



# **A BASIC OVERVIEW OF CALIFORNIA WATER LAW**

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# Water Law



- Who/What Gets the Water?
- Under What Conditions?
- Water Law is Confusing
- Frequent Exceptions to the Rules
- Goal = Introduction. Basic Understanding

# Beneficial and Reasonable Use Limitation



All Water Use in CA Must be for Beneficial Purposes and by Reasonable Method of Use

# CA Examples of Unreasonable Methods of Use and Non-Beneficial Purposes of Use

- Use of Full Flow of Stream to Maintain Accretion (Sediment Buildup) to Downstream Riparian Land -- *Gin Chow v. Santa Barbara* (1933);
- Flooding of Fields to Kill Gophers -- *Tulare Irr. Dist. v. Lindsay-Strathmore Irr. Dist.* (1935)



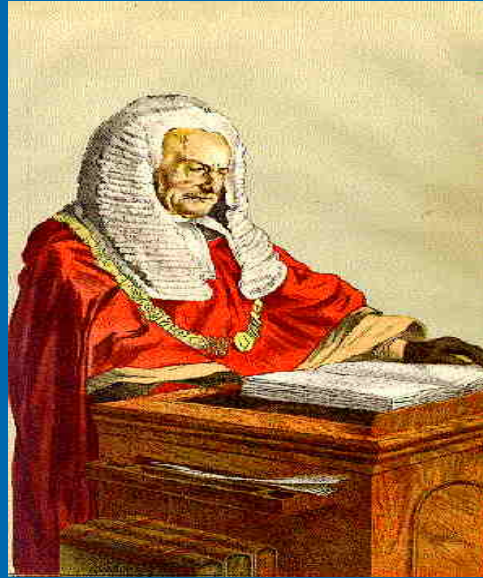
# Three Approaches to Water Law: the Old, the New, and the Ugly



- Riparianism (The Old): Land with Water = Riparian Water Rights
- Prior Appropriation (The New): Land is Irrelevant – First-in-Time is First-in-Right
- Hybrid (The Ugly): Riparianism and Prior Appropriation

# Riparianism

## Origins in English Common Law



- Riparian Right - the Right to Divert Water from a Water Body Adjoining Land for Use on Adjoining Land
- The Right is an Incident of the Rights to the Land (i.e., Part of the “Bundle” of Rights)



# Riparian Rights

- Appurtenant to Land; Right to Use Water from Adjoining Water Body
- Traditionally Must be on Riparian Land (Exceptions Apply)
- Reasonable Use
- Rights Correlative (i.e., Riparians Share the Supply)
- Right May be Inchoate (i.e., Dormant) - Not Dependent on Historical Use

# Prior Appropriation



- Developed in Western Mining Camps Because Riparianism Was Not Well-Suited for Miners (Miners Were Largely Trespassers on Public Lands)
- Water Disputes Rapidly Escalate
- Perfection of Right Through Posting Notice at Place of Diversion and Commencing Diversion



# Appropriative Rights

- May Apply to Use Off of Riparian Tract
- Defined by Historical Quantity of Use
- Priority Based Upon First-In-Time, First-in-Right
- May be Forfeited (i.e., Lost) by Non-Use
- May Require State Permit
  - California: State Water Resources Control Board
  - Colorado: Division of Water Resources (State Engineer)
  - New Mexico: Office of State Engineer
  - Nevada: Division of Water Resources (State Engineer)

