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When the spotlight of international comment has been focused upon a provision of the Constitution of the State of Colorado, it behooves us, in turn, to look in the direction of the source of light. Particularly is this true in these days when our young men are becoming personally acquainted with many of the nations of the world and allied good-will efforts are the order of the day.

Consider, then, the State of Victoria, Commonwealth of Australia, which leads that continent in irrigation development, and whose problems are much the same as ours. Victoria did us the honor as far back as 1884 of commenting upon Article 16, Section 5, of the Colorado Constitution. A Royal Commission on Water Supply under the chairmanship of the Honorable Alfred Deakin prepared a report to Parliament showing what had been done in the Western States. The report gave special attention to

> the legal difficulties that had so greatly handicapped and retarded the full utilization of its water resources. The water laws of the various American States were compared and attention was drawn to the marked advantage enjoyed by the State of Colorado, whose Constitution embodied the provision that "all streams within its boundaries were * * * declared to be public property."

These recommendations and the "Colorado Doctrine" of use and ownership of water have played a major role in the development of Victorian water law and have made possible the development of that State at a time when all irrigation was threatened by the riparian doctrine.

Prior to the passage of the IRRIGATION ACT of 1886,[1] Victoria honored the doctrine of riparian rights. However, it was and is recognized that:

> Of the purposes to which water may be applied the most important is the primary natural purpose of quenching the thirst of man and beast, washing and cooking, and the like. These wants must, in all events, be first satisfied. The next purpose in order of national importance is, in this State, that of irrigation. The claims and needs of mining, manufacturing and even of navigation must

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[1]All of the references to Victorian Law are based on VICTORIAN WATER LAW, being an extract from evidence presented to Victorian Parliamentary Public Works Committee by L. R. East, Chairman of State Rivers and Water Supply Commission, January 12, 1943.

here, as in many American States, be subordinated to those of irrigation.[2]

Early in the history of Victoria the matter of maximum beneficial use received attention, and by the Land Act of 1869 provision was made for the permanent reservation of Crown lands for public purposes.[3] Even before this, in 1862, a bill was introduced[4] making water in excess of domestic requirements public property and subject to governmental authorized appropriation. The bill failed to pass. By the Land Act of 1869, the Governor was authorized to reserve from sale Crown lands[5] needed for irrigation, and in 1881 many lakes, rivers, inlets and watercourses were withdrawn. In 1884 a commission on water supply was appointed that made various recommendations which were the basis of the Victorian WATER CONSERVATION ACT OF 1886.[6] The outstanding feature of the 1886 act was the abolition of practically all riparian rights and the nationalization of all surface waters.[7] Although the act prevented acquisition of riparian rights after its passage, it did not define existing riparian rights and it was not until 1905 that the status of

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[2]Not a Victorian statute, but a statement of Mr. East. Irrigation as a preferred use over power is a prime essential for the West today and the basis of contention over A.V.A. and other power acts.

[3]Honorable James Mackenzie Grant, Minister of Lands, stated "the government should be empowered from time to time to prohibit settlement within what may be called the lines of these great irrigation works." The United States, nearly twenty years later, adopted the same policy by the Acts of October 2, 1888, 25 STAT. 505, and August 30, 1890, 26 STAT. 371, reserving reservoir sites and rights of way for ditches and canals constructed by the United States.

[4]The United States by the Act of July 26, 1866 (43 U. S. C. A. §661), acknowledged local customs, laws and decisions which had the same effect in the West.

[5]The United States adopted the same principle by the Act of June 25, 1910, 36 STAT. 847, 43 U. S. C. A. §141, Act of June 17, 1902, 32 STAT. 388.

[6]"Recommendation IV * * * care to be taken for maintenance and protection of the public right in the waters of all rivers—with authority under proper legal sanction for the division of their waters for the public good.—It is essential that the State should exercise the supreme control of ownership over all rivers, lakes, streams and sources of water supply." Again it was stated—"Private enterprise has already accomplished something in the provision of water for both purposes; (domestic and irrigation) but, although the enterprise of individual landholders has often proved sufficient for the construction of dams and tanks and the weiring and diversion of minor creeks, it will be inadvisable to give them control of our larger rivers."

