

CALIFORNIA WATER RIGHTS LAW 101


WATER SUPPLY ADVISORY COMMITTEE
CITY OF SANTA CRUZ
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ROADMAP

- ▶ Some colorful historical background
 - ▶ Types of rights and their major features
 - ▶ Changes to water rights
 - ▶ Relationship to environmental laws
 - ▶ Governance and regulation
 - ▶ City's water rights summary
 - ▶ Policies and problems
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HISTORICAL BACKGROUND

- ▶ Our water laws come from England
- ▶ Contrasting hydrology and climate

SURFACE WATER RIGHTS

Riparian rights

- ▶ Appurtenant to the land
- ▶ Correlative share of the flowing water
- ▶ “Springing” right – continuous use not required*
- ▶ Limited changes – cannot export
- ▶ Donnybrook -- 1926 Herminghaus ruling overruled by 1928 Constitutional amendment

Appropriative Rights

- ▶ Chronological priority
- ▶ Continuous use required
- ▶ Point of diversion, place of use, defined
- ▶ Can use water far from the source (transferable)
- ▶ Basis for development of our State
- ▶ (Think CVP and SWP)

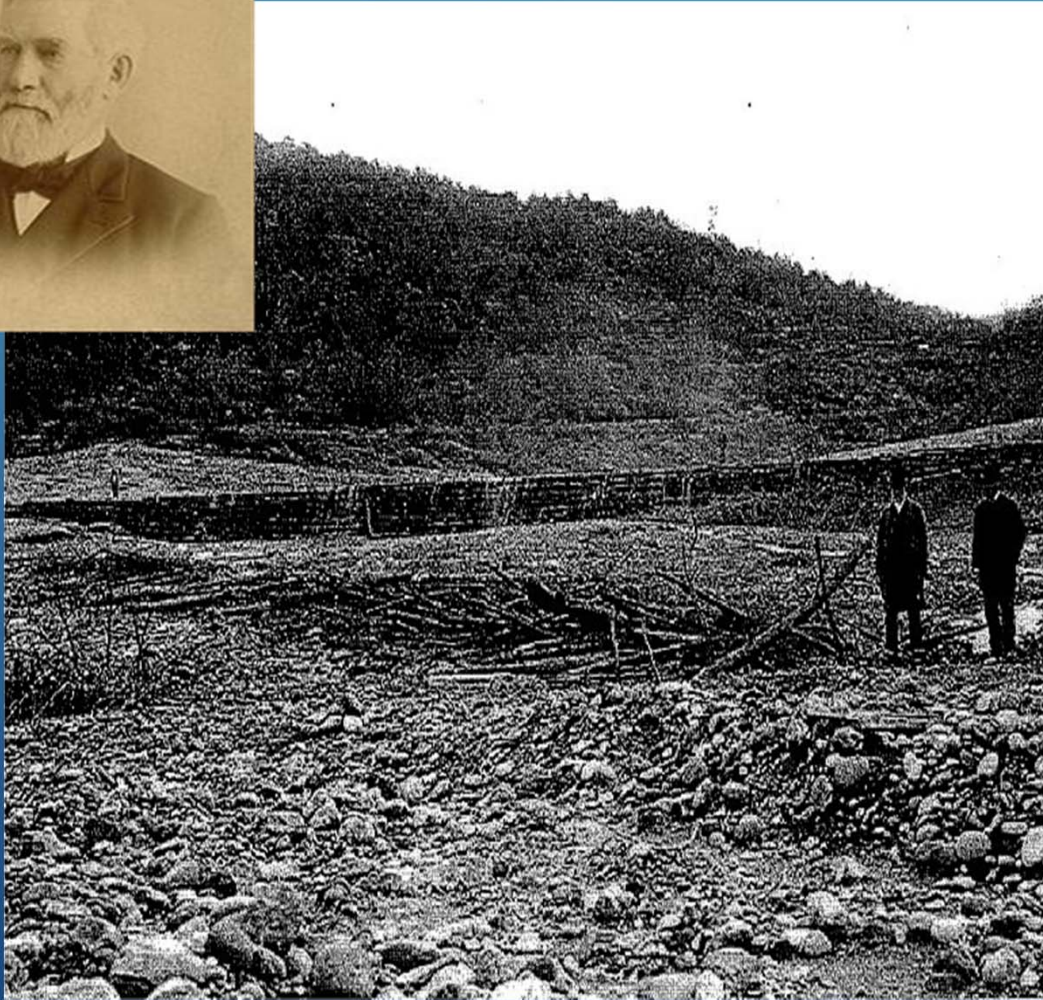
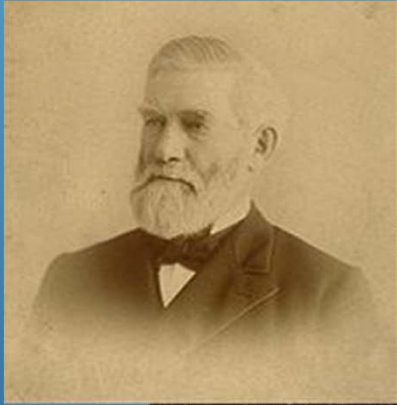
THE GOLD RUSH = EXPLOSIVE CONFLICT



