

Allocations of Ground Water

economic implications of the court reference procedure for allocating ground water important in its development and use

J. Herbert Snyder

The relatively scarce ground-water resource of the Raymond Basin area of Los Angeles County has been allocated by a legal process—the Court Reference Procedure—among the wants and needs that can be satisfied by its use.

The case of the West Coast Basin—also in Los Angeles County—is pending in court.

The arid, highly productive area of the two basins has always been dependent upon irrigation to sustain its intensive agriculture and has relied heavily upon pumped ground water and imported water. Although irrigated agriculture is declining in importance in some of the area, domestic, commercial and industrial uses place severe demands on available ground water.

These basins are characterized by long-run overdraft on ground water—a result of mining the resource—and increased pumping lifts have resulted. The West Coast Basin has had sea-water intrusion and degradation of water quality. Concern over these issues led local water users of both basins to bring suit in the Superior Court of Los Angeles County for adjudication of water rights. In both instances, the trial court referred the matter to the State Water Rights Board—formerly the State Engineer and Division of Water Resources—for investigation of all physical facts involved in the action. Although the Court Reference Procedure has been used many times in surface water right disputes, the Raymond Basin Reference marked its first use in a case dealing only with percolating ground water.

Court Reference Procedure

The Water Code of the State of California provides for, but does not require, the trial court to refer the suit to the State Water Rights Board for investigation of and report on any or all of the physical facts involved in the suit. After investigation, a Report of Referee is prepared by the Board and filed with the court. This report becomes *prima facie* evidence of the physical facts in the case. The court will also consider any evidence filed by parties to the suit. The Board is not entitled to any fee for its services but does receive total reimbursement for all expenses incurred. The over-all pro-

cedure provides all parties with the services of an impartial investigatory agency at minimum cost. Furthermore, the interests of the public are protected by this participation of a state agency.

On the basis of the Report of Referee in the Raymond Basin Reference, the trial court entered judgment in 1944—sustained by the California Supreme Court in 1949—defining the water rights of the litigants. All parties with rights to pump ground water did not enter the suit; therefore, the court defined the decreed right as equal to the safe yield less the estimated rights of the many parties—with small quantitative rights—who were not in the suit. The final holding on the main issue was that prescriptive rights were established by the later appropriators against both overlying owners and prior appropriators—and that the latter also obtained or preserved rights by reason of the water they pumped.

The original judgment provided for review and revision, if appropriate, in the adjudicated shares. In 1950 one of the original litigants petitioned the trial court for such a review. The court referred the issue to the Referee for a re-determination of safe yield. Improvement of the local ground-water economy made it possible for the court to approve an increase in the adjudicated water rights of approximately 30%.

The right to petition for redetermination does not alter the legal finality or the form of the adjudication. The Raymond Basin Reference Case can be considered as a terminated legal adjudication of ground-water rights. However, this does not make it final in the economic sense—provision exists for future adjustment in the quantitative magnitudes of water pumped from the basin if the need arises.

The West Coast Basin Reference is still in process. Suit began in 1945, with reference to the Referee in 1946. The Report of Referee was filed with the court in 1952.

Interim Agreement

Because of the serious nature of the ground-water overdraft in the West Coast Basin Area, parties to the suit executed an Interim Agreement that became ef-

fective in 1955 and has reduced ground-water extractions by about 25% below the 1952–54 rates. Volumes of water pumped by each party are based on the Referee's report of historical ground-water extractions. No action performed under the agreement affects the water rights of the parties to the suit. The agreement was designed to reduce the volume of overdraft and preserve the rights of the parties during litigation.

Economic Function

Water use in the Raymond Basin and the West Coast Basin has been sufficient to deplete the resource and—until the enforcement of the safe yield ration in the Raymond Basin by the courts and the importation of supplemental water—the deficit was made up from the ground-water stock and rapidly increasing pumping lifts resulted.

Increased pumping lifts and salt water intrusion in the West Coast Basin attest to the continued scarcity of ground water in that area. The use of the interim Agreement to reduce pump draft has slowed down the rate of overdraft but has not eliminated it. Thus, the Court Reference Procedure and associated institutional devices play an important role in allocating the resource among its various uses.

In allocating the resource among its several uses, reliance has been made on the validity of the water rights possessed by the individual user of the ground-water resource. The amount of the resource that an individual user has been allotted is dependent upon a history of beneficial use of the resource. Thus individual water users can continue to use the amount of water rationed by the court at whatever price exists or under whatever conditions for pumping may exist among individuals. Limiting the amount of total draft provides an element of security for the individuals—security against future drastic increases in pumping lifts and pumping costs. Furthermore, these rights can be modified with respect to quantity and exchanged in the market, providing for flexibility in use of the water.

Management of ground-water basins for use of the water resource involves security and flexibility. To develop water

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resources, to undertake capital expenditures, to commit resources other than the water resources to long-time development, it is desirable that there exist a certain degree of security over time with respect to use of the resource. Also, the ability to change commitments and decisions in response to changes in the economy creates the desire for a reasonable degree of flexibility with respect to availability of the resource and the use to which that resource may be put.

