

Water Rights

Basic Components

- Water rights are “use” rights—not a right to the body of water itself
- Purpose: Increase economic efficiency of water use, avoid tragedy of the commons and user conflict
- Structure of water rights incorporated into state constitutions and water codes
- Riparian, prior appropriation, hybrid states (CA)
- Four dimensions of water rights:
 - 1) Acquisition: How do you acquire the water?
 - 2) Enjoyment: What restrictions are on the use of water?
 - 3) Loss: Under what conditions are rights lost?
 - 4) Transfer: Where, when, and to whom can water be sold?

Administrative Implementation

- Water rights began mostly based in case law, then statutes
- Most states have a permitting system for water rights (in CA, Water Commission Act of 1914 established permitting system)
- In California, permits given by State Water Resources Control Board, Division of Water Rights.

Riparian Rights

History

- Mostly in humid east
- Based on English common law principles

Acquisition

- Water available to riparian landowners; contiguous to water
- Usually limited to land within a watershed

Enjoyment

- “Natural” as potentially superior to “artificial uses”
- Requires reasonable use: Enjoyment cannot injure other riparians; beneficial uses part of determination
- Correlative rights; proportional reductions if needed

Loss

- In most states, permitted water must be used in a reasonable time or rights are forfeited
- Generally stricter use requirements in appropriation states
- Rights can be lost through “adverse prescription”—adverse use of water for statutorily defined period, that goes unchallenged

Transfer

- Different rules for land sales; often conveyances incorporated in terms of a particular exchange



Prior Appropriation Rights

History

- Arid West; principles of Jeffersonian democracy
- Used in mining to move water to places with demand

Acquisition

- “First in time, first in right”: Junior and senior appropriators
- Requires *perfection*: Intent (permit application); diversion (reasonable time); beneficial use

Enjoyment

- Reasonable and beneficial uses
- No harm to senior or riparian
- Beneficial uses include recreation, wildlife; must be “reasonably efficient”
- No requirement that a senior right be more economically profitable than junior right

Transfer

- Most states allow sale, lease, exchange of appropriated rights
- “County of origin” legislation in CA

Loss

- Forfeiture for non-use

Notorious CA Water Rights Cases I

Lux vs. Haggin (1886)

- Miller-Lux company held Kern River riparian land and used water for cattle grazing (downstream user)
- Haggin ran the Kern Valley Land and Water Company, owned 400,000 acres of upstream land and diverted a lot of water for off-stream irrigation; appropriation
- Miller-Lux sues Haggin when drought combined with diversions dries Kern River and cattle die
- CA Supreme Court rules that prior riparian rights trump subsequent appropriations; subsequent appropriations cannot injure pre-existing riparian rights, but appropriators have senior rights if they precede purchase of riparian property
- Didn't stop Lux and Haggin; they negotiated a deal afterwards
- Lux vs. Haggin did not require riparians to make beneficial use; 1928 amendment to California constitution requires reasonable use by riparians

Notorious CA Water Rights Cases II

National Audubon Society vs. Superior Court of Alpine County (1983)

- Mono Lake has no outlet; extremely saline; major flyway stop
- 1941: L.A. extends Owens valley system into Mono Basin; lake drops 1ft/year
- “Mono Lake Committee” created by UC Davis biology graduate students; environmental group
- Environmentalists sue L.A., saying diversions violate “public trust” doctrine—state has obligation to protect water for public uses (rooted in navigable waters idea)
- CA Supreme Court says water uses cannot harm public interests, and tells LA and SWRCB to renegotiate water diversions
- L.A. delays implementation; leads *California Trout vs. SWRCB(1989)*: SWRCB must adjust L.A. water rights to account for fisheries harm (section 5937 of Cal Fish and Game Code; dam owners obligated to maintain fisheries below dam in good condition)
- In meantime, injunction against diversions until lake reached 6,337 ft
- SWRCB final decision reduces L.A. annual diversions from 100k acre/ft to 30k acre/ft to maintain level at 6,392 ft —prior appropriation loses to public trust

Independent Water Districts

Origins

- Authorized by general legislation like Wright Act 1877
- Created by specific piece of enabling legislation
- Many pieces of general leg (39?); hundreds of specific districts
- Purpose: Provide water infrastructure public goods; own water rights; purchase and in some cases condemn land and water rights
- Generally, the water districts are the “owners” of the rights, and users contract

