Tucson - Role of Wtr Law
in Diseconomies

p. 240

Blue Bk. recognizes excess claims, but wd. accept this & move on.

But you cannot just grab wtrs under one system then suddenly make them salable. The old priorities were supposedly a sort of public subsidy to encourage a certain kind of behavior.

Can't suddenly liquidate the subsidy.

1

Role of wtr law in imposing discs.

Plays a major role. There is no lack of enterprise, corresponding to ec. pressures. But law frustrates!

"For 100 yrs, w-r litign. has been struggling to define rts to wtr in such a way that they wd. be consonant w. our economic precepts." — S. Smith.

(in any sense,) (or in any form,)

1. MP not basis of original rts, from start (so system not "outdated". Never has been ec'l.) (Wm. Hall blasted it in 1880, no change yet)

(conform,)

a. Rip. Lim'd. to rip'n lands, except those that passed to pvt hands after 18~~[illegible]~~77. Surely has best grnd wtr, least need for surface supply.

Declaratory claims on wtrs tie up some, too

b. Approp. Easier to placate lwr rip'ns if use only in wtrshed of origin.

Never achieve certainty — sleepers

Asymmetry — can enjoin upstream from dessicating you, but not underflooding you, alkali

Conveyance losses ignored. At 1st were return flows; later, vested rts in person.

Wd. be easy to assume landowners wd. line up in order of mp.

Also, higher uses need more compl. cap., evolve slower, wtr is a smaller element in cost.

Is cheap to file appln, est. priority. Is costly to right devmt to break in. No prepayment.

But ~~people~~ land devmt never proceeds that way. Strong counter-force, inertia of those doing all right ... too happy dry farming, as STHdg said of Livermore V.

Wtr. law shd. antic., allow for regrouping later.

Rts lim'd to max. past diversion — even if just once. Thus diversion capac. does in effect — is a larger rt, altho ct. denied it: TID v. LS, but you improved it. get Lima

Also absentee, a cost to society / is a revenue to individ.

Factitious, claim-staking uses: too much, too soon. (Incl. flood wtrs, antic. storage or gift)

Includes signing up RR.

Rts stated in s.f. for max need, ties up surplus wtrs other seasons. Blocks storage: surplus flows controlled by those who don't need. ~~all others~~ in part

also, occasional users get

a, In aggreg. b, among users, WWC & CPD louse up all others whether needs them or not.

c. Correlative upstreamer must let downstream rts go by to permit use of heavy flows.

Σ rts > mean flow

But sr. rts do not shrink in dry yrs

No export unless surplus.

Storage costs not counted either. Crops needing Aug. wtr get same treatment as citrus & winter veg.

Lim'd to overlying lands

TID v. LS, no surplus. Antic. rationing by [illegible] of use, [illegible] making history.

or "reasonableness"

2d? ~~1.~~ Conveyance costs not charged vs. ~~[illegible]~~ auie to cf. mps ~~at a~~ FOB a common pt. (~~check Hadley~~)

Common ~~costs~~ charges inside ID, altho costs of service differ

Elevn

seepage & timing. TID v. LS 50%. was ok.

construction costs etc.

Law allow floating shares, but insist on fixed diversion pts — shows attitude

Wa often max productive at home, net of conveyance.

Interregional xfrs. doesn't recognize rent.

~~2. Segregation~~

~~2 i. Rts in s.f, [illegible] long pd. at max need~~

Social o.c. of hldg wtr not felt at all, directly, in most straight fwd. & obvious way, by a rental charge and only very faintly by sales opps. Holders well insulated from outside pressures.

2. ~~1.~~ ~~B.~~ Initial pattern frozen, nearly. Even if good once, wd. change. Original need for northward xfr ended. MP gradient rises to SE

½ a. ~~a.~~ Hopes for ec. Xfr: expressions of optimism

causes for optimism: mkt in shares.

Xfrability of approp. rts, even splitting

Common standard applied to all uses, "reasonable"

Scale down early excessive awards as "surplus":

KDWCD serves & taxes whole area

b. Type of Xfrs achieved. Peripheral areas get more highly orgd: TID & GID esp. value tech, external ecs. ~~Interregional xfrs. [illegible]~~

Huge interregional ones. Law too crude to recognize fine local diffs of mp. Virtually overlooks conveyance. Hence go far, ~~[illegible]~~ pass over threshold of difference that law accepts as adequate to permit xfr. On finer diffs justice is, if not entirely blind, about like Mr. Magoo, & sly self-assured.

~~b. Effective barriers to xfr~~

MWC shares. Outward only?. Fixed pt. of diversion.

Like comp'n among t-phone cos. & wasteful

may 're made

c. Excess costs imposed on these xfrs by aspects of wtr law & instns. Criticize view that any more or less eff move is to be applauded. They weren't the best xfrs to make. When the best move is delayed, other moves take its place, not the best. irreversible. Then if best is

→ Analogy of fixed diversion pts to fixed fountainheads of law. from which all truth must flow ~~must come~~.

Result often worse than no xfr, As vesteds in system from fixed diversion pts.

Too late, needs have changed by time arrives.

No rentals, only cap'd. purchase, so fuel power becomes key. Spec'n on future Fed. dams, storing below cost, or free. also, no sr flex., so sr mc always = 0.

d. ~~Complete barriers to xfr~~ Failure of "common standard" really to impose comparable constraints on jrs & srs. esp. net of xptn cost. Early excessive & otherwise unproductive awards are hallowed, ~~[illegible]~~ altho granted when wtr commanded no price. Concept of ec. rent of wtr not devd. Prevailing practices make each other ok. Static concept. Latitude for judge to impose his personal feelings in each case.

(over)

Ex. of wh, says ct. in effect, is repugnant to manners & morals of people in Visalia area, ∴ cannot be required of them.

3, d (cont.)

Issue arises when new approp. tries to get wasteful unreasonable jr. uses declared "surplus." Jr. loses – & ct. shows no disposition to apply any common standard.

e. Type of voluntary xfrs blocked

Ripn rts, no move at all

No change pt. of diversion thru buy'g shares if injure anyone. Cts overprotect ancients, give each holdup pwr to extract tribute in excess of actual damages. Veto.

" " " " from trustee instn? ~~E.g. Cons. ID or FID~~ Entire system a unit, so any change brings in everyone.

→ No buy anything from trustee instn? any beneficiary can veto.

Is much easy talk about mak'g wtr rts mktble simply by withdraw'g courts efforts to create common standard of reasonable use. U. of Ch., & now UCLA & Rand, dogma, easy w/o cognizance of whole problem. Liberum veto situation. Is always a holdout in any group, cannot get unanimous consent.

Most wtr held by instns.

No move diversion pt upstream as a rule, even on Kings, where some do move. No incentive for outer users take less & inner users more. If xfr use inward is like upstream. If so, only more – scatter is possible, not consolidation. This also hampers storage by Δg conveyance losses of wtr after storage.

No divert outside wtrshed of origin – not absolute, but presumption vs it.

" " " gnd wtr basin " " " "

No buy occasional flood rts for storage

No buy " " " " Even if you had no such (over)

No xfr use of gnd resr to for lands, bcs wtr commingles. Even if you had no such ... claim extra in case lose part e.g. to sleeper ripn.

f. Cumulative inflexibility. Jeopardy of uncertainty, claim extra in case lose part. Fear of irreversibility arouses opposition to xfrs. Fear of shortage brings panic, claim everything, release nothing

g. Drowning man effect. Fear of antic. rationing by history of use. \ Victim freezes & disables rescuer.

~~g.~~ h. Division. Create petty vested interests, each w. effective veto power. Frustrates group action, economies of commingling. Segregate wtrs for ~~[illegible]~~ ownership needs, thenceforward treat as tho a physical fact.

System has attained to an almost perfect degree of stagnation.

~~3 (resumed)~~

~~h.~~

~~3 (resumed)~~

e½. — e (resumed) In order to satisfy trustee relationship, wd have to prove wtr was "surplus"; & prove it in public. But hvg done so, wd. then have hard time proving it was yours to sell. Pvt. indiv. cd. do this easier, bcs doesn't have to go on public record that wtr is surplus ... probly trustee relationship forces one to be quite extreme about this.

In exposition, first make point that any sale of surplus appd wtr clouds title, as basic problem. Then add trustee problem. Mention ambivalence of some Chicago ecists: want public to irrationally give away wtrs free; then become (over) intent, you wd. be est'g a prescriptive rt. to some of the natural grnd wtr, to the extent you might have such a rt. if ceased recharging. This forces others to protest even if they are willing for you to use the wtr. But can't they just declare their future needs? If they really wanted to be nice, probly they could stop at that.

See "Ground Water" file, Holsinger, & Harding.

rational & let them be freely trafficked in. Fact is, the ~~type of~~ ~~irrationality~~ mystique that must pre- ~~it is nec. to~~ ~~play on~~ vail for ~~to get~~ state to give away wtrs has much in common w. ~~irrationality~~ mystique that wd. be outraged by "trafficking" in these rts. I suspect holders of the rights are more or less aware of this, & avoid ~~entering~~ conspicuous transactions wherein their privileges are profaned by ~~monetary~~ measurements in lucre, & the cupidity of the ~~under~~ less privileged aroused, so that their very basis -- which in fact is ~~[illegible]~~ vulnerable -- might be attacked.

