

# Other Systems for Allocating and Administering Water in Western States

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# Non-Prior Appropriation Water Allocation Systems

- ▶ Riparian doctrine/Regulated riparian
- ▶ Acequia rights
- ▶ Absolute ownership doctrine
- ▶ Reasonable use doctrine
- ▶ Correlative rights doctrine
- ▶ Reserved water rights
- ▶ Equitable apportionment

# Considerations in allocation decisions?

- ▶ What are the key factors that influence choices about how uses of water should be determined?
- ❖ In determining **who** can use water
- ❖ In determining **how much** water?
- ❖ In determining **uses**?
- ❖ In **managing conflicts** between users?
- ❖ In **managing adverse effects** on water sources and water?

# Riparian

- ▶ English common law origin
- ▶ Those with land adjacent to a water source have the right to make a reasonable use of the water
- ▶ A use is unreasonable if it causes harm to another's reasonable use of water from the same source
- ▶ Consideration given to a variety of factors (balancing of interests)
- ▶ Share shortages

# Regulated riparian

- ▶ Statutory system requiring users to obtain a permit authorizing use(s)
- ▶ Specified uses and amounts
- ▶ Use not restricted to riparian lands
- ▶ Limited term (10 or 20 years) with renewal

# Acequia law

- ▶ Spanish customary law applied to use of water for irrigation from shared ditches (acequias)
- ▶ Water available for all landowners located along the ditch as needed
- ▶ Shared responsibility to maintain ditch and manage water
- ▶ Sharing of shortages

# Absolute ownership (ground water)

- ▶ Common law property rights model
- ▶ Provides unlimited right of use of underlying ground water
- ▶ No liability for damage to others
- ▶ Still followed in Texas

# Reasonable use (ground water)

- ▶ Ownership of land includes right to make reasonable use of underlying ground water
- ▶ Uses reasonable if used on overlying land
- ▶ Off-land uses may not harm other users



# Correlative rights (ground water)

- ▶ Users from same aquifer share rights to use of water
- ▶ Uses based on area of overlying land
- ▶ Off-land uses subject to no injury to other on-land users

# Reserved water rights

- ▶ Applied to reservations of federal lands, originally for Indian tribes, and extended to other types of reservations (e.g., national forests)
- ▶ Based on the purpose(s) for which the reservation established that require water to be achieved
- ▶ Appurtenant, non-appropriated water
- ▶ Created at time of reservation and not lost by non-use

# Equitable apportionment

- ▶ Applied to resolve disputes between users of water of an interstate shared water resource (rivers, aquifers)
- ▶ If state to state, decided by U.S. Supreme Court
- ▶ Use allocation principles applicable in states if the same (e.g., if both follow riparian or prior appropriation doctrine)
- ▶ Preserve existing uses

# Permit systems for appropriation

- ▶ Would-be appropriator must apply to state agency (state engineer) for permission to use water
- ▶ Indefinite duration, subject to continued beneficial use
- ▶ Changes of use administratively reviewed to ensure no injury
- ▶ Forfeiture provisions for more than 5 years of non-use

# Public trust doctrine

- ▶ Traditionally intended to ensure protection for uses of waterbodies for navigation, commerce, and fishery (public highways)
- ▶ Considered the state the owner of the beds of navigable waterbodies; no obstructions in beds that would interfere with navigation without permission

# As extended in California

- ▶ *Nat'l Audubon Society v. Superior Court* (1983)  
(Mono Lake case)
- Los Angeles diverting water from tributaries to Mono Lake, a closed basin, resulting in decreases in lake elevation causing dust and wildlife problems
- Cal. Sup. Ct. applied public trust doctrine to conclude that even though diversions authorized by state, could not be continued as before because of harm to public trust values