardship Institute
Ann Marie Ore	Other	DWR
Glenn McGourty	PG Member or Alternate	Mendocino County
John Mendoza	Other	Sonoma Water
Cathy Monroe	PG Member or Alternate	Mendocino County Resource Conservation District
Mo Mulheren	PG Member or Alternate	Mendocino County
Dennis Murphy	PG Member or Alternate	Sonoma Agriculture
Jaime Neary	PG Member or Alternate	Russian Riverkeeper

Cory O'Donnell	Other	Sonoma County Counsel's Office
Janet Pauli	WG Member	PVID/MCIWPC
Clifford Paulin	WG Member	Potter Valley Irrigation District
Kristin Peer	Presenter	BKS
Robert Pennington	Other WG	Permit Sonoma
Meghan Quinn	PG Member or Alternate	American Rivers
Elizabeth Salomone	WG Member	Mendocino County Russian River Flood Control and Water Conservation Improvement District
Charlie Schneider	PG Member or Alternate	California Trout
Todd Schram	WG Member	Sonoma Water
Don Seymour	PG Member or Alternate	Sonoma Water
Scott Shapiro	WG Member	Downey Brand LLP
Angle Slater	WG Member	Pillsbury Cabin Owner
Wyatt Smith	PG Member or Alternate	Round Valley Indian Tribes
Glen Spain	PG Member or Alternate	Pacific Coast Federation of Fishermen's Associations (PCFFA)
David Taber	WG Member	Palomino Lakes Mutual Water Company
Michael Thompson	PG Member or Alternate	Sonoma County Water Agency
Brenda Tomaras	WG Member	Lytton Rancheria
Chris Watt	PG Member or Alternate	RRFC
Paula Whealen	Other	Wagner & Bonsignore Consulting Civil Engineers
Sean White	WG Member	City of Ukiah
Philip Williams	WG Member	City of Ukiah
Jeanne Zolezzi	WG Member	Mendocino County Russian River Flood Control and Water Conservation Improvement District