Water Rights

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Water Rights

Who has the right to California's water? The farmers? The people? Nature?

North or South? Water has become a very controversial issue in California As Mark Twain put it, "Whisky's for drinking, water's for fighting about." And we do California's history is filled with disputes over water, and the battle lines continue to be drawn In the midst of what looks to be a severe water shortage, the fight for water will continue to get much more intense The future does not look much better; a limited supply of water and an unlimited demand makes the battle over water rights a war

Quick Facts on California's Water

More than 100 million acre-feet of the rain and snow received soaks into the ground, evaporates, or is used by native vegetation. That leaves about 71 million acre-feet of usable surface water Of that water
* 36% flows out to the ocean
* 28% is legally committed to wild and scenic rivers and San Francisco Bay- Delta outflow
* 28% is used by agriculture
* 7% is used by cities and industry

* An acre-foot of water is about 326,000 gallons
* One acre-foot of water is enough to meet the needs of two typical families for a year
* Landscaping accounts for about half the water Californians use at home
* Showers account for another 18%, while toilets use about 20%
* About 66,000 acre-feet of water were voluntarily provided by State Water Project and Central Valley Project contractors to assist migrating salmon this year
* Central Valley residents uses up to 300 gallons of water a day, while some on the Central Coast use as little as 50
* California will be chronically short of water by 2010, unless steps are taken now to improve our water supply system
(Water Facts 2001)
Basic Water Rights
"The riparian doctrine guaranteed to the owner of land bordering a river the full flow of the river, less only a reasonable amount taken by those upstream to satisfy domestic needs and to water livestock. An owner's right was strictly usufructuary- that is, he had a right to use the water, but he did not own the stream itself. Most important, however, he had a right to the full flow, undiminished in either quantity or quality, and he was enjoined from impairing the similar right of other riparians. Use was not necessary to create his right, nor did nonuse terminate it. Location alone was paramount, and the water right simply resided in the ownership of the land." (Hundley, 1975)

There are two basic types of water rights- riparian and appropriative. In order to have riparian rights, "your property must, in general, abut or be adjacent to a stream or one of its tributaries." (albietz.com) Those who have riparian rights are called riparian proprietors; they are those who own the land bounding upon a water course. Lands have riparian status are determined by the following three criteria: they must be contiguous to the stream, the right extends only to the smallest tract held under one title in the chain title, and the land must be in the watershed of the stream (albietz). The riparian owner can only use the amount of water he or she needs. In other words, the riparian owner cannot waste any water. Riparian rights were adopted in California as part of the English Common Law in 1850 (California entered statehood). (Carpenter, et al. 2001) At that time, miner's were using appropriative water rights. Water conflicts between users were resolved by the riparian users only using the quantity of water that is reasonably needed to make beneficial use of the water. Again, no wasting any of our precious water.

The second basic right to water is the appropriative right." An appropriative water right is a right to use (appropriate) water, whether by direct diversion or storage."
An appropriative right is the public use of water (municipal) or non-overlying uses. In groundwater appropriations, the "first in time, first in right" priority system applies. Appropriative users are allowed to use the surplus water after the overlying user is satisfied with his or her water use. The elements for appropriation are as follows:

- User must have intent to use water, diversion or control of the water, reasonable and beneficial use of the water-as described by the California Constitution, and priority of appropriation. To get appropriated water, the user must get a permit by the State Water Resources Control Board. Priority for the user is based on the date the permit was issued.
- Appropriated water can be sold or transferred. Unlike riparian water rights, appropriative water can be diverted.
- Appropriative rights were given statutory recognition in 1872, 22 years after California was granted statehood (albietz).

There are several other types of water rights used to determine who gets what water:

- A reserved right is water rights held by the US government created by withdrawal of public lands from entry. The right to divert as much water as is necessary to serve the purposes for which the land was withdrawn. This right supercedes all state laws/rights on water (Carpenter).
- Overlying rights refer to groundwater rights. All property owners above a common water spot possess a mutual right to the reasonable and beneficial use of groundwater resource on the land over the water spot (Groundwater Rights in California 2000).
- Pueblo rights were a water right possessed by a municipality which is entitled to the beneficial use of all needed, naturally occurring surface and groundwater of the original pueblo watershed. Pueblo rights are discussed later.