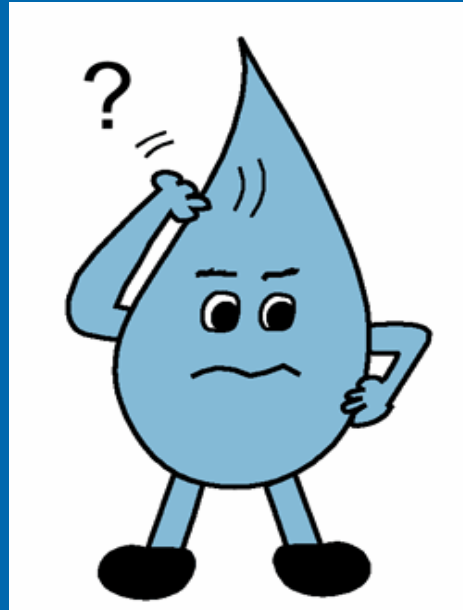
# Riparianism v. Prior Appropriation



- Conflict Between Miners (Appropriators) and Landowners Who Possessed Land Under Mexican Land Grants (Riparians)
- California Supreme Court Addresses the Conflict in *Lux v. Haggin* (1886)

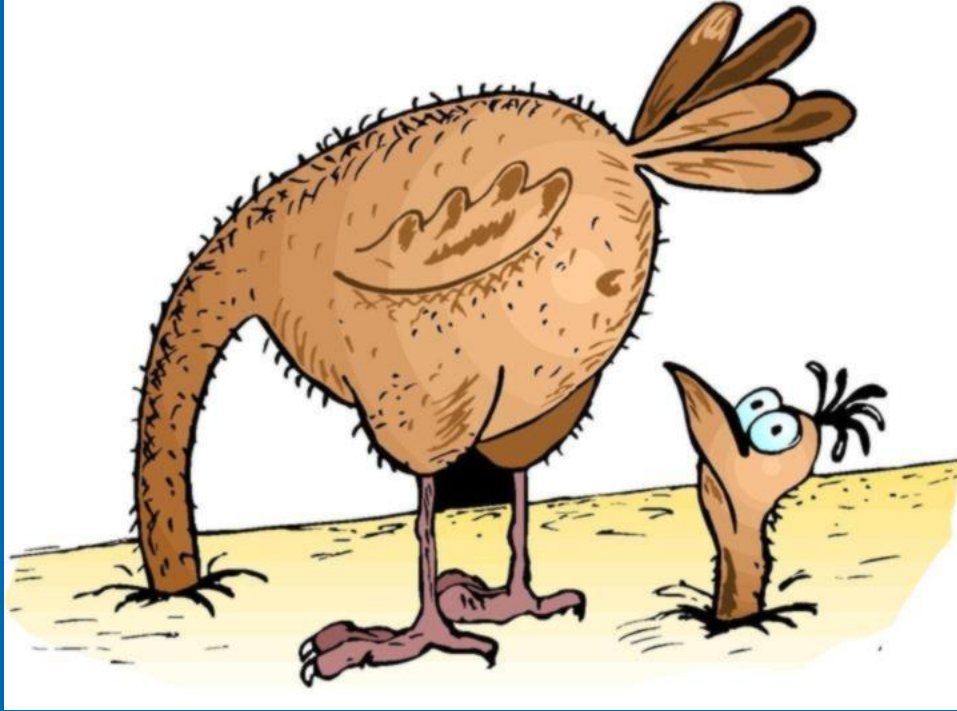
# And the Winner Is . . .

## We Choose Both!!



- Court Reasons that California's Adoption of the English Common Law Included Adoption of the Riparian Doctrine
- However, Court also Acknowledges Prior Appropriation but Renders Appropriative Rights "Junior" in Priority to Riparian Rights