2. B,

f. (resumed)

"Lion-pens" effect,* tacit understanding not to start anything, freeze status quo. Uncertain outcome of any dispute, enormous legal cost, even if lawyers cheap by the hour.

e. (resumed)

Can't xfr place of use outside "wtrshed of origin"; bcs deprive some of return flows in which they have a vested int. I.e. your rt., of which you have control, is only your net use. That is all you can export. Even if return flows in fr. wtrshed wd. be more valuable than here

Every xfr is fraught w. legal uncertainties. Law does not outright forbid, but clearly views as abnormal & suspect. Any little harm to someone, cause for invalidating. Extreme contrast to standing pat, however harmful to how many people. Law sees a peculiar virtue in stagnation, in continuing as you always have.

3. Involuntary xfrs might do it, by common standard of reasonable use. Not done. (2d)

4. B. ~~Interregional~~ Remote xfrs. (Is hope ~~all~~ slowly drift in long run to ec. use. But are always lagging)

2. Initial pattern nearly frozen

Social o.c. of hldg. wtr. not felt by ~~individ.~~ individ. holder. Insulated

i. No direct ~~charge~~ rental (based on mkt value), bes state lets out use of its wtrs w/o charge.

ii. ~~Insulated~~ No ~~substitutes~~ implicit rent bes barriers to xfr.

a. Fond, pious hopes by Harding, Smith, p. 46, ¶ "Ec. pressure will eventually result..." etc. Peabody v. Vallejo

Causes for optimism.

Mkt in shares

Xfrability of approp. rts

Common standard of reasonable use.

Even scale down some early excessive awards, to "reasonable use," which to some degree at least reflects the plight of jr approps.

KDWCD converts some flood flows to storage

"The effort which has gone into establishing this legal & economic instn. has resulted in defs. which permit ec. xfr to take place." – S. Smith.

b. Type of xfrs achieved locally.

i. MWC shares.

N-S movement, from WWC, gnrly good.

c.

~~Discs: & limitations~~

~~No change diversion pt. CPA v. LS.~~

~~Scattered & overlapp'g service areas not but (possibly, can sell outward only, like on nat. stream can shift downstream only)~~

~~No lease mkt, only pass by cap. value, fuel power counts.~~

~~(Find out -- are they ever leased?) (Either find out or drop thing?)~~

~~(Wtr wd. seem an ideal thing to lease, can't be damaged)~~

ii. Cross-canals, bring'g wtr back from St. Johns to Kwh. Packwd. Canal; Ketchum Ditch. Probly rep. purchase of old rts on St. Johns, xfr to s-n lands.

~~iii. Remote interregional imports, opd. & fixed by U.S. Will handle more later.~~

iii. Other?

c. Uneconomic constraints on these xfrs.

On balance, not much to congratulate ~~ourselves on~~ greatest of all.

0. No sr flexibility at all. Tho mp diff. here. maybe by buy'g shares. Thus must tap onto old line below

1. No change pt. of diversion. & CPD v. LS. ~~Not even change 50-50 at McKay.~~

intake, however unec.

~~This accts for criss-cross of duplicat'g & conflict'g channels.~~

Worse, compels waste of elevn. Law not merely countenances this, it imposes it on all parties ~~demands it, compels it~~. Precludes most ec. allocation of wtr, thereby all devmt of stream that might ~~[illegible]~~, enable, abilitate (?)

2. Scattered & overlapp'g service areas.

Is like buy'g pwr service in "free mkt."

Rates don't reflect length of line. Even if did, only a consol. area pay'g for wtr whether takes or no can work out.

[??. Easier to sell outward than inward along ditch, bcs if sell inward deprive intervening lands of percn? Conjecture. They can have no vested rt in imported wtr can they?]

2½. No export from wtrshed & grnd wtr basin. Can export only if existing rts not impaired, e.g. lose return flow. Blocked LS.

(2¾). No remove from rip. land, if origly rip.

3. Shares move toward strong hands

Highly orgd peripheral IDs, bcs a, stronger forced. Highly spec., free storage

b, Value techn external ecs (recharge)

Inside LSID, is uniform rate not reflecting pumping cost to uplands, etc. A small analogue to huge discrs. of CWP, A discr. forced on them by fight to get wtr. forced by need for allies.

4. Never achieve certainty. Rip. sleepers remain, & many approps. not taking full claims. Pereg. wtrs, exports subject to recapture, overlying rt is paramount. ∴ no prescriptive rt. possible?

d. Other types of voluntary xfrs are blocked almost completely. Prejudgement? Wtr rts bd. overloaded, delay. Store undevd wtrs, e.g. underground? Excess claim already. No can sell, must enjoin. No advance ruling from WRB bcs is not by statute but ct. decision. Rip. rts part & parcel (of course). Kwh cursed w. many. Then get no advance ruling

Correlative rts: No sale possible - no one can sell. ∴ must enjoin. No export unless "surplus." Surplus is a word hvg no definite objective meaning, but means in a particular case what judge thinks it means. On Kwh, hv. held is no surplus. - (next page) This also extends to use of grnd storage capac., bcs of commingling. Even I suppose wd block an ID that covered 2 basins?

~~[illegible]~~

Appr. rts. Rights held in trust (next page) Might buy them off, but they can exact tribute ~~in ex~~ based more on your benefit ~~gain~~ than their damages, one difficult party can veto.

No change diversion pt. if injure anyone.* Usually do, esply moving upstream, which is gnrly the need. So no diversion pt. has moved since 1919, & some yrs before that. Whole system tied together underground, change one, affect all. Can't even change 50-50 at McKay (which wd entail chang'g diversion pts). Hence cross canals. Even so, much more waste wtr from St. Johns. Alt. p. 42. Bad lands & hi seepage!

And you never get a group of people ~~— no possible exceptions of~~ this except of course one w/o one ornery cuss in it.

No pump from channel (over)

* W Code Ch. 10, esp. P 1706. Injured party not ~~anyone~~ bind by damages, but has absolute veto, or all traffic will bear. Everyone a potential little Gromyko.

if inconvenience anyone. In TID v. LS this was issue as much as expert. Lowered wtr level, Δd diversion cost. But lowerig wt under channel wd Δ peren, Δ use of resr.

d (cont)

Rights held in trust ~~(cont.)~~ (from preced'g p.)

Wtr rts held by I.Ds & MWCos. are held in trust for beneficiaries. over
The Trust is a ~~very~~ particularly sticky legal arrangement, hedged about w. circumscriptions
of all sorts, but above all on alienation of real property. I do not know
of a single sale of a wtr rt by a Cal. ID or MWC — there may be some. I ~~do~~ know
of many with wtr they shd sell. To best of my knowledge, qu. not adjudicated.
Law books don't discuss it. — ~~lawyers~~

Check w. Eckhardt. ~~or Dick~~ ~~Watson~~

22261 sheds some doubt on rt. to sell wtr. by ID.

Genl bias of a trust is to avoid ~~dissipation~~ liquidation of assets. Sale of real prop. for
money, & distribn of the m among the members, wd. ∴ be repugnant to nature of
trust. Selection of trust form suggests sale of wtr rts was not contemplated
origly. (May well have bn done to lend more stability or authority to title to
wtr, vest it w. dignity of public use & trust)

Any beneficiary of a trust can hale it into court on r.e. ~~sale~~? Is every
~~Insert btm previous page~~
municipality a trustee? Or is this blunder peculiar to IDs? ask Eckhardt.

The trustee wanting to sell wtr rts is thus trapped between havig to ~~prove to~~ convince
buyer he ~~x~~ can prove to rival approps the water was being used; but ~~p~~ can prove to ~~every~~
the most crotchety landholder that it was not needed very badly. Both in public & about
the same time. Too much for anyone.

Most wtr held by trustees

approp. rts. (from preced'g p.)

Rt. based on continuing beneficial use, & now reasonable use. ~~So~~ Sale of
surplus may cloud title, shed doubt on whether past use was reasonable.
Sales which completely dry up some lands to wtr others are thus more feasible
in the law than sales mak'g mgnl adjustments. (even tho splitting rts is possible)
When there was plenty of wtr, sales wd. be easier, & at low prices. But as demand grows, sales get harder, others wd. use
as evidence of surplus
~~Even~~ Sales may still occur among pvt. holders. But among instns another
complication presents itself. (above)

~~Any sale is~~

Rts of use, est. by use, never paid for. There is a kind of mystique there, which holders of a public image
appr. rts must not neglect to cultivate. But the mystique that must prevail to have state let its
valuable wtrs be used free is a kind of { Or, is fuzzy one that believes is no value in wtr by itself, all imputes to labor of developer.
anti-commercial one, wd. be outraged by conspicuous public
trafficking in these rts at hi prices. Trelease, p. 314, tells us in some states the spectacle of such trafficking in wtr
rts led states to prohibit changing place of use. ~~Apprs w. surplus wtr are under considerable pressure~~
~~anyway &~~ Apprs are not ~~very~~ insensitive to their vulnerability & their need to maintain the anti-
commercial image, & so tend to shun the profane mkt place.

MWC w. rip. rts holds them only as trustee; title never divested from landholders, Copeland et al. v. Fairview L&W Co. et al 165 Cal 89 (1913)

Valid sale by MWC cd. not deprive landholder of rt. to continued service for lands to which shares had been made appurt. by MWC." Bent v. 2d Est WC et al 51 C.A. 648 (1921)

Like unscrambling an omelet to withdraw wtr & sell, by indiv. or Co., either.

"No clear-cut decisions" – Hutchins, MWC in Cal & Ut., p. 131, what creditor may do w. wtr if forecloses on MWC. Wd. follow also, no decisions re can sell. "Ordinary remedies of creditors of corps do not apply..." p. 90.