A final right to water is
called prescriptive rights Prescriptive rights are gained by trespass or unauthorized taking
that can yield a title because it was allowed to continue longer than the five year stature of
limitations Prescriptive rights can only be obtained against private entities (Groundwater
Rights) These four other water rights have been used to help solve and even start many
of California's water battles

Water Battles

"It is hereby declared that because of the conditions prevailing in this state the general welfare
requires that the water recourses of the State be put to beneficial use to the fullest extent of which they are
capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and
that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use
thereof in the interest of the people and the public welfare." (California Constitution, Article XIV)

Before California was California, it was under Mexico's rule Those who had
property adjacent (riparian) to water has the right to its use. The Mexican government
granted rights to owners when there was no private riparian owner in the area. These
were referred to as Pueblo Rights When California seceded from Mexico in 1848, the
water rights were preserved (Dunning, Harrison 1982). In 1949, the miners began to
arrive, and they needed water for mining Water was treated like their gold The first
person to establish control over a mining site or water area had the rights. They posted a
notice that listed the amount of water claimed (miner's inches), the means of diversion, the
date of the claim, the place and the purpose, and the name of the holder It was termed,
"first in time, first in right." This was the beginning of appropriative rights to water.
Rights based on the appropriation of water on public lands were recognized by the Supreme Court in 1855, after the case of Irwin v. Phillips (Dunning).

Mining began to diminish in California, and agriculture started to grow rapidly. The claims to riparian water increased. The non-riparian farmers who required water to be transported to their land increased the demand for appropriative rights. The state recognized both riparian and appropriative rights, so many conflicts arose (Carpenter)

One of the first significant cases between riparian and appropriative rights was Lux v. Haggin. Henry Miller and Charles Lux purchased riparian land for raising cattle. Upstream was the land of James Haggin and Lloyd Tevis, two farmers who needed water to irrigate their land. In 1886, the California Supreme Court made a decision that reaffirmed the "legal preeminence of riparian rights in situations where a patent to riparian land predates full use of an appropriative right" (Water Education Foundation)

The first legislative attack occurred due to the Lux v. Haggin verdict. James Haggin and William Carr funded and organized an anti-riparian movement. They recruited support from petty speculators who hoped to benefit from the rising land prices irrigation would bring. They declared that riparian rights hindered economic growth and prosperity. This pressured the governor to call a special session of legislature in 1887. The legislation protected the riparian rights. To meet the demands of those who need appropriative rights to irrigate water, the legislators adopted the Wright Act. This allowed the formation of irrigation districts (Miller, Catherine 1993)

In an attempt at a more orderly method of authorizing use of unappropriated waters the California legislature approved the Water Commission Act of 1913. It established a permit process to control surface water appropriations. The Act created the
State Water Resources Control Board and authorized it to administer the permit process. The permit process is limited to surface waters including the underflow of surface streams and subterranean streams flowing through known and definite channels. Ground water in general is not included. Permits to pump and use ground water are still not required by law in most areas of California.

On November 6, 1928, the California legislature placed a constitutional amendment on the state ballot. The amendment required that all use of water including riparian use must be "reasonable and beneficial" to the needs of water users, and it established a standard allowing more equitable resolution of water use conflicts. Since the turn of the century, demands for large scale water resource planning by public agencies have led to a decreased emphasis on the development of private water rights. Municipal ownership of water became a commonplace as San Francisco's Hetch Hetchy and Los Angeles' Owens valley projects were completed to serve water to growing populations.

Farmer's Water  
"This preserves the farmers' position at basically the top of the water chain." (Robert E Dougherty)

Farmer's water rights have always been an issue in California. A landmark California Supreme Court case brought up the question whose right to water? On August 22, 2000, farmers won their rights to water in the Supreme Court. "The California Supreme Court has ruled that farmers in the state cannot be forced to give up their water rights just because the state says the water is needed by cities or wildlife" (Lazaroff 2001). The case began several years ago when seven alfalfa and dairy farmers refused to sign an agreement known as the Mojave water pact. According to the pact, water would
be apportioned among farmers and the various cities in the Mojave Valley's groundwater basin. The agreement would also require farmers to relinquish part of their water rights during a five-year period. The farmers claimed the Mojave water pact was a violation of the state's "priority system" for establishing water rights. Under the "priority system" of water rights, users with the older right generally receive priority over those with newer rights. "The priority system has served California well for 150 years and has the flexibility to meet our needs far into the future," stated California Farm Bureau General Counsel, Nancy McDonough (Kranz 2001).