[7]"Section 4. The right to the use of all water at any time in any river, stream, watercourse, lake, lagoon, swamp or marsh shall for the purposes of this Act in every case be *deemed to be vested in the Crown until the contrary be proved* by establishing any other right than that of the Crown to the use of such water, and save in the exercise of any legal right existing at the time of such diversion or appropriation no person shall divert or appropriate any water from any river, stream, watercourse, lake, lagoon, swamp or marsh excepting under the provisions of this Act or of some other Act already or hereafter to be passed, except in the exercise of the general right of all persons to use water for domestic and stock supply from any river, stream, watercourse, lake, lagoon, swamp or marsh vested in the Crown, and to which there is access by a public road or reserve."

riparian rights were defined.[8] Certain minor changes were made in 1928 and again in 1937, but today the right to the use, flow and control of natural streams is vested in the Crown and where access is provided by road, any person may take water for domestic and ordinary use and to water cattle. A riparian owner has these same rights and in some cases the right to irrigate a garden. However, the riparian owner has no absolute right to such water, but only to such as is available after the exercise by an authority of the powers conferred upon it for storage or diversion.

It is a matter of opinion as to whether or not Victoria's system is superior to Colorado's. The writer is certainly not competent to pass such an opinion, but it is interesting to note the opinion of KINNEY published in 1912:[9]

> Australia has done in the history of her irrigation practice what the western states of this country should have done, or, rather, what our Federal Government should have done many years ago—it being then the owner of all public lands—and that is, it has fixed the status of ownership in and to waters and has prescribed the exact conditions under which the water may be used. In our own country this was left largely to the individual. And by this means, enormous profit making corporations have sprung up which own and distribute much of our waters; endless litigation has been and is being caused; and at all times the rights of the consumers are more or less unsettled. And, strange as it may seem, Australia learned many lessons from the conditions in this country. In turn, it is not too late for us to learn many lessons from Australia.

Since the creation of the State Rivers and Water Supply Commission in 1905 (the first chairman was Dr. Elwood Mead, later Commissioner of the United States Bureau of Reclamation) there have been built thirty-four large reservoirs and a great number of smaller basins with a combined total storage capacity of approximately two million acre feet; 14,000 miles of channels in rural sections and 700 miles of pipelines in urban sections providing domestic and stock supplies to an area of fifteen million acres composed of 50,000 separate rural holdings, the greater

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[8] "Section 4. The right to the use and flow and to the control of the water at any time in any river, creek, stream or watercourse and in any lake, lagoon, swamp or marsh shall *subject only to the restrictions hereinafter provided* and until appropriated under the sanction of this Act or of some existing or future Act of Parliament *vest in the Crown.*"

"Section 5. Where any river, creek, stream or watercourse or any lake forms the boundary or part of the boundary of an allotment of land * * * *the bed and banks thereof shall be deemed to have remained the property of the Crown* and not to have passed with the land so alienated."

[9] 1 KINNEY, IRRIGATION & WATER RIGHTS (2d ed. 1912) 203.

part of which could not have been developed without this aid.[10] The matter of post-war construction, as in the United States, is receiving the studied attention of the Commission.[11]

[10]WATER SUPPLY PROBLEMS IN VICTORIA. July, 1939, by L. R. EAST, Chairman State Rivers and Water Supply Commission.

[11]THE FINANCING OF DEVELOPMENTAL WORKS, 1943, Published by State Rivers and Water Supply Commission.

Humorous or Pathetic? We Leave It To You

AGREEMENT FOR SUIT

....., Plaintiff, versus....., and others, Defendants.

I, the undersigned, ..., Client, hereby apply to ....., Attorney, to represent me in the District Court of the City and County of Denver, State of Colorado, Case No..... Div..... (said Number is assigned by the Court the day after filing said suit). In making this Application I agree to the following of my own free will and act.

1. That I have read completely, or have same read to me, and understand fully each and every of the terms of this AGREEMENT before signing the same.

2. That I fully understand and agree that....., Attorney, cannot and does not guarantee to win any case; and specifically cannot and does not guarantee to win this case. All I ask is that said Attorney do all he can in my behalf.

3. That I fully understand and agree that this is a DISPUTED and DIFFICULT CASE, for reasons set forth on the third page of this AGREEMENT, and is a case to be settled by the Court, and that the only duty of the Attorney is to present my side of the case as best he can, under all the circumstances, and is not to be held responsible for the outcome of the case. That I have full confidence in his honesty, integrity and fairness: otherwise I would not ask him to represent me in Court.

4. I fully understand and agree that no lawyer can properly guarantee to win any case in Court. No lawyer knows how a Court or Jury will decide; that all clients must in all cases take that risk, and the client is not to question the honor or integrity of the Court, nor of her Attorney.

5. I fully agree to accept the decision of the Court, or verdict of the Jury without question; unless I appeal to the Supreme Court of the State of Colorado within the time limit, as explained to me by the Court and by my Attorney.