An I.D. can go thru bankruptcy w/o divesting wtr rts -- so how sell? "Dedicated to public use" Exempt from execution: TID v. Collins 154 Cal. 440, 1908. Even tho no longer used for dist. purposes.

These are not just analogies, since commonly only time you can pry surplus r.e. away from ~~[illegible]~~ ancient holders is when in fincl distress

"An I.D. owns no lands in a proprietary sense, and its property is owned by the State and is held only for governmental purposes." Allen v. Hussey, 225 Pac. 2d 674, 1950; 101 C.A. 2d 457, 1951.

~~13~~.

Fuzzy titles. If continue old use, no problem. If seek convey, challenges & trouble

~~d (cont)~~ d. (concluded)

~~E~~ Law does not absolutely prohibit xfrs. ~~It is equivocal, it leads you on hopefully~~ But it clearly regards them ~~as~~ as abnormal & suspect. The cards are stacked for the status quo. The burden of proof, where a question arises, is nearly always on ~~He one~~ him ~~wanting~~ proposing a change. Rather minor damages to established ~~ones~~ claimants are accepted as grounds for invalidating a transfer. By contrast, much greater damages ~~to prospective uses are weighed lightly~~ that result from standing pat are ~~not~~ weighed very lightly. The law sees peculiar virtues in ~~[illegible]~~ continuing in the well-trodden paths. On the Kwh it has thereby attained to a nearly perfect degree of stagnation.

e. Method of involuntary transfer does not work at all. Forfeiture for nonuse or wasteful use is repugnant to the values of jurists & administrators & is not applied, even tho ~~one~~ ~~commanded~~ mandated by statute. (over)

e½. Uncertainty breeds excessive claims to protect self vs. all possible switches of the law.

f. ~~[illegible]~~ Inflexibility is cumulative. Suppose Lwr Kwh cd buy from Kings, Wd. not hesitate to sell to south. The value of any wt rt to the holder is vastly enhanced over its present & reasonably prospective use bcs ~~it is~~ other wtrs are hard to ~~find up~~ xfr, to any ~~one~~ one ~~[illegible]~~ wt rt is irreplaceable even at much higher price.

Kings wd then buy from SJ, SJ from Merced, ~~etc~~ if necy, Merced from Tuol. &c. Thus that vast body of thermal land Alt tells us lies abt betw. FK & 700' be served from most convenient source.

A condition of utter rigidity is not likely to develop gradually, ∴, but rather suddenly when an apprehension of ~~remote~~ future shortage begins to circulate. Instead of promoting better ec. of wt via a higher price, it causes all to grab for as much as they can immediately, & creates an effective shortage where none has yet been imposed by nature.

The fear of irreplaceability & irreversibility ~~evokes~~ fires militantly indignant & ~~self~~ righteous opposition to any sale.

The apprehension of future ~~anticd~~ shortage of wtr brings an actual shortage, much sooner than imposed by nature, ~~as~~ as everyone anxiously ~~who~~ begins to ~~claim~~ expands his claims. ~~as far as he can get away with~~ Need permanent wtr for bargaining power.

This works hand in glove w. the spec. ~~forces~~ faster.

Sr. approps. with claims in excess of actual diversions increase their use as they see a possible threat. Thus the system acts perversely, and acts to withdraw wtrs from new approps just as their needs become more acute. It has the srs take excess, & lvs many jrs, who once had counted on a full season supply, with just a flood season supply, which they can neither use very productively, nor release for storage.

This has the anomalous result that as the resource becomes scarcer, & shd be eczed on more closely, it is instead simply ~~grasped~~ clutched tighter by the ~~owners~~ incumbent ~~claimants~~ holders, however little they need it, & its xfr to higher uses prevented. A society in this instl. impasse is much like a drowning man who ~~clings~~ grabs his rescuer around windpipe & freezes in panic. The Red Cross teaches us how to ~~handle~~ break the grip of the drowning victim; but who will ~~us~~ teach society to break the deadly mortmain grip of wtr law? save a panic-stricken society from itself?

Have Σ diversions risen since?

1935, Ct said no surplus.

In Pkdy v. Vallejo. Ct. stressed how all now reasonable. This wd. presumably make it easier for approps to est. existence of a "surplus" which he cd. divert w/o trespassing on rts of ripns.
But few months later, TID v. LS, countenanced extreme contrast.
3 Cal 2d 496, use is "reasonable" if in keep'g w. "gnrl custom of the locality."

The law, in its use of "reasonable", has a flexible concept which cd, if kings were philosophers & jurists were ecsts, be used to effect an ec. outcome. For what is reasonable depends on circumstances, just as mkt value does. So in the circumstance that alternative uses for wtr become more pressing, it cd. be ~~held~~ reasonable,
if jurists were ecsts,
to hold ancient approps to ~~higher~~
"Waste", which is verboten, cd be defined as any use at mp < mar. o.c.
standards of ec.
equally
~~just~~ as hi as ~~must be observed by the~~ imposed on new approps
rising
just as a free mkt wd. do, ~~by~~ imputing a monetary rent to wtr. as it becomes scarcer. At best, much cruder than monetary measurements, ~~substitutes~~ directly intuitive perception of judge, much affected inevitably by his personal scale of values. But still might move in distinctly ec. direction, in the main.
~~This wd.~~ however conflict w. idea that sr. approp. has superior rts, & so has never bn carried very far.
Early excessive awards, granted loosely when wtr had little scarcity value, are hallowed.
In TID v. LS, Cal. SC held wasteful methods of diversion
ave. 50% loss
ed
It sanctioned practices that Wm H. Hall had condemned in 1880!
not be ~~complained of by~~ cited as evidence of surplus wtr, bcs such methods were a well established local custom.
Ct. allocated wtr according to use made before 1916, 19 yrs before decision, & 44 yrs before now. (p 504)
[As to ripns, they cd hold ~~unused~~ rts unused indefly by method of declaratory injn,
Ec. of wtr, i.e., was repugnant to manners & morals of natives of Visalia & cd not be required of them.
& be entitled to whatever seemed reasonable at that future stage. p. 525]
Thus the ct. refused to recognize the growth of an ec. rent attach'g to limi'd wtrs ~~located in arid sections~~ of prime location, ~~when~~
occasioned by Δq
demand for wtr. ~~increased~~ around them. It conceived its social obligation rather to protect the
incumbent
~~ancient~~ claimants in
perpetuating
their
ancient
~~obsolete~~ & wasteful practices, & to insulate their cozy little water economy from the needs of all their thirsting neighbors. It estd the anomaly that in areas of greatest wtr shortages, most wasteful practices wd be tolerated, bcs areas were earliest settled.
~~Today, we~~ Even in 1935, CVP was being built, & ct. knew that wtr was to be brought 100s of miles at hi cost to this very area. Yet the idea that this might imply any need to eeze on the wtr nature had already placed there did not commend itself to the ct at all. The idea of
location value or
~~ec~~ rent, in short, has not found its way into wtr law. ~~This~~ It treats both wtr and xptn inputs as ~~free~~ non-economic goods.

Any evidence that this is esp. bad. re conveyance costs? Yes. Insofar as ~~such~~ cfsons are made of relative reasonableness, conveyance loss is not a factor. As between 2 uses equally reasonable ~~at~~ the land, the fact that one involved large conveyance losses wd. not be held against it, provided they too were of the same order of "reasonableness".

Nowrite TID v. LS

The battle of LS stopped decisively all realloen of Kwh wtr to higher uses everywhere, not just LS. Quote Bull 21-I, back of a1B9 file.

✓✓

Sect. 275 invited DWR in DPW to enjoin waste. Never did.

Anyway, experience of S7, MWD, shows if threaten w. diligence, expand service area.

Complexity breeds resignation.

3. ~~4~~ No one wants to open Pandora's box.

~~The law is filled w. uncertainty, to~~

The whole system is now interdependent. Any suit is likely to involve the whole river. Past suits have bn protracted, expensive, and frustrating all around. The result is a ~~tacit community~~ climate of opinion such as might have prevailed in Gy after the 30 yrs war — let us rather endure the evils that we know than fly to others we know not of. So status quo is frozen. Let well enough alone

So the law here has attained to a degree of perfect stagnation — something it seems to contemplate w. complete equanimity. From all that I can determine It beholds what it has wrought, takes pleasure in its prospect, & pronounces "It is good!"

(over) 4. Divisive. Those w. good summer flows control winter surpluses but lack incentive to store. Those using prime wtr have tax base ~~&~~ & credit base to free big joint project, but aren't helping out (so whole U.S., which is even less directly involved, is called in) Local enterprise is disabled. Those w. spring squirts of wtr hold it down, sink suppl. wells & pumps, dev. vested int. in deep pumps, oppose community spending for rationalized surface supply, & raising grnd wtr level. Those w. best land can't get wtr, so biggest support out of e.g. [illegible] for P.F.

Conclusion: (over)

3. The law permits remote imports, at whatever cost

As Wantrup has pointed out, is not enough to criticize at a moment of time. Change over time is big thing. Here, system also is failing

The law's perception is too crude to recognize fine or even quite substantial differences of ~~local~~ marginal p-y in a locality. It is also disinclined to change conveyance costs vs. a use. It may give some attn. to loss of wtr, but none to loss of elevn, or physical cost of conveyance. But Justice is not completely blind. It is more to be cfd to the ~~near-sighted~~ myopic Mr. Magoo, who does, after all, respond to extreme contrasts of light & dark, & to the major outlines of things. ~~So it introduces a bias into wtr devmt, toward remote xfrs. (a bias that harmonizes rather well with empire-bldg predilections of many regions, anyway).~~ When the wtr-seeker has crossed over several streams he finally reaches one that the ~~some~~ cts will acknowledge ~~ranges far enough, he passes over the threshold of whose present use is~~ ~~so lightly~~ ~~inconsequential as to be safely below the threshold of the courts' concept of "reasonable,"~~ ~~so that it presents a "surplus"~~ ~~& that Justice, which is not completely blind, but~~ contains a "surplus." Here, too, it is easier to placate the local interests w. cheap pwr & flood control.

