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Hybrid Systems: Outline

Harrison C. Dunning

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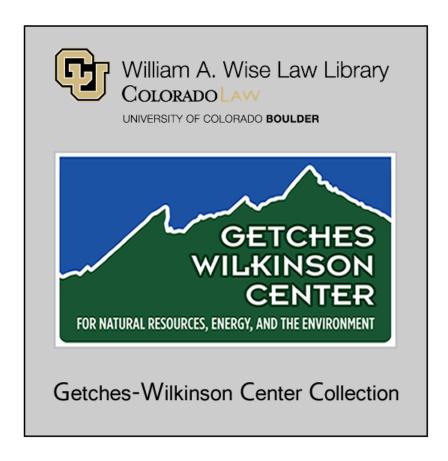
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Citation Information

Dunning, Harrison C., "Hybrid Systems: Outline" (1981). Water Resources Allocation: Laws and Emerging Issues: A Short Course (Summer Conference, June 8-11). 6.

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Harrison C. Dunning, *Hybrid Systems: Outline*, *in* WATER RESOURCES ALLOCATION: LAWS AND EMERGING ISSUES (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1981).

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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. <u>Irwin v. Phillips</u>, 5 Cal. 140 (1855): appropriative rights are recognized in a way which does not preclude riparian rights
 - B. <u>Crandall v. Woods</u>, 8 Cal. 136 (1857): an early recognition of riparian rights
 - C. Lux v. Haggin, 69 Cal. 255, 10 P. 674 (1886)
 - 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 <u>Lux</u> 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
 - 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
 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 <u>Herminghaus</u> 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. <u>In re Waters of Long Valley Creek System</u>, 25 Cal. 3d 339, 158 Cal. Rptr. 351, 599 P. 2d 656 (1979)
 - 1. The statutory adjudication system
 - 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"?