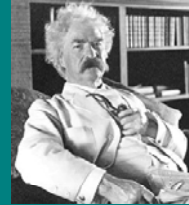


California's Legal Framework to Regulate Groundwater

Stefanie Hedlund, Esq.
Best Best & Krieger LLP

“In California,
whiskey is for drinking, and
water is for fighting.”
-- Mark Twain



Overdraft-Related Undesirable Effect:
Land Subsidence and Ground Fissuring (Antelope Valley)



From Water Education Foundation, Expert's Guide to Groundwater, 2003.

Water Supplies

- Surface Water
- Groundwater
- Recycled Water

Themes in California Water Law

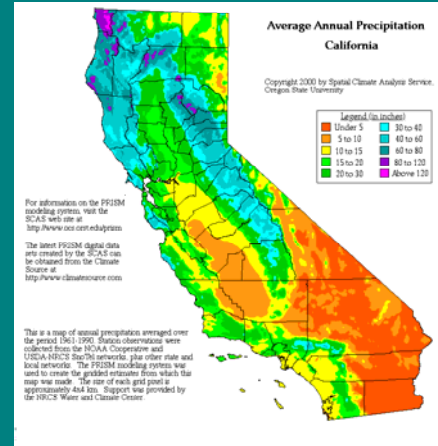
- Connection Between Property Ownership and Right to Use Water
- All Water Rights Are Usufructuary (“Use”), No Private Ownership

California has most complex water law in the
United States

- Surface water - riparian, appropriate, prescriptive
- Groundwater – overlying, appropriative, prescriptive

Supply and Demand Problems

- In California, water is located where the people aren't
 - Northern California water supplies
 - Southern California water demand
- Concurrent growth of population, agriculture, and industry
- New (post-facilities) environmental concerns



Riparian Rights

- Right of landowner next to surface water to use enough water to meet needs of that land
- Correlative and of equal priority
- Runs with land, not lost by non-use
- Not quantified
- Not regulated or permitted by State



Independence & Statehood

- Inherited U.S. legal system – based on English common law principles
- Riparian rights
 - Right of landowner adjacent to a watercourse to flow sufficient to meet needs of that land
 - Correlative & equal
 - Works well in wet environments like England
 - Also applied to owners of land overlying groundwater basins



Riverside County Early 1900's

Appropriative Water Right

- Right to divert **specific quantity** to specific location for specific purpose(s)
- **Does not depend on ownership** of land
- “**First in time, first in right**”
- “**Use it or Lose it**”
- May be used on lands away from streams or outside a watershed

- All other western states eliminate riparian rights
- In 1886 California Supreme Court writes 100 page decision keeping both riparian and appropriative rights
- Now there are a small number of riparian rights but...

Groundwater Law

Early 1900's - groundwater starts to emerge as a source of water

Percolating Groundwater

English law is Rule of Capture



Overlying Right

- To use percolating groundwater must own overlying property
- Must be used on overlying property
- **Not quantified**
- **Correlative**
- Not lost by non-use
- **Not regulated or permitted**

California has no statewide regulation of groundwater

Texas is only other State that doesn't have some type of comprehensive groundwater regulation

Appropriative Right

- Right to pump specific quantity
- Does not depend on land ownership
- “First in time, first in right”
- **Not permitted** or regulated
- Lost by non-use
- Must be **surplus** to overlying uses
- **Almost all municipal and industrial uses are appropriative**

Where Are We Now?

Underground Water

Largely unregulated, agricultural uses (overlying uses) generally have priority

Current Challenges

Groundwater Regulation

- Unquantified overlying rights
- Conjunctive Use in unregulated groundwater basins
- Ownership of stored underground water
- Overlying priority

Current Challenges

Environmental Uses

- Water rights for instream uses?
- Endangered Species Act

Current Challenges

Land/Water Rights Connection

- Should it be severed?
- Chile (privatized resource)
- Australia (public resource) – freely transferrable
- Pros – economically efficient, promote reallocation
- Cons – social and environmental costs

What are others Doing?

- Most states regulate groundwater use
- Surface and groundwater connectivity



Best Best & Krieger
Attorneys at Law



Stefanie Hedlund
Best Best & Krieger
400 Capitol Mall, Suite 1650
Sacramento, CA 95814
(916) 325-4000
Stefanie.Hedlund@bbklaw.com