Same time, creates a critical need for such imports by first hvg encouraged too many beginnings of irr. in Kwh, by giving to each of many acres a little squirt of ~~spring~~ wtr, ~~& pum~~ stimulating suppl. pumpg. & providing no means to ease on grnd wtr, & no means to retract, reconsolidate.

Thus the law permits ~~remote~~ monumental interregional xfrs, ~~now~~ & where it vetoes ~~small~~ simple local ones, and so biasses wtr devmt heavily in this direction. Thus it comes about that the wtr supply of the Kwh area is ~~augmented~~ supplemented from ~~the~~ a supply regulated in Shasta Resr. _00 miles away, while inexpensive little economies at home meet a stone wall of judicial disapproval.

h. Cont. Ripn. as such cannot store wtr. So much land & wtr cannot participate in storage project. also hard for sr. apprtr to convert rt. to divert a flow into rt. to store it, or q. it repl. 280, p. 10, but what was source? Hutchins, Cal. Law W=Rts, I think -- check it.

2, conclusion

So when reach end of wtr supply, local system simply freezes, w. all its "temporary" diseconomies, rather than proceeding to rationalize itself toward the "ultimate" economy often visualized. ~~[illegible]~~

~~but~~

h (cont.). But we underestimate this divisiveness simply to say it blocks local enterprise. It does more than that. Let State or Federal agencies enter the area well financed and in eleemosynary mood, and it blocks them too! The orig. Cal. W. Plan, Bull 4 p. 46, & Bull. 9 p. 10, and CVB, BR plan, p. 104. [Lalt. house] proposed such xfrs. But — Even when construction costs are largely financed from outside, the law ~~simply will not hear of, countenance~~ ~~[illegible]~~ lets intransigeant old settlers veto any proposal, however economic, however generous to the locality. E. O. Larson quote, 490, p. 114

(as to cities, not contribg to fixes of wtr devmt at all, locally)

Wtr-rich instinctively shy from any arrangement afford'g direct xfers wtr sup. Eventual pressure toward =n.

Now this bias, which I'm sure most of us recognize, has important implication for our attitude toward ~~wtr law~~ whether this is the best of all possible worlds which implications are not, I believe, so widely appreciated.

There is ~~[illegible]~~ the comforting belief that ec. pressures must inexorably push wtr to its highest use despite instl. ~~barriers~~ resistance. This I deny. ~~[illegible]~~ In 1st place ec. pressures don't last that long, they change rather quickly, & to frustrate one for 50 yrs is on the ave I'd say about as good as killing it altogether. This is that long run in which we are all dead. In 2d place, reaching limits of wtr seems on Kwh to have frozen the pattern solid, for 50 yrs. In 3d place, instns do not simply resist, they ~~also~~ open up avenues for releasing energies in the wrong directions, viz. CVP. If instns. block the ec. project long enough you will not get no project, but an unec. project, -- outside-fncd by our grand Am. system ~~and~~ ~~[illegible]~~ of p.w. for pol. profit. Areas of shortage even get support from areas of surplus in between, to keep them from going for their wtr. ~~irreversible~~. You can't roll it back up again later when ec. forces prevail. Not only does it last a long time physically, but the lawyers ~~leap~~ latch right onto it and make it a natural wtr course on which users established fixed rights on the old pattern.

After a remote xfr, local interests may relax their "drowning-man's" grip on surplus ~~[illegible]~~ local wtrs, & permit realloc'n of them.

Optimists will point both to the micro & remote xfrs as evidence of ec. movement. But the one precludes or undercuts the other. The result may be, & in Kwh area will be I think, a cycle in which more wtr is devd than can be absorbed for many yrs to come, as several new sources converge on the area in next few yrs. Small Projects Act; [illegible]; Terminus; 7K surplus; CVP. Inc. tax subsidy. Wtr is by no means the only constraint on devmt of ird land, as is often so ~~f~~ gaily assumed (if it were, dearest products wd be big wtr users, but not so) & any large increment is bound to push us up vs. ~~the~~ other ~~limit~~ constraint such as demand for products, (which has meantime been satisfied from other regions that respond quicker) ~~cap~~ developmental cap., landholders willing to sell at reasonable prices, mkt & processing facilities, transportation, etc etc., labor (both managerial & unskilled). There is good reason to believe that a more imptnt lim'g factor than wtr is ec. pressure on landholders. So when cheap subsidized wtr is donated from outside, in such a way as to relieve pressure from landholders, is good cause for doubting that the wtr will be quickly soaked up by an eager mkt. Yet the development period for monumental interregional xfr projects is so long, ~~& they~~ that the wtr scarcity inspires other projects to begin in meantime, so a flood is brewing up of new supplies.

Another unfortunate aspect of remote imports is how they stimulate premature wtr devmts up & down the entire state, motivated in appreciable part by the urgent anxiety that someone else may grab the wtr first. Granted this sometimes serves a useful role, shaking up lethargic local interests, ~~does it not~~ it sets rather a hysterical tone by which to evaluate new projects, & poses a real danger of beginning more than the state has resources

(over)

New sources: CVP when end recharge pd.
PL 163, new distr. systems
Possible shift land to hort. crops requirg less wtr
New storage on all 4 rivers
FRP

l

3 (cont)

to finish in an ec. time. In '20s, State set out to "relieve Tulare Cty" (Bull. 9, 1925, p. 7), ranged so far, ended up w. comprehensive plan w. something for most ctys in State, State filings all over, anxieties quieted every stream.

To draw an analogy that is also a factor in the area, the ctn program is self-resuscitating bcs whenever controls are relaxed, growers rush out to establish ctn. histories in antic'n of future controls, which ~~of co~~ thus are made inevitable. In wtr, this condition is chronic. It leads either to ~~to~~ tieing up wtrs unproductively by local interests, or, where the use criterion is applied, i.e. to remote takers who have ~~is among~~ no claim based on location, ~~requirement is taken seriously,~~ ~~to~~ to premature devmt & excessive devmt. On FK is evident many contract'g agencies have contracted for a good deal more than they really need — they actually take the minima allowed under their contracts. They are still steeped in psych. of approp. system, premium on premature inflated claims (over)

There is a belief that ~~A~~ CVP had to come anyway bcs there was an overdraft, so why quibble.

But overdraft resulted from alloc'g wtr to low uses, w/o constraints. CVP came in to serve the hi uses, frustrated. Actually all it is mak'g possible is perpetuat'g low uses. Even if grant is ec. now, which is questionable, wd. not be if ~~they~~ local wtrs first alloc'd to high uses, CVP to low. Wdn't even be the same CVP, wd. serve low elevns. Barley. Lwr cost, but still prbbly not ec'l.

Ctn now takes new land. A good developmental crop. But land is mostly all eligible for decid. & vines, higher return. So land for this purpose no longer scarce. Wtr, too. Then look out.

Orchards take long time to come on.

Remote import must be large:

- To pay for works
- To get allies
- To recharge over wide area
- Etc?

So large Δ. More than double Calif acreage of peaches, plums, citrus. Nor that all will be so used. But land *cd.* be so used, will hang over mkt for long.

Sign up eagerly in wtr users orgns, so not be left out. This tends mislead project planners, is demand for more wtr than is.

Is very good risk BR will get too much stored underground in dry cycle, to conceal surplus; comes wet cycle, like 1935-43 when TID table rose 40'. get alkali damage, & no place to store flood wtrs.

1. Mutual Water Company shares. These have circulated over a considerable area for many years. General movement has been clearly economic, from north to south. Big buyers have been the Irrigation Districts: Lindsay-Strathmore, Tulare, Corcoran.
2. Northern branch (St. Johns') diversions to south branch (Kaweah Branch.) Packwood Canal, Ketchum Ditch, and Tulare I.D. canal, carry water from surplus branch to relative deficit branch.

c. Uneconomic aspects of ~~constraints imposed~~ on these transfers

1. The law forbids changing the point of diversion of waters transferred by share purchase. It requires buyer to tap onto the ~~existing~~ seller's system below diversion point, however uneconomical that may be. Since most companies with surplus water divert at low elevations, this requires buyers at high elevations to let the elevation waste in the natural channel, then repump the water. This has precluded the most economical transfer of water, i.e. to the upper coves and benchlands with thermal conditions for citrus, olives, and winter vegetables, although the diversion and ditch were ready for use when use was enjoined in 1928 (Consolidated Peoples' Ditch v. Lindsay-Strathmore I.D.)

2. There is very little short-run flexibility. Such transfers as are effected involve capital transfers, and often constructing new channels. Yet the short run marginal productivity of water, to save a crop, is sometimes extremely high.

3. The M.W.C. service areas become extremely scattered, which increases unit service costs. Wutchumna Water Co. serves only something like 20% of the land within its perimeter. The companies also overlap.

4. Shares, if originally derived from riparian rights, remain riparian, cannot be removed from riparian land.

5. Export from the watershed is virtually impossible, because some existing right is invariably damaged by loss of return flows.

