A BASIC OVERVIEW
OF CALIFORNIA
WATER LAW

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Water Law

- Who/What Gets the Water?
- Under What Conditions?
- Water Law is Confusing
- Frequent Exceptions to the Rules
- Goal = Introduction. Basic Understanding
Beneficial and Reasonable Use Limitation

All Water Use in CA Must be for Beneficial Purposes and by Reasonable Method of Use
CA Examples of Unreasonable Methods of Use and Non-Beneficial Purposes of Use

- Use of Full Flow of Stream to Maintain Accretion (Sediment Buildup) to Downstream Riparian Land — *Gin Chow v. Santa Barbara* (1933);

- Flooding of Fields to Kill Gophers — *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935)
Three Approaches to Water Law: the Old, the New, and the Ugly

- Riparianism (The Old): Land with Water = Riparian Water Rights
- Prior Appropriation (The New): Land is Irrelevant – First-in-Time is First-in-Right
- Hybrid (The Ugly): Riparianism and Prior Appropriation
Riparianism
Origins in English Common Law

- Riparian Right - the Right to Divert Water from a Water Body Adjoining Land for Use on Adjoining Land

- The Right is an Incident of the Rights to the Land (i.e., Part of the “Bundle” of Rights)
Riparian Rights

- Appurtenant to Land; Right to Use Water from Adjoining Water Body

- Traditionally Must be on Riparian Land (Exceptions Apply)

- Reasonable Use

- Rights Correlative (i.e., Riparians Share the Supply)

- Right May be Inchoate (i.e., Dormant) - Not Dependent on Historical Use
Prior Appropriation

- Developed in Western Mining Camps Because Riparianism Was Not Well-Suited for Miners (Miners Were Largely Trespassers on Public Lands)

- Water Disputes Rapidly Escalate

- Perfection of Right Through Posting Notice at Place of Diversion and Commencing Diversion
Appropriative Rights

- May Apply to Use Off of Riparian Tract
- Defined by Historical Quantity of Use
- Priority Based Upon First-In-Time, First-in-Right
- May be Forfeited (i.e., Lost) by Non-Use
- May Require State Permit
  - California: State Water Resources Control Board
  - Colorado: Division of Water Resources (State Engineer)
  - New Mexico: Office of State Engineer
  - Nevada: Division of Water Resources (State Engineer)
Riparianism v. Prior Appropriation

- Conflict Between Miners (Appropriators) and Landowners Who Possessed Land Under Mexican Land Grants (Riparians)

- California Supreme Court Addresses the Conflict in *Lux v. Haggin* (1886)
And the Winner Is . . .

We Choose Both!!

- Court Reasons that California’s Adoption of the English Common Law Included Adoption of the Riparian Doctrine

- However, Court also Acknowledges Prior Appropriation but Renders Appropriative Rights “Junior” in Priority to Riparian Rights
California Water Law

- Riparian Rights are First Priority Rights
- Appropriative Rights are Second Priority Rights
- Surface Water Regulated by the State
- Percolating Groundwater Regulated by Local/Judicial Management if Regulated
Uncertainty fostered in California by riparian/overlying rights

Dormant riparian rights are a principal source of uncertainty in California – *In re Long Valley*
What About Groundwater?

Similar Laws; Different Management Regime
Percolating Groundwater: Vagrant, Wandering Drops Moving By Gravity in Any and Every Direction Along the Path of Least Resistance – *City of Los Angeles v. Hunter* (1909)

Subterranean Stream ("Groundwater Flowing in Known and Definite Channel")
- Subsurface Channel Present;
- Channel Possess Relatively Impermeable Beds and Banks
- Course of Channel Capable of Being Known with Reasonable Inference; and
- Groundwater is Flowing in the Channel

Beds and Banks Test - *Los Angeles v. Pomeroy* (1899)
River channel

percolating groundwater

relatively permeable bedrock or older alluvium

River channel

subterranean stream*

relatively impermeable bedrock or clay
California

Overlying groundwater rights: similar to riparian rights

- Overlying rights to a groundwater aquifer are analogous to riparian rights to a surface water body.
- Same legal characteristics apply to both forms of right.
- Appropriate rights available for groundwater that is surplus to the needs of overlying owners.
Who Manages?

- State (SWRCB – Surface Water)
- Local Public Agency
- Courts, Adjudications, and Watermasters
- Joint Power Agency
- AB 3030 Groundwater Management Plans
- Voluntary Coalitions
Recap

- All Use Must be for Beneficial Purposes and by Reasonable Means
- Two Basic Forms of Water Rights: Riparian Rights (Senior) and Appropriative Rights (Junior)
- Surface Water and Groundwater (Percolating) are Governed by Different Legal Regimes
- Overlying Rights to Groundwater Similar to Riparian Rights to Surface Water
- Many Forms of Management
# California

## The Water Rights Table

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<thead>
<tr>
<th>Source</th>
<th>Subterranean Stream</th>
<th>Percolating Groundwater</th>
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<tr>
<td>Type of Right ↓</td>
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<tr>
<td>Appropriator</td>
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Lot’s of Other Issues

- Overdraft
- Endangered Species Act
- Public Trust Doctrine
- Federal Reserved Rights
- Groundwater Storage and Conjunctive Use
- Water Transfers
- Water Supply Planning (UWMP, WSA & WSV, etc.)
QUESTIONS???