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Water Education Foundation

Water 101 – The Basics and Beyond

Cucamonga Valley Water District's Frontier Project
10435 Ashford Street
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Basic Terminology

- Overdraft = defined generally as the deficit between the water pumped from a groundwater basin and the long-term recharge of those supplies
- Safe yield = amount of water that can be pumped from the groundwater basin without creating an overdraft



HOW IS A WATER RIGHT DIFFERENT?

- Isn't a water right a real property right?
- Is it treated like other types of real property?



HOW IS A WATER RIGHT DIFFERENT?

- Water is a “usufructuary,” or use right. There is no private “ownership” of water in California.
- If you don’t use your water right, **SOMEONE ELSE CAN**



HOW IS A WATER RIGHT DIFFERENT?

- Only “own” it by using it
- Can’t waste it
- Can’t obtain right that intrudes on public claim for public uses (State holds water in trust)



TYPES OF WATER RIGHTS:

- Riparian
- Overlying
- Appropriative
- Prescriptive
- Pueblo Rights



Types of Water Rights

- CA's water rights reflect the State's history
- 3 historical sources of California's different types of water rights:
 - Spanish/Mexican law – pueblo rights
 - English common law – riparian rights
 - California/western mining – appropriative rights



Spanish Influence

- Fr. Junipero Serra – the Mission Trail
 - 1769 (San Diego) – 1784 (Sonoma)



Spanish Influence

- Water diversions began with the Missions
 - Small-scale ditches to divert water from streams
 - No storage facilities
 - No real irrigation
- "Pueblo Rights" – the town has a municipal right to the water supply



Pueblo Rights

- Early City of LA cases, courts implied the right based on Spanish and Mexican law
- Pueblo has right to water appropriated for use of its inhabitants
- Right of successor City, although an appropriator, is superior to riparian
- Pueblo right is amount needed for inhabitants



Mexican-American War & "Manifest Destiny"

- "Go west, young man, and grow up with the country," Horace Greeley editorial, quoting John B.L. Soule
- 1846-48 – Mexican-American War
"liberated" CA; CA joined the U.S.





“The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State.”