6. Export from the ground water basin is also virtually impossible. Both kinds of export would be economical.

7. Such waters as finally do reach Lindsay-Strathmore are treated in one sense uneconomically, in that that I.D. pumps water up to its higher lands at the same rate charged to other lands. This arrangement was forced on the I.D. in the days it was fighting for survival and needed to bring in the high hill lands as allies. In microcosm this makes an analogy to the present situation of the California Water Plan.

1. (resumed) The cross-channels from St. Johns to Kaweah Branch are totally unnecessary, since the transfer could have been effected at McKay Point, where the two branches split. But this would have involved changing diversion points, and upsetting the near-sacred 50-50 split at McKay Point.

d. Other types of voluntary transfers are blocked almost completely

1. Riparian rights are part and parcel of the riparian land, not severable. The Kaweah system is endowed with many riparian rights because there were several natural distributary channels, and most of the lands passed into private hands before 1877 (Desert Land Act.) No matter how much he wants to sell the riparian cannot. But he can lose his right by adverse use, and so remains alert to enjoin all diversions that might be so construed.

The riparian cannot store water, and so storage of that portion of the waters represented by riparian rights is effectively blocked.

2. Correlative rights of overlying owners likewise are not salable, but can be lost by prescription, thus inciting overlying owners to enjoin most constructive activity.

Only "surplus" ground waters might be exported from the basin. "Surplus" is a vague word, but Calif. Supreme Ct. has held there is none in Kaweah basin (1935). Were the court to be willing to change its mind, no one could so discover without investing in works to export, since no advance ruling is possible on correlative rights which are not statutory and do not come under Water Rights Board.

The ground water basin cannot be used for storage by outside interests (Lindsay-Strathmore tried it,) because the stored waters would commingle with natural waters. This problem will frustrate much of what is hoped to be accomplished under the CWP.

3. Appropriative rights. There is no general prohibition on sale, but there is a number of conditions and hurdles which in the aggregate amount almost to probition.

a. The right of use is established by or bought by use, under the auspices of a kind of mystic philsophy that its value is created by said use. The mystique is roughly violated, and the public outraged, by the spectacle of licensees "trafficking" in their privileges for something as profane as money, which reveals very unmistakeably the capitalized economic rental value. Appropriators tend to shun this dangerous publicity.

b. Sales that dry up some lands 100% may still be feasible. But sales that make marginal adjustments are subject to another hazard, the sale may cloud the title by giving evidence that the appropriator had a "surplus."

c. Among institutions, another complication presents itself. A Mutual Water Company does not hold beneficial title to its water rights; it is a trustee for the landowners. There is no clear-cut decision that a mutual can sell its water rights. Likewise the individual landowner cannot sell his rights without withdrdwing them, if he can, from the mutual. It is unscrambling an omelet, and the law does not try to make it easy.

An I.D. is similar, only perhaps worse. It can go through bankruptcy without losing its water rights or other property. It "owns no lands in a proprietary sense, and its property is owned by the State and is held only for governmental purposes." (Allen v. Hussey, 1951)

Either a MWC or an I.D. trying to sell would be trapped between having to prove a, The water was of no great value to the trust beneficiaries; b, The water was being put to beneficial use prior to sale.

why quibble over details? But if Kaweah water were allocated to its highest uses, CVP water would meet only the lower uses. Even granting it is economical now (which it probably is not), it would not be if it had only the lower uses to serve; or if it were, it would be because it came in at much lower elevation and much lower cost.

Remote project is too big, several reasons

~~Most unfortunate aspect of interregional transfers~~ is Also ~~the way they~~ stir up anxiety all over the state over loss of waters, and so stimulate premature water development from south to north. Granted this may sometimes serve a useful purpose in shaking up lethargic local interests, it sets rather an hyterical mood within which to evaluate new projects, and poses a real danger that the state will begin more projects than it has the capital resources to finish in a reasonable time, and the demand to consume. In the 'twenties, recall, the CWP started off originally from the need to "relieve Tulare County." (Bull. 9, 1925, p. 7.) The existence of surpluses in the Merced, Stanislaus, and Tuolumne were duly noted, and this was not unrelated to the burst of premature irrigation expansion in the 'twenties.

At that time it was noted that capital flowed more easily into constructing major irrigation works than into land development. In the present cycle this ~~situation~~ unbalance is not improved, but aggravated. Today we have the Army Engineers building water conservation works free under guise of flood control. We have the huge Bureau contribution that was not there before, and its interest-free loans for distribution systems. There is the small projects Act, and the Davis-Grunsky. There is the progressive income tax rate, much advanced over the 'twenties, funnelling more funds into tax-exempt I.D. bonds. And now comes the FRP. Shortly now the B.R. will have completed its recharge operations under its big water customers and have a surplus for sale.

There has been no comparable stimulus to the actual development of individual farms to take and use water. The result, looming up, is an overbalance of water supply works compared to the demand for water. The result? Irrigation is new enough in American history that it has figured in only two major depressions, 1893 and 1929. But in each of them it figured prominently, through premature development of water supply works for undeveloped lands. There is ample indication that we are moving on the same course again.

New plantings look huge relative to previous acres, but are very small cf. to land now eligible. Shortage or scarcity now imputes to cap. to dev. & customers to buy.

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Well, Chet, obviously this will take some pruning to get into a 40-minute talk. But these are the general ideas, anyway. I'll probably cut out the last page as being too big a jump from the data presented. And see you in Tucson. Will of course in my talk apologize to you publicly for getting sketchy MS to you so late.

"An I.D. owns no lands in a proprietary sense, and its property is owned ~~[illegible]~~ by the State and is held only for governmental purposes."

(Allen v. Hussey, 225 Pac. 2d 674, 1950)

As to mutuals, Hutchins tells us there are "No clear-cut decisions" whether a ~~creditor~~ foreclosing creditor can ~~transfer~~ ~~water~~ ~~[illegible]~~ transfer the rights he acquires to other lands.

Production, Tulare Cty

	1943-51	1952-58
Plums Tulare Cty	11,500 (3.13/a)	14,000[3] (2.92/a)
Navels		
Tulare	171,000	344,000
Fresno[1]	27,400	29,600
" [2]	23,200	24,500

Other Tulare Cty:

Freestones – substantial increase in yields

Olives – noticeable .. acres & cty output
No Δ in yields/a

Alf. No Δ of yields/a. In fact a drop. from 7 to 6.
Tay. confirms, 1951-58, FK service area

Ctn Rise of acres & yields, but many problems of interpr.

Table grapes -- No Δ in yields/acre
.. .. ..
Raisin

clings .. like freestones, substantial Δ yields.

[1] All oranges, 1944-51 and 1952-58

[2] Navels, 1944-50 and 1956-58

[3] Plum acreage Ad. not yields per acre, 1941-51; 1952-58

Calif. production & acres.

Freestones.

Same story as w. plums.

1956 bearing acres, 36,000
.. non 14,000

Non bearing shot up, 1954-56, entirely in SJV. Enormous increment coming on.

Dean & McC. p. 18

Clings, p. 15, Sac. V. expanding too, but from 1955 SJV picking up ball.

1956 Bearing acres 46,000
Non .. .. 15,000, up from 10,000 in 1953. Big Δ coming on.

Plums.

Cal. acres, 1955, 21,000. all time high, 32,000 in 1929. — S.P. 261

Check latest Crop & Livestock. Note how easy to flood mkt. The area of land now w. good wtr supply & good for decid. fruit is far more than enough, were all in bearing, to flood mkt.

Cal. has 90% U.S. commercial plums — Dean & McL., p. 23. Non bearing acres have shot way up since 1954, entirely in SJV, i.e. Tulare Cy. 1956, Dean & McL. latest figure, is 6,000 in State, of which 4,000 in SJV. — p. 24

Walnuts.

1956 Bearing acres   110,000
Non   "   "   28,000

Tulare Cty has a share along river Visalia - Woodlake, 8,000 a. in 1958, expanding rapidly from 2800 in 1946. Dean & McC p. 42; & Tul. Cty Ag Comm.

Walnut yields in Tulare Cty have not Δd a bit, 1946-88. They are right along river, hence wtr supply not Δd by CVP.

Sharp contrast to navels.

16, 17

Outline

B. Drawbacks of monumental projects
   1. Increment too large, overexpand
   2. Slow response to demand.

   Need not met for long time.

   3. Over expansion
   ~~Other projects & areas start.~~
   a.) Lag of land devmt behind p.w., conceals effects, lets project be completed
   ~~2. Increment too large, to absorb easily overexpand~~

   b. also other project start, ~~under price umbrella~~.
      i. Price umbrella

      ~~ii. Incite competitive devmts to claim wtr~~

      ii.) ~~m~~ To ~~grab wtr~~ nail down wtr

      iii) ~~Mu~~ ~~To compensate~~ By log-rolling. Indiana

C. Current over expansion

   Recharge will cease to absorb.

   Ctr-alf will take less.

HAMMERMILL BOND
MADE IN U.S.A.

Consolidated Peoples Ditch Company et al., Respondents, v. Foothill Ditch Company et. al., Defendants; Lindsay-Strathmore Irrigation District et. al., Appellants, 1st Series, 205 Cal., 1928, pps. 54-65.