- ▶ Water rights
- ▶ Agricultural vs mining economy
- ▶ Environmental impacts

FEDERAL JUDGE LORENZO SAWYER

WOODRUFF v BLOOMFIELD GRAVEL MINING COMPANY (1884)



- ▶ Incredible fortitude of an individual
- ▶ Ultimately a fatal blow to hydraulic mining
- ▶ One of our earliest environmental rulings that trumped water rights

- ▶ Pre-1914 - just use it **OR** follow Civil Code posting and requirements
- ▶ 1913 legislation - State regulation of surface water
- ▶ Post 1914 - Permits & approvals from State required for new diversions, changes to diversions
- ▶ Recent litigation - SWRCB jurisdiction over pre 1914 water rights defined
- ▶ Contrast - riparian rights

PRE AND POST 1914 APPT'V RIGHTS (SURFACE WATER RIGHTS)

GROUNDWATER

- ▶ 30% - 45% of total state supply
- ▶ Drought conditions have caused overdraft and land subsidence
- ▶ True or percolating ground water versus subterranean water legally treated as surface water



- ▶ Depends on the type of right
- ▶ Limited changes to riparian rights
- ▶ Appropriative rights are far more flexible
 - ▶ Pre-1914
 - ▶ No injury rule
 - ▶ No administrative process; must litigate to challenge
 - ▶ Post-1914
 - ▶ SWRCB change petition process – cost, time and risk
 - ▶ Cannot increase volume, season, or rate; consumptive use req't
 - ▶ Can now also change method of diversion (courtesy of your City); and other conditions (e.g., TUCP)

CHANGES TO WATER LAWS




RECYCLED WATER – WHO OWNS IT?

- ▶ State statute: owner of the wastewater treatment plant
 - ▶ Unless there are contracts to the contrary
- ▶ Decreased river discharge may require SWRCB approval

ENVIRONMENTAL LAWS : WATER LAWS

- ▶ Many environmental laws apply notwithstanding how senior or solid your water right is
- ▶ Examples
 - ▶ CEQA
 - ▶ State and Federal ESA's

GOVERNANCE AND REGULATION

- ▶ Depends on type of right
 - ▶ Riparian – Courts, and limited SWRCB regulation
 - ▶ Pre -1914 appt'v – Courts and limited SWRCB oversight
 - ▶ Post -1914 appt'v – Extensive SWRCB permitting and oversight
 - ▶ Groundwater (true) – Counties (their option); groundwater management plans; and new state requirements
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CITY RIGHTS SUMMARY

- ▶ Pre-1914 coastal streams
- ▶ San Lorenzo River – post 1914 appropriative
 - ▶ Tait
 - ▶ Felton
 - ▶ Newell Creek Reservoir – TUCP
- ▶ Groundwater
- ▶ Notes:
 - ▶ Storage-limited
 - ▶ Water Rights Conformance Project pending



Frederic Remington 1901 - *Fight for the waterhole*

- ▶ Policy issues abound
 - ▶ Reasonable and beneficial use is the common requirement
 - ▶ The seniority system of appt'v rights in times of drought
 - ▶ Inconsistent and burdensome regulatory treatment
- ▶ Persistent problem – tragedy of the commons

POLICY AND ACHILLES TENDONS