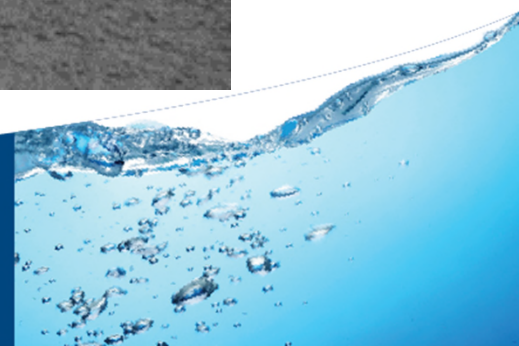
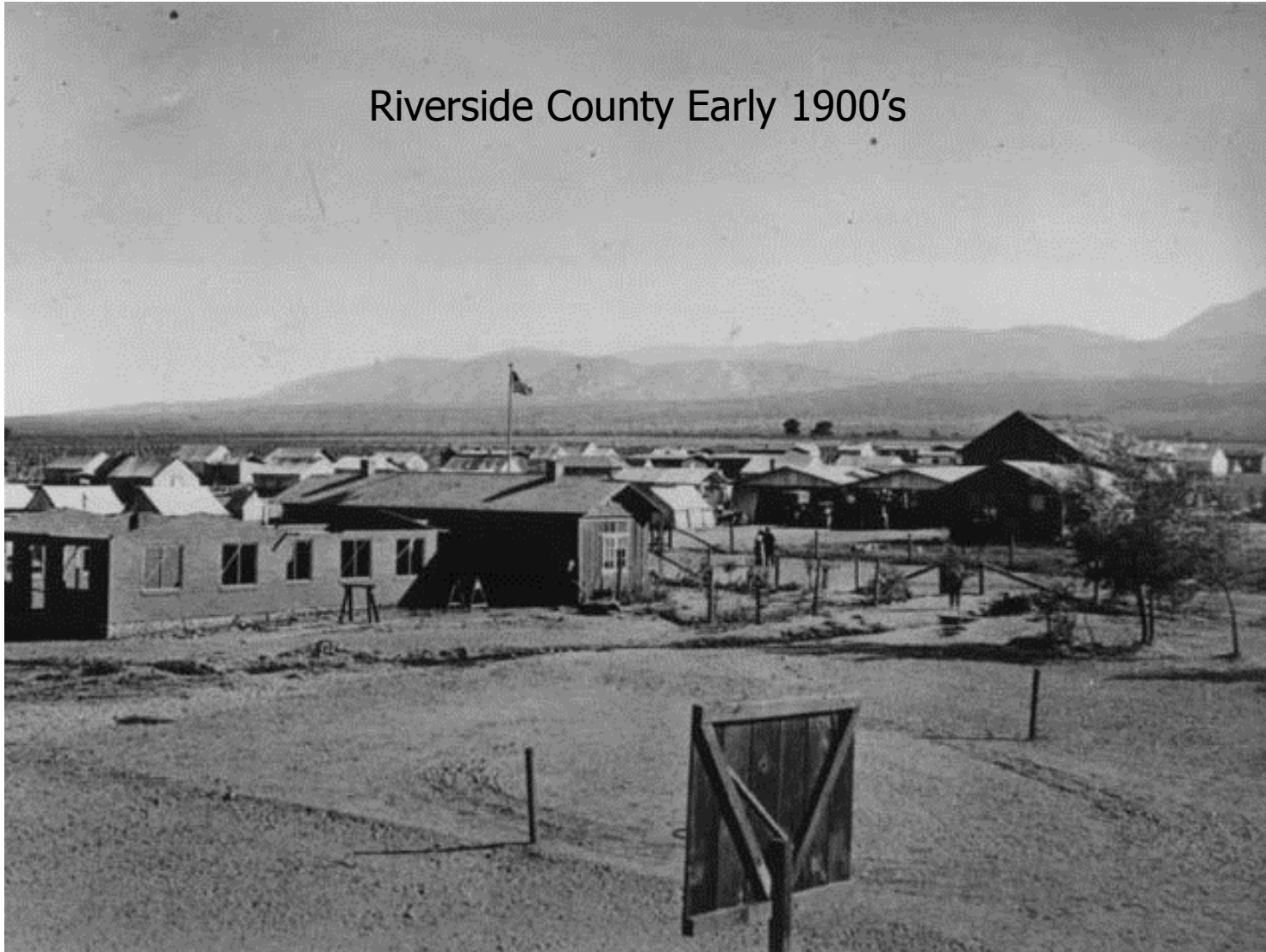
Riparian Rights

- 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





Riverside County Early 1900's



Riparian Right

- Correlative
- Does this give riparian water user certainty?



Riparian Right

- Can be severed
- Source of Title
- Unity of Title



Riparian

- Not lost by non-use
- Since runs with the land, can begin use at any time or stop use and start again



Riparian Right

- Not regulated or permitted
- Very little State regulation
- Reporting requirements



The Gold Rush

- Mining – large-scale irrigation diversions in mining ditches
- Miners didn't own land
- Prior appropriation



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



Riparian Rights in the West

- Riparian rights do not work well in arid lands
- By 1887, Colorado, Utah, Idaho, Montana, Wyoming, New Mexico, the Dakotas and Arizona had legislatively eliminated them in favor of appropriative rights



Appropriative and Riparian Rights

- In 1886 California Supreme Court writes nearly 200 page decision keeping both riparian and appropriative rights



Lux v. Haggin (1886) 69 Cal. 255

- James Ben Ali Haggin bought more than 400,000 acres on the Kern River
- Haggin played the role of champion of small farmer and appropriation doctrine



Lux v. Haggin

- Henry Miller and Charles Lux owned 120,000 acres in Kern County including a large estate near Haggin
- Haggin dug many irrigation canals upstream from Miller and Lux
- 1877 -- Drought



Lux v. Haggin

- Miller and Lux's cattle began dying from lack of water and they went to Haggin
- Asked Haggin to release $\frac{1}{4}$ of river's flow
- Haggin refused
- Miller and Lux sued in May 1879



Haggin's Problem

- Appropriative right must be surplus to existing uses
- Not correlative, has a lower priority



Lux v. Haggin

- Retained riparian rights
- Retained appropriative rights
- Riparian right has priority unless appropriative right perfected before land patented from Federal Government



Lux v. Haggin

- After the win, Miller and Lux discovered that they got too much water in the spring and not enough in the summer
- Miller and Haggin cut a deal. Haggin built a reservoir and Miller gave him $\frac{2}{3}$ of the water he had won