Attempt by plaintiffs to quiet their title to the Kaweah River and to "... restrain threatened diversion of such waters to the injury of said plaintiffs...." pps. 56-57

Tulare Co. Superior Court issued temporary injunction to restrain the defendants from making the diversion - p. 57

Question before appeals court is whether or not the trail court exceeded or abused its discretion in issuing the injunction

L-S I D is the defendant affected by the injunction

Each of plaintiffs states in complaint the specific amount that it is entitled to and also states the extents and limitations of the water rights of the defendants: the Foothill Ditch Co. and the Wallace Ranch Water Co. - p. 57

L S I D claims to have acquired from Foothill and Wallace "... certain rights to a certain ditch known as Foothill Ditch... and that having done so it is proceeding... to enlarge the carrying capacity of said ditch and the flumes and aqueducts thereof to an extent much greater than the limited use of the same for the diversion of the waters to which the former owners thereof were entitled would require..." and to such an extent as to seriously endanger the rights of the plaintiffs and deprive them of their rightful share

"The appellants' contention that a preliminary injunction was not presently necessary for the plaintiffs' protection against a threatened loss of water for the reason that at this season of the year no available water was flowing...," has no merit p. 58

Plaintiffs couldn't risk waiting until water rose enough to enable its diversion in the ditch because of the "... risk of the charge of laches in allowing the appellants' costly outlays based upon a claim of right to proceed." — pps. 58-59

"We do not deem the order of ~~the order of~~ the trail court to be broader than the situation requires...." — p. 59

Appellants' contention that plaintiffs have no common cause of action for injunctive relief is without merit because they are all dependent upon a common source of supply

Starting in 1925 LSID acquired stock in most of the plaintiffs and then entered into a contract for the purchase of an interest in the upper portion of the Foothill Ditch, the intake of which is above McKay Pt. & thus above the diversion ditches of the plaintiffs — p. 60

Also, in having purchased plaintiffs' stock LSID acquired right to utilize Foothill Ditch at and below its pt. of intake

~~LSID's enlargement of Foothill Ditch equaled in acre feet "... the aggregate amount of water to which ... it would have then become entitled by virtue of the appropriation thereof by each of such corporations of the water to which it and its stockholders had become entitled by virtue of the appropriation thereof by each from the sum total of the waters of the Kaweah River." — p. 61~~

LSID contends that it is entitled to divert into the Foothill Ditch an amt. equal in the aggregate to the sum total of the proportions that it would obtain at the diversion pts.

of the seperate co's. in which it owns stock —p. 61

"We are unable to give our assent to such a contention."

LSID acquired stock in Lakeside, Tulare Irrig. Co., Elk Bayou, Consolidated, Farmers, Persian, Evans, Uphill, Fleming, Modoc, Goshen and Wutchumna —p. 62

Shares purchased by LSID would entitle it to a Σ of 100 ft.^{3}/sec at certain stages of flow

Foothill Ditch was enlarged enough to carry this capacity

When owners of riparian rights organize a corp. for "... the sole purpose of facilitating the distribution of their water upon their lands..." they have, in so doing "... expressly reserved the ownership of such water in themselves." —p. 64

But such is not the case here

"The sole right of each and every stockholder in each of said corporations is the right in mutuality with its fellow stockholders of having the proportionate share of each in the distributable waters owned by such corporation supplied to each stockholder..." by the corp's. facilities

"... neither one nor any of such stockholders would or could possess the legal right to take or receive the amount of water to which such stockholders may be entitled by another manner or means than those supplied by the corporation itself...."

"... the clearly unlawful method (of LSID) which has given rise to the present action." —p. 65

Quote in which court says L-SID has to go to each co's. ditch to get its proportionate share

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1st, 205 Cal 54

Consolidated Peoples Ditch Co. v. Foothill & L-SID

"... it would seem to be too clear for argument that neither one nor any number of such stockholders would or could possess the legal right to take or to receive the amount of water to which such stockholder or stockholders may be entitled by another manner or means than those supplied by the corporation itself in the exercise of its full and legal control over the reception and distribution of such of the waters of the Kaweah River as is covered by its appropriation and is receivable in the amounts and at the points of intake designated in the very acquisition of its appropriative rights in the water of such river." -p. 64

Tulare Irrigation District vs. Lindsay -
Strathmore Irrigation District 3, Calif. 2,
1935, pps. 489 - 584

Brief
Riparian rights - Appropriation - Reasonable Use - Constitutional Law - Para. 2, p. 489

Sec. 3, Art. XIV, Nov., 1928 of the Constitution

> "...a riparian, as against an appropriator whose right has not ripened into a right by prescription, is not entitled to the full flow of the stream as it is wont to flow in a state of nature, without diminution by the appropriator, and his rights are limited by the doctrine of reasonable use...."

Injunction - Remedies - Beneficial Use - Con. Law - Para. 3, p.489-490

Under Art. XIV, it no longer is sufficient to base injunction simply on fact that the owners are riparian

> "...the court must determine whether such owners, considering all the needs of those in the particular water field, are putting the waters to any beneficial uses... and from a consideration of such uses, the trial court must then determine whether there is a surplus in the water field subject to appropriation." p. 490

Necessary for court "to find expressly the quantity so required (for beneficial uses) and so used and it must fix the quantity required by each riparian for his actual beneficial uses, the same as it would do in the case of an appropriator...." Para. 4, P.490

Any finding which ways that the riparian requires a "reasonable amount" is "clearly insufficient and a judgment based thereon must be reversed."

Art. XIV protects "prospective reasonable beneficial uses" of the riparian as well as "actual reasonable beneficial uses"
Para. 5 p. 490

Both actual and prospective uses have priority to any right of the appropriator

But the appropriator is allowed to use the water "until the riparian needs it, thus, at all times, putting all of the available water to beneficial uses."

Court may retain jurisdiction "over the cause" so, when a riparian claims need for water, the court determines whether the proposed new use is "~~a~~ reasonable beneficial use and, if so, the quantity required for such use" - Para. 6, p. 490

Art. XIV applies to an overlying land owner and an appropriator just as it applies to a riparian owner and an appropriator - Para. 7, pps. 490-491

It is not sufficient under Art. XIV to find that "...each riparian requires the 'whole of the underground flow of said stream...to mosten said land from beneath.'" Para. 8, p.491

"In an area of such need as the Kaweah delta..., the use of the entire flow of a stream, surface or underground, for subirrigation cannot be held to be a reasonable use of the water." Para. 9, p.491

Since an injunction decree "acts on the rights of the parties in the future," and since this case involved an appeal from an injunction decree, even though "judgment was entered and the appeal was perfected" before passage of Art. XIV, the law at the time of the appeal case is the governing one and not the one at the time of judgment - Para. 10, p. 491

Art. XIV follows due process because it is "a reasonable exercise of the police power" - Para. 11, p. 491

Sec. 11 of the Water Commission Act, insofar as it declares that ten years' nonuse constitutes abandonment of the riparian right is unconstitutional Para. 12, p. 492

Riparian right includes the right to the underground as well as the surface flow of the stream in accordance with beneficial use concept of Art. XIV Para. 15, p. 492

Riparian's future prospective rights are canceled if an appropriator has taken water and devoted it to a public use prior to the time that the riparian's needs arise, for "~~a~~ public use has intervened as to the quantity required for such future uses." Para. 19, p. 493

When an appropriator takes water it is up to him to prove that there is an excess supply beyond that needed for "reasonable beneficial use" by those who have prior and preferential rights, but this does not relieve the holders of prior rights from proving that the quantity that they have been using is necessary for their "r. b. uses." Para. 21, p. 494

reasonable and beneficial

Awards to the appropriators in ft.3/sec. together with an ultimate limitation in acre ft., "measured by the maximum number of acre feed used by each appropriator in the past." Para.26, p.495

An appropriator, as against subsequent appropriators is entitled "to the continued flow to the head of his ditch of the amount of water that he, in the past,..., has diverted for beneficial purposes plus a reasonable conveyance loss" as long as this Am't. is not more than that required "to supply the area of land theretofore served by his ditch...." ~~Para. 29~~, p. 495 Para. 27

If an appropriator uses more water than he needs for beneficial uses, he acquires no right to the excess - Para. 28, p. 495

"No matter how long continued" - Para. 29, p. 495

"...an appropriator cannot be compelled to divert according to the most scientific method known and is entitled to make a reasonable use of the water according to the general custom of the locality, so long as the custom does not involve unnecessary waste." Para. 30, pps. 495-496

Prestige Onion Skin

Burden of proof in injunction proceedings with prior vs. subsequent appropriators lies with prior - Para. 31, p. 496

> Prior attempting to secure injunction against subsequent, the plaintiffs must recover upon the strength of their own title and not upon the weakness of the defendants' title, as in any other quiet title case - Para. 33, p. 496

A water corp. which distributes water to stockholders or consumers is not a periodic appropriator, if it requires a continuous flow to distribute water properly, even though the consumers it serves may be only periodic appropriators - Para. 34, p. 496
"In said action, in order to prove a right gained by appropriation, each appropriator had to establish that the quantity awarded by the trial court had been actually, in the past, diverted and used by the one claiming that right; and where there was no evidence that any specific quantity had been diverted during the winter period by any one appropriator, and no evidence as to the area actually irrigated during that period, the evidence was insufficient to sustain awarding a specific rate of flow and all lesser flows during that period." Para. 40, p. 497
Defendant has right to export ground water for "beneficial purposes" - Para. 41, pps. 497-498
"...what is a beneficial use depends upon the facts, and circumstances of each case...." - Para. 44, p. 498
Extermination of pests, "such as rabits and squirrels," does not constitute a "reasonable beneficial use." Para. 45, p. 498
"...Evidence (presented by 'irrigation experts') indicated that some of the water used in the winter months was put to beneficial uses." Para. 46, p. 499
Because cause of the extreme variability of the river's flow, the 'average' run-off has no real meaning Para. 48, p. 499

> Therefore "...there was no merit in the contention that the appropriators could only acquire an appropriative right to a quantity of water equal to some amount slightly over the mean low average produced in the watershed...."

