

**TIMELINE: CALIFORNIA WATER RIGHTS
FROM THE FEUDAL AGE TO 21ST CENTURY CALIFORNIA**

**Gil Harootunian, PhD, California State University, Fresno
Kees van der Geest, PhD, United Nations University Institute for Environment and
Human Security**

1762-1821—Spain permits land-grants (“*ranchos*”) to spur settlement in “Alta California.” The crown retains the title, and the *ranchos* are patterned on Spain’s elite landed class with rights entrenched from Europe’s Feudal Age.

1821-1846—Upon its independence from Spain, Mexico transfers title to the *ranchos*, who are typically “friends” of the Mexican Governors of Alta California. During the first geological survey of the California (1860-1864), the agricultural scientist on the expedition notes that the *ranchos* are huge holdings of the best lands in the Valley, making one person rich while the public suffers, and credits the Spanish land-grant system as “one of the great drawbacks” to the healthy development of California (Brewer, 2015).¹

1848 (January 24) —The Gold Rush. Gold discovered in Sierra Nevada. California is a U.S. holding only. Prospectors stake water claims as well as mining claims, using the U.S. West’s common law of “appropriation” based on “beneficial use.” *Ranchos* try to “float” their claims to the hills, creating legal disputes costing up to \$500K (Brewer, 2015, p. 160).

1849 (November)—California State Constitution drafted. The Constitution adopts English common law of “riparian doctrine” as water law. Riparian rights, allowing those owning land alongside a natural water body to enjoy beneficial use, also operated for the benefit of England’s landed gentry in the Feudal Age. [Riparian rights formerly belonged to the King whose abuse of them was limited with the signing of the Magna Carta on 15 June 1215.]²

1850 (September 9) —California is admitted as a state into the U.S.

1855— “Riparian” vs “Appropriators” have 1st legal contest in California Supreme Court (Irwin v. Phillips). The decision establishes “he who is prior in time is better in right.”

1850s-1880s—Henry Miller, the future “Cattle King” of the California, buys his first 8,835 acres in the San Joaquin Valley in the early 1850s from a Spanish land grant-holder who wants to leave his *Rancho Sanjón de Santa Rita* for the gold mines (Treadwell, 1931, pp. 55). The feudal legacy in the Valley is making an open path toward concentrated wealth, including water wealth.³ Miller makes a series of shrewd acquisitions from at least 16 other Spanish land-grants, (Treadwell, p. 58) —always with “an eye on [ironclad] water rights” (Scheuring, 2010, pp. 73-

¹ Thank you to Mr. Joseph Roup, who ran the Southern Pacific Railroad in Fresno County for many years, for lending the author limited editions of “Californiana” volumes on every aspect of Valley development and historical figures such as William Brewer and Henry Miller.

² The relevant sections of the *Magna Carta* are 33, which ordered the immediate removal of all the King’s fish-weirs that blocked waterways throughout England, and 47 and 48, which ordered the de-enclosure of all riverbanks and the complete and irrevocable abolition of “evil customs” related to forests, warrens, and riverbanks.

³ Henry Miller knew well the feudal legacy: as a young boy he fled his native Germany after realizing the nobility owned the land and peasants such as his family would never have access to enough land to thrive (Treadwell, 1931). Scheuring (who shows no knowledge of the feudal origins of water rights) yet notes that Miller’s behavior toward his underlings is “feudal” and toward his children “autocratic, a legacy of his own German childhood” (2010, pp. 185, 206).

74) —and ends up owning over 120 miles along the San Joaquin River (Treadwell, p. 63), plus other key rivers, streams, creeks, sloughs, and swamps, including the Valley’s key southern river—the Kern River.⁴ The Supreme Court of California confirms Miller holds riparian rights to virtually the entire Kern River in *Lux v. Haggin*⁵ (1886) (p. 93). The water wealth and monopoly allow Miller to keep building a cattle empire that reaches one million acres (Igler, 2005).⁶

Early 1900s—Miller and Lux, Inc. begin a string of lawsuits to halt the building of upstream storage reservoirs. The cattle baron argues the new reservoirs interrupt the flow of the San Joaquin River water to which he is entitled as the riparian rights holder (Miller, Feb. 1989).

1914 (December 19) —California adopts the Water Commission Act which recognizes and protects established water rights.

“*Senior Water Rights*” bundle those who hold “pre-1914 [appropriation] rights” and riparian rights. The State has virtually no control over these rights.⁷

“*Junior Water Rights*” holders hold post-1914 rights (which require state approval).

1926—California Supreme Court rules in favor of riparian farmer Amelia Herminghaus (v. Southern California Edison). The power company, located upstream from Herminghaus’ land, also held riparian rights and sought to store the water. The Court holds that storage reservoirs interfere with the riparian water rights downstream and riparian rights take precedence even if the water use is wasteful (Miller, Feb. 1989).

