



Notes: Some Aspects of Federal-State Relationships in California Water Resources Development by Leland O. Graham (1961)

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Notes on:

Leland O. Graham, 1961. Some Aspects of Federal-State Relationships in California Water Resources Development." (Duplication process.) Sacramento. Materials assembled at suggestion of Assemblyman Carley V. Porter, Chairman, Assembly Committee on Water, California State Legislature. No copyright. Library binding. Call no. f HD1694, C2,G7.

p. vi. Burns-Porter Act, 1959. (Followed immediately the Ivanhoe Decision, 1958. Land grossers were hot to trot!)

Interesting that Porter apparently sponsored or patronized Graham. He and his stenos must have labored mightily over this work, which is like a Ph.D. dissn. One must be very dull not to realize Graham favors BR.

P. 4. 1887, Wright Act, Cal Stat. 1887, c. 34.

1897, superseded by Wright-Bridgefurd Act, Cal. Stat. 1897, c. 189. I.D. Law now codified as Cal. Water Code ss. 20500-9978.

P. 65. 1951. A.G. Fred Howser (R) had harassed BR. Defeated in June 1950 Republican Primary. Replaced by Pat Brown, Jan. 8. Brown sided with BR.

P. 74, n.236. Albonico v. Madera I.D., 1951, trial judge held acreage lim. unconstl., and called BR "Marxian," p.10. Hailed by L.A. Times and I.D.A.

P. 84, n.260. Ivanhoe decision, 1958, 299-300, USSC upholds utility type contracts, saying the prospect of BR withdrawing future water service "is too improbable to figure in our decision." Ivanhoe I.D. v. McCracken, 357 U.S. 275, 1958.

(Thus, USSC apparently upheld utility contracts, but left a little time bomb that might be used vs. future marketing and ec. pricing - watch it.)

P. 87. Brobeck, Phleger and Harrison, 1960, still grouching about Ivanhoe. They had been "third set of counsel for the appellees," i.e. McCracken and friends. BP&H was mainly concerned with title to the waters, scolded USSC for saying CVP could acquire what rights it needed to serve project. Here, and later, BP&H come across as reactionary.

P. 93. In Ivanhoe, USSC rejected doctrine of Cal SC that BR held water rights only "in trust" for landowners. BR control was "limited," because all landowners in districts were beneficiaries of the trust, had said CAL SC: shot down in Ivanhoe, USSC.

(Thus, appurtenancy shot down. Thus, ironically, it is Ivanhoe that lets water be marketed today!)

P. 96. Ivanhoe, p.296-97, recognizes excess lands benefit from groundwater recharge. The contracts "declare that such water

shall not be considered as furnished by the project."

P. 97. "The project was designed to benefit people, not land." Ivanhoe, 357 U.S. AT 296-97.

P. 101. Case remanded to Cal SC which had to eat humble pie. "Once it was established that the title of the U.S. was or can be made unlimited the necessity of discussing the nature of the state's title to water passed." 53 Cal. 2d at 716.

P. 106-08. Cal A.G. Howser had orig brought Cal in, to support McCracken. Brown switched, supported Ivanhoe. Ivanhoe prbly would not have carried it to USSC. BR did not help. So it was Brown who won Ivanhoe!

Pp. 109-21. Conc of land in BR service area. Cite.

P. 172, n.440. Long biblio on 9(e) contracts. Apart from acreage lim, "the principal public attack ... has been focused on the employment of the so-called 9(e) form of contract ... "

P. 175, these date from 1939 Act. P. 176, they are in lieu of repayment contracts, i.e. title does not pass. 40 years is max term, short term are allowed. They are inconsistent with "the ultimate acquisition of permanent water rights under state law."

P. 184, 1935, State Water Project Authority had advanced a straight utility-type contract, which it opposed when Feds did it.

P. 185, BR contract is sales of water, not passing of title. U.S. will furnish, district will pay; district may exchange water with any other district; water shall be measured; water may be cut off "unless and until...."

P. 188, Burns-Porter Act, State contracts with districts are utility-type contracts again! P. 190, state has come "full circle," back to utility contracts of 1935 WPA!

193-94. Too many small districts. Larger districts would achieve more "pure economic efficiency and a higher degree of equity among ... beneficiaries of what fundamentally is a publicly-owned natural resource."

P. 194, n.524. Re I.D. assessment powers, Cal Water Code ss 23240-242.5, 23667, 25500-6658, 25725, 25800.2.

P. 196, n.528, "literary exchange of unpleasantries" between KRWA and BR. Long biblio.

P. 202. "Land (which is defined to include city and town lots) is assessed on a basis exclusive of the value of its improvements." Cal Water Code ss 25500-02.

P. 207-08 User districts in Kern Cty. in 1958 were all Water Storage Dists., landowner voting. Arvin Edison, BV, North Kern, in Kern Cty., and Tulare Lake Basin, Tulare and Kings Cties. 3 more proposed: Rosedale-Rio Bravo, Semitropic, Wheeler-Ridge-Maricopa. All huge. All deliberately selected WSD form, "when sizes of pvt. ownerships and the .. method of voting are recalled." n.577.

P. 213. Mallon v. Long Beach, 44 Cal 2d 199, 1955. Cal SC held that legislature can alter "contractual or property rights acquired by a muni corp from the state for governmental purposes." Wow! That would seem to let State off hook on CWP water contracts. Burns Porter Act sought to ironclad its contracts vs. Mallon, may have succeeded.

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Selections from ff. pp. 109-10, 112-14, 116-18, 122 2 sen.s, 126 begin last par. to 127 top, 130, 132, 134-45, 149-53 (w/o notes), 165-66, 170-71 1st sen., 172, 176-78, 182-85 1st sen., 187, 190, 193-94.

This is a twice-hidden gem. First, volume is obscure, hard to find (although often cited). Second, the veins of gold must be mined from - not dross, but digressions. The writer is a poet disguised as a lawyer.

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