Flexible aspects of the riparian doctrine as applied to ground water—the correlative rights doctrine—have facilitated the development of the ground-water resource in the course of economic change. This aspect of the correlative rights doctrine has not yet been fully tested under economic conditions where ground-water development can not be firmed up subsequently by additional water development. The rationing induced in the Raymond Basin and West Coast Basin area merely provides for a reduction in use of relatively inexpensive local ground water and supplementation by making use of relatively expensive imported surface water.

Development, management, and use of water in ground-water basins requires long-run security for the individual developing or making use of the water. He must be certain that all deferred revenues and costs of the development and use can be accounted for and fully compensated over time. The adjudicated pumping shares of each individual based on the Referee's finding provide for a secure right to pump ground water and protect—to a degree, at least—previous commitments.

One of the key characteristics of an operating economy is the change inherent in that economy. Normal operations of an economy include the elements that allow for economic flexibility as well as economic security over time. The imposition of a legal framework upon the operation of an economy should allow for economic change of that economy. Thus, absolute dependence or reliance upon a single legal doctrine that provides some elements of flexibility, for example, but little or no security would not be conducive to the best operation of the economy. On the other hand a legal process that would establish security but not permit flexibility over time would be equally awkward. Thus a single legal process, if it is to allow for normal operations of an economy, must take into account both the security and flexibility aspects of the operation of that economy.

The Court Reference Procedure—as applied in the Raymond Basin case and as preliminarily applied in the West

Coast Basin case—has built into it both the flexibility and the security aspects necessary to normal operation of an economy. The procedure as a legal process appears to be adequate to adjudicate ground-water rights in well defined ground-water basins. It is a legally valid process that satisfies an immediate economic need. It can be improved and made more efficient, however, if basic data are gathered in advance, if interim agreements are used, and if only the major water rights are actually included in the process. The Court Reference Procedure provides for effective over-all allocation of ground water and protection of ground-water rights.

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RIGHTS

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court ordered that all parties be allowed to continue to pump at a reduced rate, the total pumpage not to exceed the safe yield. Another comprehensive determination of ground-water rights, in the West Coast Basin, is still pending.

An increasingly serious problem is that of overdrawn ground-water supplies, particularly in the southern part of the state. In recognition of this situation, statutes applying only to specified southern counties were enacted in 1951, 1953, and 1955. None of these statutes purports to restrict the exercise of the overlying landowner's or appropriator's ground-water right.

One of the statutes encourages the ground-water user to obtain an alternate supply of water from a nontributary source, the use of which will be deemed equivalent to a reasonable beneficial use of the ground water which he has ceased to extract as a result of having the substitute supply.

Another statute requires the ground-water user to make—to the State Water Rights Board—annual reports of information essential to adjustments and determinations of ground-water rights, thus speeding up and reducing the cost of the requisite studies.

The third statute relates to preliminary injunctions equitably restricting and apportioning a reduction in pumping where it appears that unrestricted pumping would destroy or irreparably injure the ground-water supply, because of ocean water intrusion, while rights of use are being determined.

The steady increase in California population and the increasing costs of obtaining additional water supplies have led to an era of large projects: the State Water Plan; the Central Valley Project;

the Feather River Project; and the Metropolitan Water District of Southern California, in addition to many hundreds of district and mutual company enterprises.

The apparent trend is toward formal appropriations of water by large projects, which will either distribute the water or provide for its distribution to individual users pursuant to legal or contractual relationships. In many localities, the farmer's individual pumping plant on his own farm is an important exception. But even in that case, with increasing drafts on ground-water supplies, indications are mounting that community action will be needed in protecting and recharging many of the supplies.

In 1955, the legislature reorganized the State water agencies. The Division of Water Resources of the Department of Public Works was abolished and its functions pertaining to water and dams were transferred to two newly created agencies of the State government. A State Water Rights Board was vested with control of the acquisition of rights by appropriation, assistance to the courts in the adjudication of water rights, and administration of legislation applicable to southern California counties concerning extraction of ground water. Supervision over distribution of water in watermaster service areas, together with the remaining functions relating to water and dams, was transferred to a Department of Water Resources.

The extensive developments of California water resources and those being planned have created important water rights problems. Among these are some matters of Federal-State relationships, including the 160-acre limitation. Another problem is legal control over water brought into a ground-water area by artificial means without the consent of overlying landowners, without infringement of their correlative rights but with due protection of rights to the use of the imported water. A recent problem is the status of an entry on public lands, under the Desert Land Act, supported by an appropriation of percolating ground water, which under current California law is made by informal diversion and use and not pursuant to the California Water Code.

A major problem—still far from settlement—involves water rights of areas of origin of water. In existing law, certain restrictions are stated with respect to the taking of water, pursuant to State and Federal plans, away from the counties, watersheds, and areas in which it originates. The restrictions with respect to counties are statewide in application; those for watersheds and areas relate to the Central Valley Project. The restrictions are to the effect that in the develop-

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shall not be deprived of any water required to supply local needs. There is no provision for determining in any given case, presently or in the future, the extent of these local needs and of quantities of water to serve them. The lack of certainty is currently the subject of controversy and of a considerable measure of opposition to projected developments.

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RIGHTS

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ment of these major water plans the counties, watersheds, and areas of origin

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