Appropriative Right

- Important to distinguish between two types of appropriative rights: pre-1914 rights and post-1914 rights



Appropriative Right

- Pre-1914 rights are those rights that were perfected prior to the passage of the Water Commission Act in 1913. Pre-1914 rights are **NOT REGULATED** or permitted.
- Many Central Valley agricultural rights are pre-1914 rights



Appropriative Right

- Post-1914 rights are permitted – State Water Resources Control Board
- Permit conditions – season, type of use, environmental limitations



Appropriative Right

- Can be lost by non-use
- Forfeiture, non-use for five years
- Abandonment



UNDERGROUND WATER RIGHTS

Overlying

- The right to use percolating groundwater as a result of ownership of property that overlies groundwater basin



Groundwater Law

- Early 1900's - groundwater starts to emerge as a source of water
- Percolating Groundwater
- English law is Rule of Capture – Acton v. Blundell



Overlying Rights

- Katz v. Walkinshaw (1903)
- Rejects rule of capture
- Adopts correlative rights



Overlying Rights

- California effectively adopted riparian right for groundwater (“overlying right”)
- Riparianism tilted vertically



Overlying Rights

- Must be used on overlying property
- Used within groundwater basin
- If it is exported it is an appropriative right



Overlying Rights

- Not quantified
- Correlative
- Only limit on use is reasonableness



Overlying Rights

- Not lost by non-use
- As with riparian right can start use at any time or start and stop use



Overlying Rights

- Legislation does not require permit or modify water rights
- Courts are the only way to address water rights
- Ownership of storage space - conjunctive use



Groundwater Rights

Appropriative

- Right to pump specific quantity of water
- Not permitted



Appropriative

- Does not depend on ownership of land
- Water must be surplus
- Can be exported from groundwater basin



Appropriative

- “First in time, first in right”
- Strict priority as between appropriators



Appropriative

- Can be lost by non-use
- Forfeiture (non-use for five years)



Appropriative Rights

- Municipal Users are by definition appropriators
- San Bernardino v. Riverside (1921)
- Court refused to recognize City as exercising overlying right of its property owners



California Groundwater Rights

- Are correlative rights a practical way to manage groundwater?
- What about overlying priority?
- Agricultural uses generally have a priority over municipal uses



PRESCRIPTIVE RIGHTS

- Adverse possession of water rights



PRESCRIPTIVE RIGHTS

- Open and notorious
- Can't be a secret underground pipe or well



PRESCRIPTIVE RIGHTS

- Adverse and hostile
- Cannot be permissive



PRESCRIPTIVE RIGHTS

- Continuous and uninterrupted for five years



PRESCRIPTIVE RIGHTS

- May apply to both surface and groundwater
- Cannot prescript against a public agency
- May be lost by non-use



Sustainable Yield

- Maximum quantity of water that can be withdrawn annually from a groundwater basin without causing an undesirable result



Undesirable Result

- Chronic lowering of groundwater levels
- Significant and unreasonable reduction of groundwater storage
- Saltwater intrusion
- Degraded water quality
- Land subsidence
- Depletions of interconnected surface water with impacts on beneficial uses



Key Components of Legislation

- High and Medium Priority Basins must have Groundwater Sustainability Agency by 6/30/17
- Must have Sustainability Plan by 1/31/22 (1/31/20 if in critical overdraft)
- State can step in if deadlines not met



Powers of Sustainability Agency

- Impose fees and groundwater charges
- Require registration and measurement of every well
- Control groundwater extractions
- Allow transfer of groundwater extractions



Groundwater Prescription

- Santa Maria Case (2012)
- First case in which prescription was actually tried



Santa Maria

- Commencement of overdraft creates adversity
- Pumping during overdraft is adverse
- Long-term, severe water shortage was sufficient for notice (depleted water levels were well-known or should have been well known)



ACHIEVING CERTAINTY

- Public Water Suppliers as Appropriators
- Sustainability Planning
- County Ordinances Prohibiting Export
- Groundwater Adjudications



ALL TYPES OF WATER RIGHTS ARE LIMITED BY

- REASONABLE AND BENEFICIAL USE
(Article X, Section 2)
- Public Trust Doctrine



National Audubon Case (1983)

- State has an affirmative duty to protect public trust resources
- Public Trust Doctrine limited by reasonable use doctrine and allocations can harm trust resources
- The State can reconsider allocation decisions whether or not trust resources were previously considered



Thank you for attending

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