1928—Southern California Edison and other powerful backers push for a Constitutional amendment that requires “reasonable” as well as “beneficial” water use and “conservation for public welfare.” Californians approve. The “Reasonable Use Doctrine” is born.⁸

⁴ Hugh Glenn, “The Wheat King” in the northern part of the Valley, made a shrewd acquisition of 7,000 acres that were the heart of the Jacinto land-grant along the Sacramento River in 1867, acquiring the water rights. Glenn builds an empire of 66,000 acres (Scheuring, 2010, pp. 82-83; 144; 149). After Glenn’s brutal murder in 1883, Miller and Lux purchased a good chunk of his estate (Scheuring, p. 170).

⁵ Miller’s great-grandson, George Nickel, Jr., holds the inherited water rights won in *Lux vs. Haggin* at the San Juan Ranch on the banks of the Kern River. Another descendant, Philip Bowles, is similarly situated at Miller’s old Delta Ranch in Los Banos (Igler, 2001, pg. 181).

⁶ The rampant corruption of public officials, bankers, businessmen, settlers, and an array of other players to grab as much land as possible in the latter half of the 1800s in California by “schemes of deeply laid fraud, villainy, rascality, perjury, and wickedness in land titles that would entirely stagger your belief” (Brewer, 1966, pg. 160) has been well chronicled. Igler clarifies in *Industrial Cowboys* that land grabbing in the San Joaquin Valley was not speculative as it was in the rest of California but done to secure and hold onto water rights (2005).

⁷ Miller and Lux eventually reached an agreement with Haggin, the “Grand Khan of the Kern” who gained most of his profits from selling water at high prices to local farmers (Igler, 2001, chap. 4, “*Lux v. Haggin*”). Examining Valley development through the lens of modern industrialism, Igler notes the former state Senator John M. Day, while on a tour of the Valley, realized “the principle of appropriative rights ... lent itself to corporate monopoly as easily as had the law of riparianism” (Igler, 2001, pg. 119). The smaller farmers who did not want to pay high prices for water or to lease land with water rights from Haggin had to abandon their farms and move on with their families. This led to school closures and dim prospects of the healthy development of farming towns while simultaneously creating a large migrant labor force in the Valley (*ibid*). Hugh Glenn’s realm is similarly described (Scheuring, 2010, pp. 145-146). The Valley—examined through another lens—was feudalized.

⁸ Not a few authors describing the Valley’s founding culture locate it at the other end of the spectrum from “reasonable.” The culture is described as a gambling culture. High stakes industries like gold mining and land speculation brought desperate and violent characters who were overwhelmingly male to a region with new and weak governments that had little power over lawlessness or were complicit in it. The harsh landscape with extreme

<p>1957- J.G. Boswell, destined to become the biggest private farmer in U.S., building California’s first giant agribusiness model, purchases a chunk of the deceased Henry Miller’s million-acre realm that gives Boswell an important entrée into Kern County (Arax and Wartzman, 2003, p. 300, 314). The feudal legacy of concentrated land (and water) wealth continues.⁹</p>
<p>1970s—U.S. environmental movement results in the creation of the Environmental Protection Agency (December 2, 1970) and legislation such as the Endangered Species Act (1973). The Delta Smelt, named for the Sacramento-San Joaquin Delta, is protected by the Endangered Species Act. Federal and California state law permit reducing deliveries of water to farmers to maintain the ecological health of the Delta to protect its species such as the Delta Smelt.</p>
<p>1980s—California’s State Water Resources Board evokes the “Reasonable Use Doctrine” when toxic farm wastewater from the Valley’s Westlands Water District poisons the Kesterton National Wildlife Refuge.</p>
<p>1988 – The National Resources Defense Council in partnership with environmental and fishing groups sues the U.S. Bureau of Reclamation over the Friant Dam, which dried up the San Joaquin River for 60 miles by contracting every drop for agriculture. NRDC wins, and the San Joaquin River Restoration plan is born (2006). The 102nd U.S. Congress passes the “Central Valley Project Improvement Act” mandating the Bureau of Reclamation repair environmental damage caused by its works in California’s Central Valley (1992).</p>
<p>2007-2009—California experiences exceptional drought. Governor Brown declares drought State of Emergency (February 2009). Historic California legislation is passed: Water Code §5010 requires Senior Water Rights holders to file “Statement of Diversion and Use” (i.e., they must report how much water they are using to the State).</p>
<p>2009—Valley agricultural irrigation and water districts join with Metropolitan Water District of Southern California (serving Los Angeles, San Diego, and other cities) to sue federal agencies protecting the health of the Delta and its Delta Smelt. The farmers and cities lose the lawsuit.</p>
<p>2011—California’s State Water Resources Control Board drafts “The Reasonable Use Doctrine and Agricultural Water Use Efficiency” report to promote more efficient use of agricultural water. Aspirations include a fully staffed “Reasonable Water Use Unit” and a “Reasonable Water Use Summit.”</p>
<p>2012–2015—California experiences exceptional drought. Governor Brown declares a drought State of Emergency on 17 January 2014.</p>
<p>2012 (September 25) —California becomes the first state in the U.S. to enact a Human Right to Water Bill (Assembly Bill 685), following a visit by the United Nations Special Rapporteur for the Human Right to Safe Drinking Water and Sanitation. The U.N. Special Rapporteur expressed concern about serious challenges to access to safe drinking water, especially for the</p>