Court admitted that there was an "uneconomic use of water" and unscientific diversion of water by appropriators - Para. 50, pps. 499-500

> But, since "the various appropriators were not one unit and each had his own appropriative right...the courts could not and, even if they had the power, should not compel them, at their expense, to build new systems of diversion; and defendant could not complain of such alleged poor methods of diversion."

Since "various state bulletins" showed that conveyance losses on "various irrigation projects" were "far in excess of 40 per cent", the defendant shouldn't contend that such losses should not exceed 30 per cent - Para. 51, p. 500

> (~~How can the court defend the above on the basis of its statement in Para. 44)~~?

"An appropriator is not compelled either to irrigate in the most scientific manner known or to divert in the most scientific manner known." Para. 52, p. 500
In said action, plaintiff's appropriative rights, which long antedated any right of defendant to any water ~~at all~~ for use on nonriparian lands, were required to be protected regardless of the great needs/of defendent." p. 500

Body
Suit brought by Tulare to quiet its title against L & S to surface and underground waters of the Kaweah

Also to prevent L & S from exporting ground water

Original decision, before appeal, was in favor of Tulare

Held that Tulare could only use that quantity of water which it needed for use on its Kaweah riparian lands

Respondents owned great variety of water rights

Appropriators, riparians, overlying owners, etc.

Background

Two admitted facts

Rights of L & S as a riparian owner were not involved in the appeal
L & S admitted that respondent appropriators had prior rights in time

But L & S contended that the respondent appropriators have not put all of their water to beneficial use.

Tulare and other respondents evenly divided flow at McKay Pt. between St. Johns and Lower Kaweah

But when water decreases to 80 ft.3/sec. in Lower Kaweah at McKay Pt. after the snow run off, then all water is diverted to Lower Kaweah until October 1 and thereafter until flow again exceeds 80 ft.3/sec.

"The court found that the flow of the river 'varies greatly in amount of flow and in rate of flow from year to year, from season to season, from day to day and from hour to hour.'" p. 505
Kaweah delta comprises more than 300,000 acres p. 506

Soils are highly porous and fertile and because of mountains to the east and red lands to the southeast and north through which water will not readily percolate, the delta forms a natural ground water resevoir

Ground waters are "diffused percolating waters "which 'move generally with the surface slope and at righ angles to the surface contours of the delta.'" p. 507

The earlier court also found that a falling water table had increased cost of obtaining ground water p. 507

Increase of salinity

Earlier court placed valuation on citrus lands of $1250 per acre with irrigation and only $50 without irrigation p. 508

Total cost of L & S irrigation system was $1,600,000 in 1918 p. 509
Pump 25,000 acre ft. annually and carry a maximum head of 75 ft.3/sec. p. 509

Trail court divided year into two six month periods - Feb.1 - July 31, Aug. 1 - Jan.31

Fixed rights to rate of flow for each class of respondents

Appropriators

Period 1 - 2000 ft.3/sec.
Period 2 - 1000 ft.3/sec.

Riparians

A reasonable quantity of surface flow and all underlying ground waters that they were riparian to

Overlying landowners

Trial court said that L & S ground supply and that of above was a common source

But granted no relief to above, for apparently felt that relief was implicit in their capacity as riparian owners

Respondents "collectively claim every drop of surface or underground or diffused percolating water in the delta." p. 512
In 1923, L & S filed additional defense based on Sec. 11 of 1913 Water Comm. Act which said that ten years nonuse constitutes abandonment of the riparian right
Issue amounted to whether or not there was a surplus of water in the delta of 25,000 ft. annually which L & S could utilize without injury to prior rights of respondent appropriators

L & S contended that respondents never diverted the amt. found by the trial court and that which they did divert was and is being wasted p. 516

Also contended that respondent appropriators did not need to divert any water during winter

Whether L & S's pumping affected surface flow of St. John's early seasonal flow of Lower Kaweah

If above did occur on Lower Kaweah what was the plasibility of constructing an impervious bypass across the cone of depression created by the pumping?

Whether reasonable needs of respondents are less than flow of the two rivers and their tributaries

If there is an excess, is L & S entitled to any rights respondents may have under a form of condemnation

One group of respondents made compromise with L & S in 1931 p. 518

Gave L & S right to take "at such times and at such a rate as it may desire, a quantity of water in each year equal to the amount that would be produced by a continuous flow of 35 cubic feet of water per second during the year (approximately 25,500 acre feet)."

Paragraph 1

Mineral King Fruit Company gave up all claims against L & S pps. 518-520

Same as above with Marietta R. Gray p. 520

Paragraph 2

"...the trail court applied the rule that a riparian as against an appropriator...." see Para. 2 (brief) p. 524 This the trial court applied the rule that as between such parties riparian and overlying owners are not limited to a reasonable beneficial use p. 524

Paragraph 4 p. 525

Under Art. XIV the court must fix the quantity needed by a riparian for reasonable beneficial use just as it would for an appropriator

Paragraph 8 p. 526

Quantities required for reasonable beneficial use must be fixed for all owners under XIV

Paragraph 10

" Although passed after the decree below, this act must be given effect in deciding the appeal, since the case involves only relief by injunction and this operates wholly 'in futuro'" p. 528

Paragraph 34

L & S concedes that respondant appropriators are not periodic appropriators, but does contend that such appropriators rights and needs are seasonal p. 548

Paragraph 35

"...we are convinced that the evidence overwhelmingly established that, except in years of extraordinary flow and except for certain exceptional spurts, the respondent appropriators herein, as a group, have used practically the entire flow of the Kaweah River during the height of the irrigation season for reasonable beneficial purposes." p.549

During April, May, June and July, in spite of the fact that these are the months of most dependable supply, "...has been an insufficient amount to meet respondents' needs."

Also during these months L & S has greatest need to export water, but "appellants needs cannot justify this court in depriving other property owners of their property rights long since vested."

Paragraph 36

Court agrees with L & S during October, November, December and January that respondent appropriators as a group do not divert 1000 ft.3/sec. "and all lesser flows." "We are also of the opinion that the evidence does not support the findings that each appropriator diverted for reasonable beneficial uses the specific number of cubic feet per second and all lesser flows..., awarded to it." pps. 549-550

Paragraph 38

Three aspects of sufficiency ~~and~~ of findings of trial court in regard to awards made for Per. 2

1. Award made to each appropriator by trial courts
2. Whether water during Per. 2 was put to beneficial uses
3. Whether amt. used by respondents and their method~~s~~ of diversion ~~are~~ is reasonable

Consolidated People's Ditch Co.

During Per. 2, was awarded 125 ft. 3/sec.

> "...testimony is far too vague and indefinite to support a quiet title decree of a definite quantity of water in this period." p. 552

Elk Bayou Ditch Co.

During Per. 2, awarded 80 ft.3/sec.

> "Such award, based, as it must be on past use, finds absolutely no support in the record." p. 553

Lakeside Ditch Co.

During Per. 2, awarded 200 ft.3/sec.

> Evidence show that respondent does not use award
> "If the water was not there in any month or for any other appreciable period, it should not have been awarded." p. 554

Packwood Canal Co.

Awarded 75 ft.3/sec. during Per. 2

> "Not one word of testimony was offered that this ditch, in the memory of any witness, ever had any water during Period 2." p. 558

Paragraph 39

"We can agree with the trial court...that the benefits of winter irrigation can be shown by general testimony,..., but we do not agree with respondents that evidence that winter irrigation was practiced under one ditch can justify or sustain a finding awarding a specific quantity to another ditch." p. 563

Paragraph 43

"No water should be awarded any appropriator during any period when it is not using it." p. 567
Thus awards made to respondent appropriators during Period 2 "...cannot be sustained and that the judgment based thereon must be reversed."

Evidence also does not show that water used in winter period was put to beneficial uses

Paragraph 49

L & S held that quantity of water diverted by appropriators each year is in excess of that needed for beneficial uses and that "such excessive use of water has resulted in an injurious high water table with the creation of alkali and deterioration of the soil." p. 571

> "We are clearly of the opinion that both these points are without merit."

Paragraph 56

"...each of the respondents herein had the burden of proving when the amount diverted by it was actually diverted. The appropriator is limited not only by the amounts diverted in the past, but also to the times it diverted water in the past." p. 576

" "...if any appropriators right in the past has been so limited by reason of prior appropriations by others that it actually did not get and use water in certain periods of the year, obviously it could acquire no right as against appellant to a continuous flow for the entire year."

Paragraph 57

Since trial court's decision that there was no surplus was based upon the awards made to each appropriator, and since these awards have been held unsupported, "the finding that there is no surplus falls with them." p. 577

Paragraph 58

Does appellants pumping cause any seepage losses from St. Johns ~~at all~~ and does it cause these losses in excess of 10 ft.3/sec.? p. 578

> Pumping operations of the appellant do materially decrease ground water and do cause induced seepage on St. Johns

L & S admitted that its pumping does cause ground water reduction on Lower Kaweah, but held that such did not do so "to the extent fixed by the trial court"

> Evidence says that L & S is wrong pps. 578-579
>
> Thus decision of trial court in this question was affirmed

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Trial court was directed to modify its judgment as follows:

> L & S allowed to export annually and can take at any time and at any rate that amount of water "which would be produced or discharged by an average continuous flow, during such year of 35 cubic feet of water per second." p. 580

"...the rights of the respondents must be satisfied before the appellant is entitled to pump any water for nonriparian uses from the waters underlying the Rancho de Kaweah." p. 583

Esleeck

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III Role of Water Law in imposing diseces on system.