The right to use water is a property right and may be protected against infringement in the same manner as any other property right. Since water rights equal property rights, the farmers have the first priority to water. However, city officials and water agencies claim that water should be used in a manner that benefits the most people. The city and water agencies argued that the state Constitution requires that natural resources benefit the greatest number of users that they can support. The court ruled that their argument ignores "the requirement that this use be subject to the rights of those with lawful priority to the water" (Lazaroff). Justice Ming Chin wrote, "The farmers have the right to pump water from the ground underneath their respective lands for use on their lands. Those rights overlie the rights of later claimants to the water. In the event of water supply shortages, overlying users have priority over appropriative users:"

Southern California

About one-fifth of the Colorado River's annual flow goes to the Imperial Irrigation District (IID), which irrigates nearly 200,000 hectares of cropland. A one hundred year
old deal with the federal government gives the IID this water for free. Farmers within the district pay only for the transportation of the water, one cent per cubic meter. A few hundred miles west in Los Angeles, the Metropolitan Water District (MWD), which is the wholesaler for about 16 million southern Californians, pays up to 16 cents per cubic meter (Water Education Foundation).

California has been using about fourteen percent more Colorado River water than a 1922 interstate agreement entitles it to. The US government has put the state on notice that it must find away to live within it's allotted share. Any cutbacks in water usage would come out of urban supplies, since the Imperial Valley farmers have seniority to water rights (Water Education Foundation).

In 1998, IID managed to strike up a deal with San Diego. The irrigation district agreed to transfer up to 246.8 million cubic meters of water a year to San Diego at an initial price of 20-27 cents per cubic meter. San Diego residents will benefit from lower costs and greater reliability of future supplies. IID will receive substantial profits, and if the efficiency of the transferred water increases, farmers will not need to cut down so much in crop production (Water Education Foundation).

On an average day in the developing world, about 150,000 join the urban lifestyle. By 2025, nearly 5 billion people are expected to live in cities, about twice as many as in 1995. This means that the share of water going to these urban activities will more than double from 13% of total water use to 27% between 1995 and 2025 (Water Facts).

Nature

Much of the change (in the environment) has been made by water. Miners have washed away whole mountains in search of ore, and farmers have made the desert sprout peaches. ("Water in California High Tide, Arid Land")
Mono Lake is the oldest lake in North America by almost one million years. It's salty water supports a small, delicate balance of plants and animals. For fifty-five years, Los Angeles has been drawing water from the Mono Lake Basin. The state says that the diversion has damaged Mono Lake's ecosystem and that Los Angeles can no longer take the water until the environment begins to recover. In the 1980's, Mono Lake's brine shrimp population had a ten percent success rate in their hatching. That led to the decimation of the California Gull (ninety-five percent of the state's population nests there). They feed off those shrimp; and without the shrimp, many of the gull's did not survive. Environmentalists began lawsuits to prevent Los Angeles from taking the water. Now, Los Angeles can only take one-third of the water it used to from Mono Lake, and not until the lake rises eighteen feet. That will take almost twenty years ("Significant Source of Water for LA Will Be Cut Off")

Recently, the California House and Resource Committee passed a bill that proponents deem will solve many of California's water concerns. It is called the Western Water Enhancement Security Act. The bill would help restore the water ecosystem and enhance the reliability and quality of water in California and 17 other western states. Environmentalists oppose the bill saying it could be harmful to the Delta Bay and the Central Valley. If the bill is approved, Steve Evans, conservation director for the statewide group Friends of the River, said, "The promise of restoring the ecosystems of the Sacramento-San Joaquin Delta and San Francisco Bay will be all but abandoned if this bill is approved" Environmentalists say there are fine goals within the bill, but they are not compatible with restoring the environment. (Meusel, Colin 2001)
What we need is a plan that everyone can agree on. However, it does not seem possible.

We should save our environment, but others need water. Farmers are allowed water rights, but what about those people in Southern California? Water is a dilemma for California, and the battle over water rights are far from over. In fact, they might have just started. The question still remains whose right to water?

Works Cited


Miller, Catherine M 1993 "Flooding the Courtrooms Law and Water in the Far West." University of Nebraska Press, 1993


