

# Daily Journal

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PERSPECTIVE

## Wildfires, farms, fish and meeting water demands

By Meredith E. Nikkel

California's record-breaking wildfires in 2018 raise not only climate change and forest management issues, but also spotlight yet another demand on the state's limited water resources. Although forest management can improve downstream water supplies, the amount of water used for fighting wildfires is small and not typically distinguished from the major environmental, agricultural and urban uses of water in California. See Department of Water Resources (2013) California Water Plan Update (Bulletin 160-13). However, with the extreme drought years of 2014 and 2015 that called on Californians to reduce water use by the gallon, the concept of "every drop counts" is still fresh in our memories. Even one more gallon required to fight ever-growing wildfires calls on water resource managers to find creative ways to balance the multiple legitimate demands on California water.

The concept of balancing competing demands on water is central to many state and federal laws. The federal Clean Water Act requires consideration of public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, navigation and other purposes in setting water quality standards. Federal Clean Water Act Section 303(c)(2)(a), 33 U.S.C. Section 1313(c)(2)(a). California's Porter-Cologne Water Quality Control Act furthers that balancing by protecting beneficial uses for "domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife,



New York Times News Service

A firefighter waters a smoldering stump left from the Ranch fire in Clearlake, Aug. 8.

and other aquatic resources or preserves." Cal. Water Code Section 13050(f). The common law public trust doctrine also calls on the state to recognize that the economy and population of the state rely upon water diverted from in-stream public trust uses of water. *Nat'l Audubon Soc'y v. Superior Court*, 33 Cal. 3d 419, 446 (1983).

With the California Constitution's laudable command to put all waters to "beneficial use to the fullest extent of which they are capable," the Water Code declares that it is the policy of the state that the domestic use of water is the "highest use of water" and irrigation use is the "next highest use." Cal. Water Code Section 106. In similar manner, state and federal laws protecting endangered species prohibit all activities that harm protected species, including uses of water that cause such harm, and afford endangered species the highest of priorities. 16 U.S.C. Section 1538(a); Cal. Fish & G. Code Section 2080; *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978). How are California

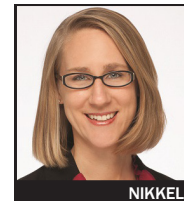
water users, resource managers and regulators to meet these competing legal requirements and meet the demands on water use for domestic, irrigation and environmental purposes?

Achieving the balance and maximum beneficial use of water in California requires stakeholders to embrace the concept of compromise. Compromise requires each party to an agreement to make concessions and give something of value up in order to find resolution. Water users, environmental advocates, and state regulators must find ways to give up a piece of what they hold most important in order to accomplish the balancing of multiple uses required by law, and good public policy. There is little dispute that the demands on California's limited water supply are all legitimate — water for people, food and fish is essential to life as we know it. As water resources become more limited during drought conditions and increasing demands — from more frequent wildfires to growing California populations — strain

limited supply, we all must give something up in order to achieve maximum beneficial use of water in the state.

As concessions are made, the economic consequences of those concessions must not be overlooked. Concessions on water for fish can impact commercial fisheries; concessions on water for farms can impact the entire economic chain from migrant farm worker to international trade; concessions on water for domestic use can impact the ability of communities large and small to thrive. In addition, regulations developed to achieve the balancing and protection called for by law must recognize the economic results of new requirements and provide avenues for economic recovery of impacted areas. Try as we might, not every regulator can be an economist nor every environmentalist an expert on business or finance. If long-term water management is going to meet competing demands, it will come by way of open discussion and compromise among water advocates committed to giving something up in order to ensure a balanced and sustainable approach.

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