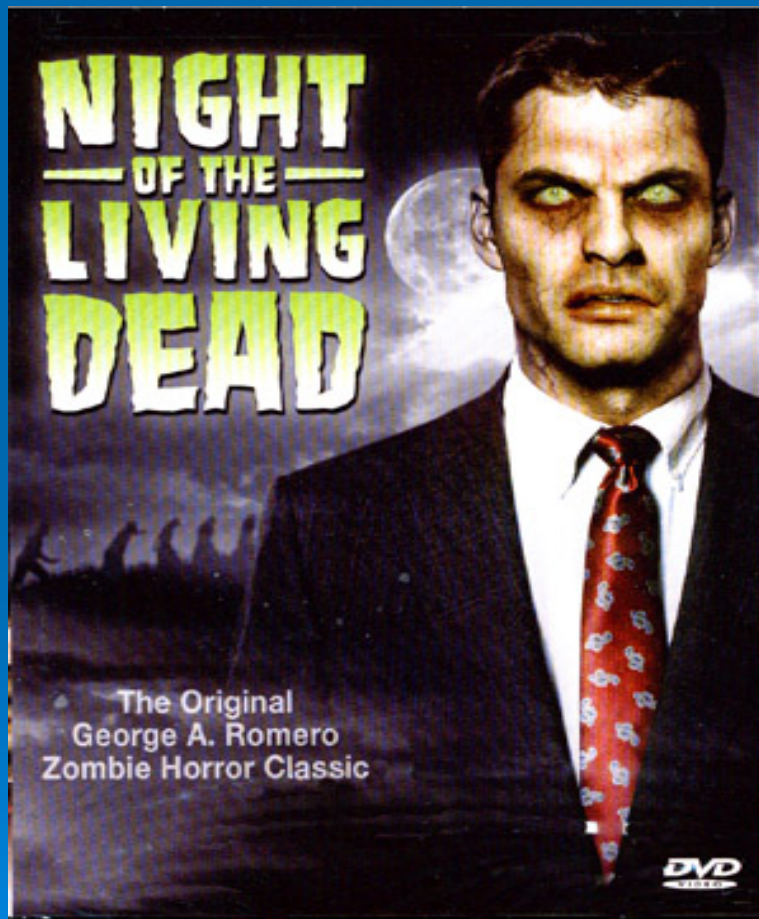
# California Water Law



- Riparian Rights are First Priority Rights
- Appropriative Rights are Second Priority Rights
- Surface Water Regulated by the State
- Percolating Groundwater Regulated by Local/Judicial Management if Regulated

# Uncertainty fostered in California by riparian/overlying rights

Dormant riparian rights are a  
principal source of uncertainty  
in California – *In re Long Valley*





# What About Groundwater?



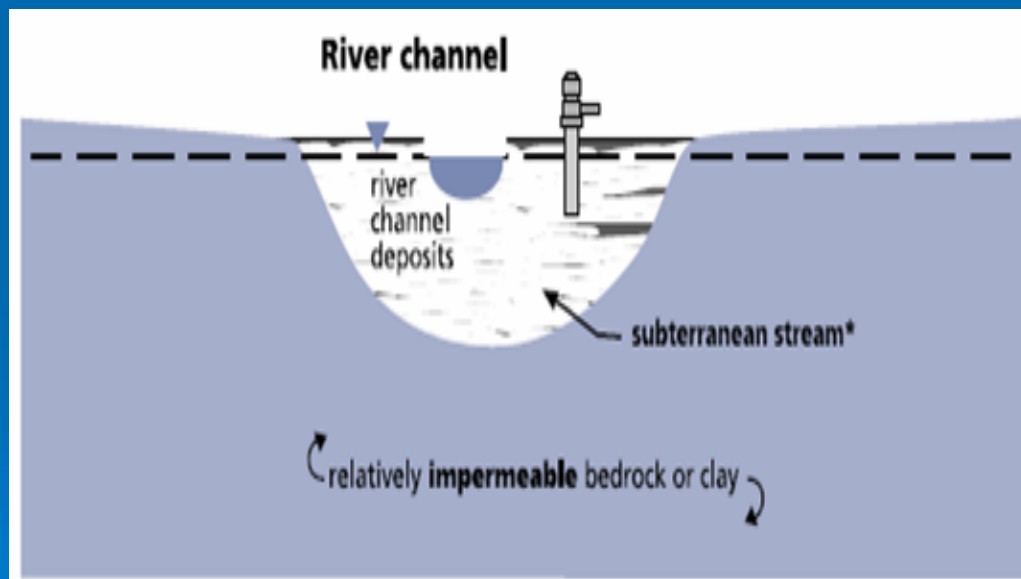
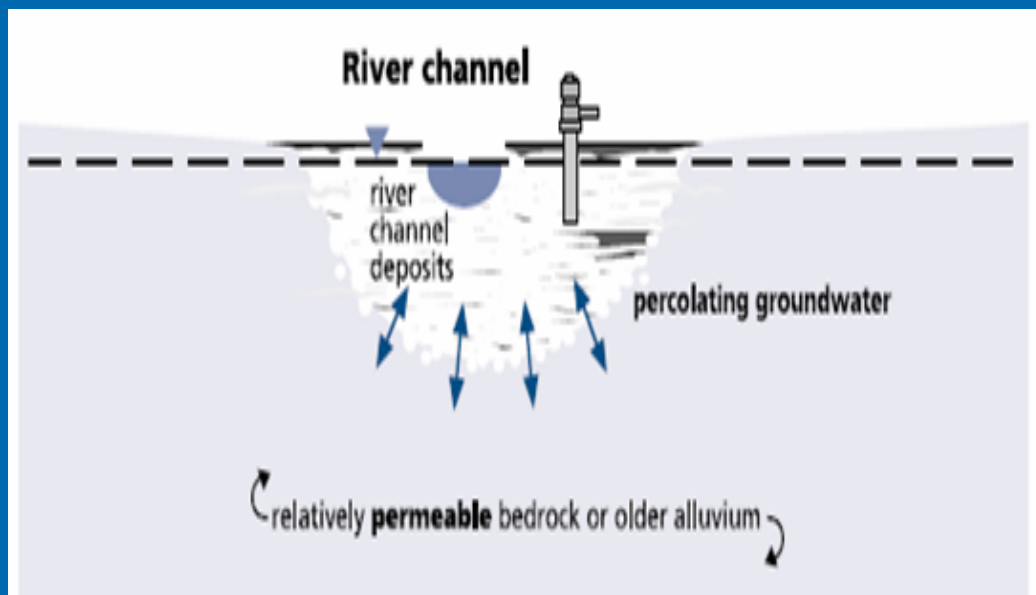
Similar Laws; Different  
Management Regime