No lack of enterprise. Ec. pressures to xfr wtr have counterparts in human agencies

But frustrated

A. The "lion-pens" effect. Freezing status quo. after TID v. LS, stalemate, settle out of ct., agree, raise no fundamental issues, lawyers argue to doomsday, no clean decision.

B. Cumulation inflexibility. Never get it back.

C. Liberum veto -- e.g. anyone on St. Johns cd. uphold McKay split.

D. [Non-severability of rip. rts] More gnarly: barriers to xfr

[illegible]. Various rules vs. exporting

1. —

2. Underground reserved for overlying owners! see ground wtr file, Hollinger & Harding. Can't even export wtr you store there yrself. Wtr you inject loses status as yrs; wtr you export gains status of a rt (so you cd stop recharging). Hence is enjoined. So? Maybe.

3. Wtrshed of origin -?

4. appr. xfr only if none injured. Vesteds in ~~the~~ return flows.

E. No change pt. of diversion when buy MWC shares. (so when LS finally did buy wtr, was from WWC, relatively hi inp, as shown by Ivanhoe 10 later.

F. I.D. can't sell? Trustee, dedicated to public use, etc.

G. Historical priorities. No relation to present. Times changed, learned much, demands & tech. change.

Soils get better to south, rain less. Early days, not seen.

H. Create factions, no work together. Much less w. neighbor streams

I. Division Uncertainty; hi legal cost.

J. Segregating wtrs for ownership purpose, hence treating as physical reality. Frustrates most ecs. of commingling, joint opr.

K. Social cost of holding wtr not felt by holder.

a, Not directly, most effective way. No change

b, Not indirectly as o.c. Barriers to sale. Insulated

L. Segregate wtrs for ownership purposes, then treat as tho physical problem.

M. Due to scattered service area & hi channel losses, & pvt. prop. is not worth storage bcs stored water is expensive wtr & you lose much of it. If released in Aug. wd. lose much more than ave. loss is now.

N. Occasional move in ec'l. direction is not enough, maybe worse than nothing.

~~While~~ Slow response to most ec. adjustments means less ec. ones, less viscous, are made, irreversibly. So the ec. ones become unec. — &, if made, bring ruin to all. (19)

Law too crude to recognize fairly substantial diffs. in up. Only gross ones. Hence ~~div~~ +ap. remote wtrs --- & give no weight to xptn cost.

O. Xptn cost not ~~inclu~~ recognized by law, in cfsons.

Within & among orgns (20)

Allowing floating shares, but insisting on fixed diversion pts.

Loss of altitude

Seepage loss — TID v. LS, tolerated 50%. & wd have tolerated more were it local custom.

P. Summarizing, ec. wd send wtr South at hi alt. w. some regulation.

Downstreamers blocked this at LS, precluded any further xfr.

Q. The drowning man effect. When ~~panic~~ shortage looms, panic, clutch frantically, lose necessary mobility, create shortages.

Instns. requiring unanimity esp. bad in such times, bcs someone always wants to hang on, even if most are rational.

R. Among a group, is whole spectrum of attitudes toward selling. Wt law lets attitude of the least willing prevail.

S. Stickiness oft blamed on approp. system as such. But misdirected perhaps. Pure approp. rt. is quite flexible (despite other drawbacks.) It is other gimmicks that tie up.

T. Seller of wt share disregards techn. external ecs — i.e. recharge fraction. Buyer, if big or an I.D., adds them to value. Several cases this has worked to offset other disecs., but not always, e.g. sale of WWC stock was overdone, witness later Ivanhoe ID.

U. Sale of shares as perpetuities introduces unequal fincl. power as element. Movement to Barley Basin probly based on this.

V. When you hold wt rt., srmc wt = 0 (unless is internal o.c.)

Rts. fixed in af, for max need. Ties up ~~to~~ extra wt all other times, mc = 0.

W. Upstreamer must let downstream rt. go by, even if not used at the moment. How common is this?

V. (resumed). To permit use of heavy flows, ct. fixed rts. so Σ > mean flow. But this means in ave. yrs, srs. have more than enough, while jrs. have nothing, &/or great unsteadiness.

X. W. wt rts in af, benefits of Fed. storage can go only to one group. (And they don't need it much!)

These rts are lmd in af to a max. But max = max past use. (TID v. LS?)

Y. Hence far exceeds normal use.

And does this not justify excess diversion capac? Ct. said diversion capac. did not measure rt., but this amts to same thing. Can't divert w/o capac. Just to use it once!

Y. Use of larger flows by jrs. blocked by a, Giv'g srs. too much. But worse than the quantity effect was effect on steadiness. Esp. in summer mos.

Thus in July. Kwh rarely below 30,000 af. Enough to supply 6" to 60,000 acres, firm supply. But how many acres got firm July wtr? Foothill D., CPD, Marks-Riv., Lemon Cove, Hamilton. Work this out.

Z. Sale of MWC shares scatters & overlaps service areas. Like free compn in selling 'phone service — worse than mnpy. WWC serves 18.8 % area over which dispersed. Etc — use these figures, on Σ service areas etc.

AA. Have to go ahead w. costly physical acts to find out if they are legal. LS went ahead. Got slapped down each time, at great expense. Discouraged others from trying. Not only cdn't export surplus, but cdn't use grnd wtr ser.

BB. Why excess invmt in agts?

1. Unnec. aggr. variance.
2. Factitious preemptive uses.
3. Scattered service areas, overlapp'g

CC. All land devmt is scattered, (until we reform that process). Wtr law shd allow detachment of wtr from lands, bcs now when reach lim. of wtr supply, scatter is frozen, no regrouping possible.

DD. All wtr devmts now involve use of ground storage. Run afoul :- of rip. law, prohibiting exports etc.

EE. "Claim-stretching" diversion.

77. Everyone gets a little shot of wtr in the spring. Thus this excess wtr is tied up so those w. greatest up can't store it to provide selves [illegible] full season supply.

This is probly greater barrier than cost of Terminus

G.G. Concept of rent, law not facile with. "If I got it for nothing, I don't need to make any money with it."

Ec. of wtr, says ct. in effect, is repugnant to manners & morals of Kwh hrs. so ck

FK will import over 1m afy

Enough to put 400,000 new acres into production.

If all devoted to oranges, peaches, plums, & walnuts, wd. multiply these acreages

1958 acreages in Calif: bearing

Clings	46,000
Freestones	36,000
~~Walnuts~~	~~110,000~~
Navels	65,000
Valencias	90,000
Plums	21,000

Σ ~~368,000~~ 258,000 can triple this by adding 500,000 acres.

Of course much will go to alf & ctn, even pasture. But these are higher yieldg crops in the area. Enormous new lands opened up, supplied w. wtr. Will be a wonder if don't overexpand. Pressure to pay for new wtr supply facilities will do it. Alf. can't pay for expensive wtr, even as subsidized as it is.

September 29, 1961

Professor L. M. Hartman
Colorado State University
Ft. Collins, Colorado

Dear Professor Hartman:

I know of precious little previous work along your lines, although in 1943 the Nat. Res. Planning Board "State Water Law" bulletin described this as the most important avenue for future research. I assume you know this Bulletin, which contains good material.

Generally compensation is not employed. Rather, injured parties are given a veto power over transfers which they can sell for what it will bring. You can imagine the resulting mess, which virtually precludes any transfers. For the California law see Water Code, Chapter 10, Paragraph 1706. This is a prime reason transfers occur so seldom.

Effects on third parties usually occur via ground water, so ground water law is of the essence. In southern California that blocks almost any transfer of surface water, since the underflow ties the surface to the ground water and correlative law reserves ground water for overlying owners. You might switch some water around in a small area, but never outside of the "ground water basin" or watershed of origin (both nebulous terms.)

You can do a lot better by buying land and pumping ground water than you can by trying to establish an appropriative right these days to surface water. No one can stop you from pumping, and you can increase your use until there is an adjudication, at which time your history of use will determine your share for the future.

Stevens v. Oakdale I.D., 13 California (2d) 343, establishes that you acquire no appropriative right in waste waters.

There is much debate on ground water in the California Water Plan, which would involve storing water under some lands for use elsewhere. Holsinger has an article on this in Jnl. of Am. Water Works Assoc., 47, 374 (1955). Generally you can't store water in one watershed or basin for use in another -- e.g. the Lindsay-Strathmore problem. Frank Clendenen, Prof. of Civil Engineering at Berkeley, is a young enthusiast for "conjuctive use" of ground and surface reservoirs and by this time I hope has gotten around to some thought for the legal problems involved.

Here are some relevant cases: Burr v. Maclay Rancho, 154 Cal 428. Miller v. Bay Cities Water Company, 157 Cal 256. Surface appropriations were blocked to preserve ground waters. Also, write the California Water Rights Board for their Alameda Creek Decision, which goes into this problem extensively.

Generally, once you get water out of its natural channel it becomes much more flexible. There are rights to return flows in natural channels only.

The Provo River case should be interesting, where diversions at high elevations were allowed later, because return flows were established.

Wells Hutchins has a U.S.D.A. Tech Bul 439 on return flows, but he never shows any thought for the economic transfer problem.

California has the Court Reference and Adjudication procedures that give you simultaneous solutions for whole streams, or aspire to. These procedures may hold the germ of reconciling many claims simultaneously.

I hope these stray thoughts may be useful. Be glad to help with more specific questions.

Sincerely,

Mason Gaffney
Professor

Prestige Onion Skin

cc. John V. Krutilla

P.S. There is also a discussion of return flows in Vol. 3 of the 1950 W.R.P. Commission Report.