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Hybrid Systems: Outline

Harrison C. Dunning

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OUTLINE

"HYBRID SYSTEMS"

BY

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WATER RESOURCES ALLOCATION: LAWS AND EMERGING ISSUES

THE UNIVERSITY OF COLORADO SCHOOL OF LAW

I. INTRODUCTION

A. Review of the principal differences between riparian and appropriative water rights

1. Need for use
2. Place of use - watershed protection
3. Quantification - water subject to the right
4. Priorities

B. To what extent do these differences represent fundamental incompatibility between the two types of water rights?

II. BIRTH OF A HYBRID JURISDICTION: HOW CALIFORNIA DEVELOPED THE "CALIFORNIA DOCTRINE"

A. Irwin v. Phillips, 5 Cal. 140 (1855): appropriative rights are recognized in a way which does not preclude riparian rights

B. Crandall v. Woods, 8 Cal. 136 (1857): an early recognition of riparian rights

C. Lux v. Haggin, 69 Cal. 255, 10 P. 674 (1886)

1. The political context of this "battle of the giants" over Kern River water
2. By a 4-3 decision, the Supreme Court of California again recognizes riparian rights
3. The Lux method for establishing priorities where riparian and appropriative rights exist on the same watercourse
4. The allocation of Kern River water after Lux v. Haggin
 - a. The Miller-Haggin Agreement
 - b. The Shaw Decree
 - c. The Kern River Water Rights and Storage Agreement

- D. Katz v. Walkinshaw, 141 Cal. 116, 74 P. 766 (1903)
 - 1. The hybrid approach applied to groundwater
 - 2. Priorities where overlying and non-overlying rights exist for a particular aquifer

III. TWENTIETH CENTURY SWINGS OF THE PENDULUM FOR THE RIPARIAN RIGHT IN CALIFORNIA

- A. The Water Commission Act of 1913: an (unsuccessful) frontal assault on the riparian right by the California Legislature
 - 1. Background: the report of the Conservation Commission
 - 2. The statutory provisions
 - 3. Herminghaus v. Southern California Edison Company, 200 Cal. 81, 252 P. 607 (1926): the limitation of water used for the irrigation of uncultivated areas to no more than two and one-half acre feet per acre per year held to be beyond the police power of the state
 - a. The Herminghaus decision provokes a state constitutional amendment in 1928 which subjects riparians to a reasonableness standard in disputes with appropriators
 - 4. Tulare Irrigation District v. Lindsay-Strathmore Irrigation District, 3 Cal. 2d 489, 45 P. 2d 972 (1935): the "Oregon Solution" struck down on the basis of the 1928 constitutional amendment
- B. Joslin v. Marin Municipal Water District, 67 Cal. 2d 132, 60 Cal. Rptr. 377, 429 P. 2d 889 (1967): a judicial attack on the riparian right?
- C. Statements of Water Diversion and Use: an ineffective attempt to develop an inventory of riparian uses
- D. In re Waters of Long Valley Creek System, 25 Cal. 3d 339, 158 Cal. Rptr. 351, 599 P. 2d 656 (1979)
 - 1. The statutory adjudication system
 - 2. The treatment of unexercised riparian rights in statutory adjudications

IV. EVALUATION OF THE HYBRID SYSTEM IN CALIFORNIA

- A. Providing certainty and stability in water rights: riparian and appropriative rights compared
- B. Providing for watershed protection
 - 1. By riparian rights: the Owens Valley example
 - 2. By area of origin protection statutes
 - 3. By the public trust doctrine
- C. Stream settlements, by agreement or by adjudication: beyond the hybrid system?

V. DEVELOPMENTS OUTSIDE OF CALIFORNIA: HAS THE CALIFORNIA "DOCTRINE" BECOME THE CALIFORNIA "RULE"?