# California

## Percolating Groundwater v. Subterranean Stream

- Percolating Groundwater: Vagrant, Wandering Drops Moving By Gravity in Any and Every Direction Along the Path of Least Resistance – *City of Los Angeles v. Hunter* (1909)
- Subterranean Stream (“Groundwater Flowing in Known and Definite Channel”)
  - Subsurface Channel Present;
  - Channel Possess Relatively Impermeable Beds and Banks
  - Course of Channel Capable of Being Known with Reasonable Inference; and
  - Groundwater is Flowing in the Channel
- Beds and Banks Test - *Los Angeles v. Pomeroy* (1899)



# California

## Overlying Groundwater Rights: Similar to Riparian Rights



- Overlying Rights to a Groundwater Aquifer Are Analogous to Riparian Rights to a Surface Water Body
- Same Legal Characteristics Apply to Both Forms of Right
- Appropriate Rights Available for Groundwater That is Surplus to the Needs of Overlying Owners

# Who Manages?





- State (SWRCB – Surface Water)
- Local Public Agency
- Courts, Adjudications, and Watermasters
- Joint Power Agency
- AB 3030 Groundwater Management Plans
- Voluntary Coalitions

# Recap

- All Use Must be for Beneficial Purposes and by Reasonable Means
- Two Basic Forms of Water Rights: Riparian Rights (Senior) and Appropriative Rights (Junior)
- Surface Water and Groundwater (Percolating) are Governed by Different Legal Regimes
- Overlying Rights to Groundwater Similar to Riparian Rights to Surface Water
- Many Forms of Management

# California

## The Water Rights Table

Source →	Subterranean Stream	Percolating Groundwater
Type of Right ↓		
Riparian Or Overlying Owner		
Appropriator		



# Lot's of Other Issues

- Overdraft
- Endangered Species Act
- Public Trust Doctrine
- Federal Reserved Rights
- Groundwater Storage and Conjunctive Use
- Water Transfers
- Water Supply Planning (UWMP, WSA & WSV, etc.)

QUESTIONS???