climate variables like drought and flood made cattle and wheat enterprises as speculative as other industries. See for example Brewer, 1966, pp. 259-260, 482, 487, 497 or Scheuring, 2010, chap. 4, “The Gamble of Grain; pp. 130-131).

⁹ Here is another factor in the confluence of factors: J.G. Boswell—“The King of California”—along with other prominent figures such as Hugh Glenn (“The Wheat King”) and James Haggin (“The Khan of the Kern”)—came from Southern slave-holding families (Iglar, 2001, p. 101; Arax, 2003, chapter 2; Scheuring, 2010, pp.24, 58). When Glenn ran for governor, *The Sacramento Union* and opponents derailed him for running a virtual “slave plantation” or “Irish tenant system” (Scheuring, 2010, pp. 144-145).

most marginalized populations (UC, Berkeley, May 2013). Such populations can be highly concentrated in the Valley’s unincorporated “Disadvantaged Communities” (DACs).

2014 (September 16) —California Governor Brown signs into law the Sustainable Groundwater Management Act.

2014–2015—In July 2014, Federal and state agencies release *Recovery Plan...* for Chinook salmon and steelhead (NOAA, 2014). In August 2015, the San Luis & Delta-Mendota Water Authority along with the Valley’s Westlands Water District file a federal lawsuit to stop the Bureau of Reclamation from releasing Central Valley Project water into the Klamath River to restore Chinook salmon.

2015 (April 28, 2015) —California State Water Resources Control Board publishes a Notice of Emergency Regulations, swiftly adopted. The historic regulations allow for “[E]ven more senior water right holders, such as some riparian and pre-1914 water right holders [to] receive a notice to stop diverting water” (California Water Boards, 2015).

2015 (June 12) —California State Water Resources Control Board issues the Curtailment Notice to Senior Water Rights holders (pre-1914) to immediately cease diverting water from the Sacramento-San Joaquin Watersheds and Delta (during the drought).

2015 (June 19) —California Senate Bill 88 empowers State Water Resources Control Board to require certain water systems to merge, i.e. for municipalities to extend their water systems to the unincorporated “Disadvantaged Communities” (DACs) within or bordering them.

References

- Arax, Mark and Rick Wartzman (2003). *The King of California: J.G. Boswell and the Making of a Secret American Empire*. New York, Public Affairs.
- Brewer, William H. *Up and Down California in 1860-1864: The Journal of William H. Brewer, Professor of Agriculture in the Sheffield Scientific School from 1864-1903*. Francis P. Farquhar, Ed. University of California Press: Berkeley, CA. 1966.
- British Library. *Magna Carta* (English Translation). 1215. Retrieved from <http://www.bl.uk/magna-carta/articles/magna-carta-english-translation>
- California, State of, Water Boards. (January 2015). *Statutory Water Rights Law and Related Water Code Sections (As amended, including Statutes of 2014)*. Updated 28 April 2015.
- Igler, David (2005). *Industrial Cowboys: Miller & Lux and the Transformation of the Far West, 1850-1920*. University of California.
- Miller, M. Catherine (Feb. 1989). “Water Rights and the Bankruptcy of Judicial Action: The Case of *Herminghaus v. Southern California Edison*.” *Pacific Historical Review* 58(1), 83-107. DOI: 10.2307/3641078
- NOAA (National Oceanic and Atmospheric Administration) (2014). *California Central Valley Salmon & Steelhead Recovery Plan*. Retrieved from http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/california_central_valley/california_central_valley_recovery_plan_documents.html
- Scheuring, Ann Foley. *Valley Empires: Hugh Glenn and Henry Miller in the Shaping of California*. Rumsey, CA: Gold Oak Press, 2010.
- Treadwell, Edward F. *The Cattle King: A biographical account of Henry Miller of the Miller & Lux Cattle Empire*. Fresno, CA: Valley Publishers, 1931. Revised 1950. 2nd edition 1966.
- UC, Berkley, International Human Rights Law Clinic. May 2013. The Human Right to Water Bill in California: Implementation Framework for State Agencies. Retrieved from https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL.pdf.

California Water Rights Timeline: 1762-2015: Summary Graphic