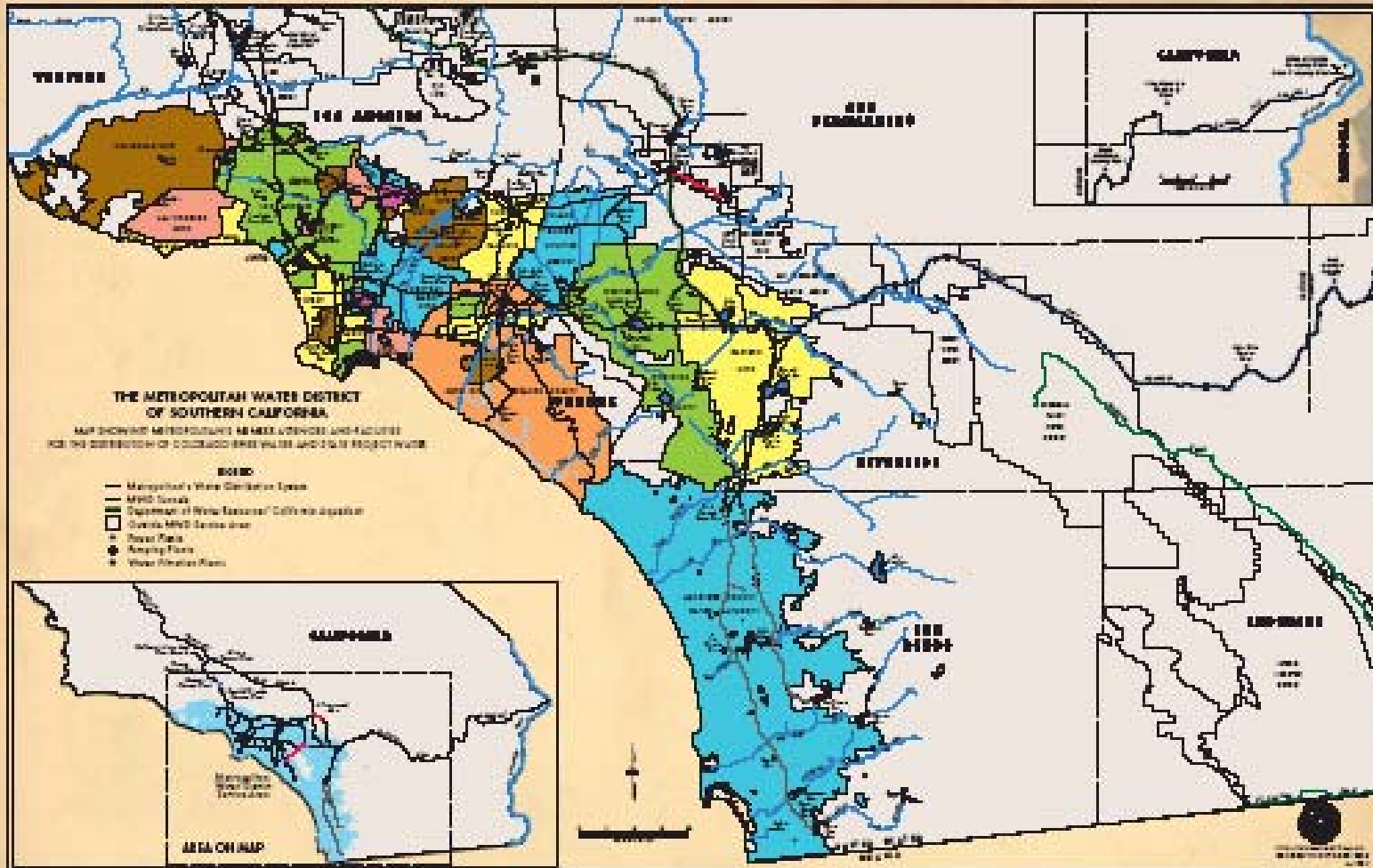
Irrigation Districts

- Formed by petition of landowners within irrigation district area to County Board of Supervisors
- Board of Directors votes on issues; at-large or district elections
- All landowners can vote
- Imperial Irrigation District (1911)
 1. Largest irrigation district in country (500,000 acres); largest CA water user
 2. Water (3.1 maf annually) primarily from All-American canal; also power
 3. 31% of crop acreage is alfalfa—cattle feed

Metropolitan Water District of Southern California

- Water wholesaler for 250 SoCal communities
- Legislative authorization in the 1927 Metropolitan Water District Act
- Basic motivation was cooperation between municipalities to fund construction of Colorado River Aqueduct (Parker Dam/Lake Havasu)
- Approved through elections within each public agency involved in creation; e.g. Los Angeles votes to join MWD
- Board of directors appointed by member agencies; no election of board members
- Directors voting shares depend assessed property values; L.A. was biggest; now San Diego?
- San Diego currently challenging constitutionality of MWD voting scheme, saying it should reflect water purchases not property values
- Contracts for water from State Water Project and CO River
- Revenues come from selling water, taxes from member agencies

EXECUTIVE SUMMARY



Other Water Supply Organizations

- Municipal utilities, private and public
- Private water supply, like mutual water and ditch companies
- In general, think of all these districts as buying water from some particular source, and then distributing to some users for a particular price
- The self-interest of each district determines their decisions on water supply issues: reliable, clean, and cheap water with enough reserves to weather shortages
- The “portfolio” approach