

PROPERTY

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CLASS 8:
WATER

Class Outline

- Water (mostly common law of):
 - Natural flow theory v. reasonable use theory
 - Dry States
 - Groundwater

Water

	On the surface	Underground
Defined (Channel or body)	Watercourses	Underground streams
Diffuse (No channel)	Surface water	Percolating waters

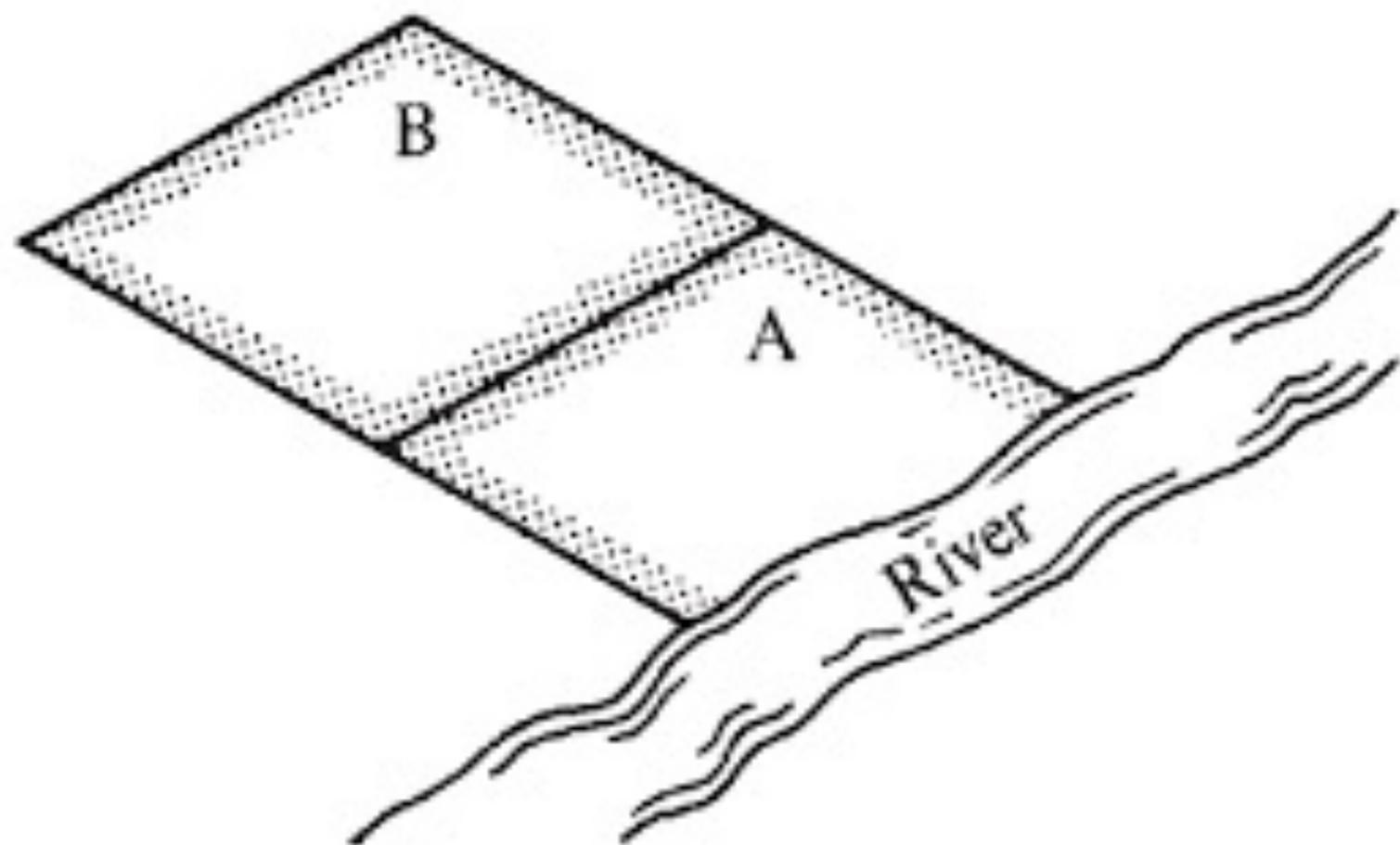


FIG. 168. RIPARIAN OWNER

Evans v. Merriweather

B

R T. Carlin (1835 or '36) → Evans, second steam mill

A _____

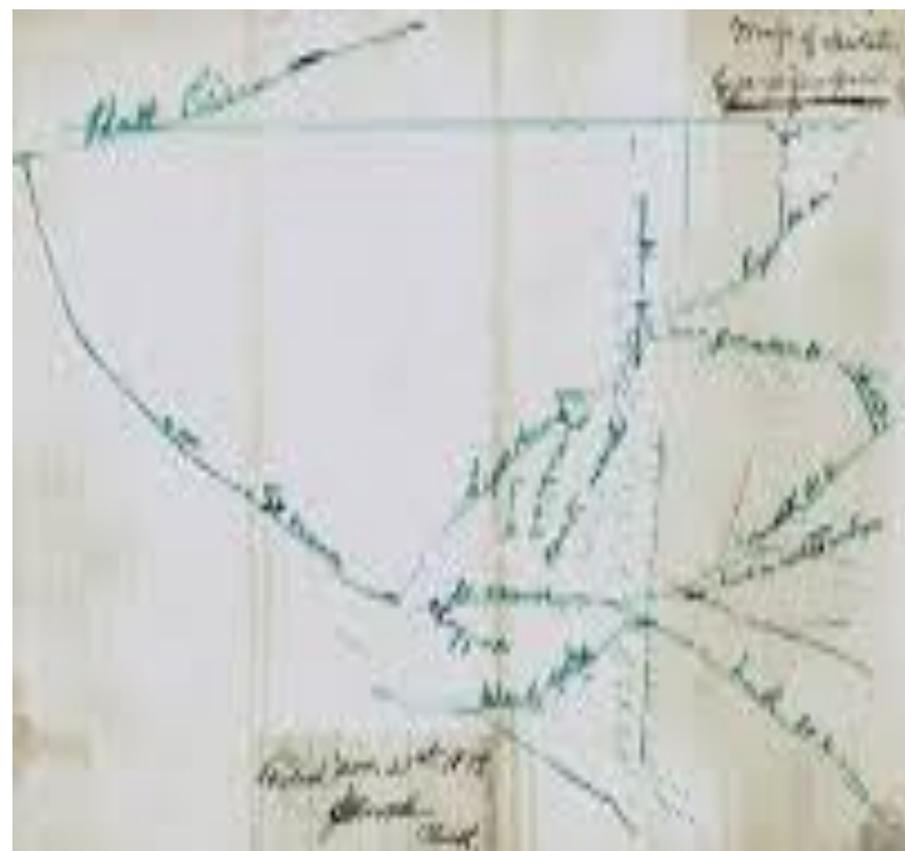
N

C T. Carlin (1834) → Smith & Baker (1836 or '37) → Merriweather

H steam mill after Evans' mill

“Reasonable Use”

- 2 tiers of use based on urgency:
 1. Natural wants – drinking, household uses, cattle
 2. Artificial wants – irrigation (perhaps natural in an arid area) and power



Coffin v. Left Hand Ditch Company

St. Vrain

----- | ----- (Coffin – later)

|

| ditch

|

----- James

|

| Left Hand Ditch – first

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Prior Appropriation

- Appropriator can divert water out of the original basin (forbidden in most riparian states)
- The use need only be “beneficial” (nonbeneficial use – e.g. flooding gophers – is rarely permitted)
- Rights terminate if the beneficial use stops
- Transferability is usually allowed but often limited
- New uses cannot impair the right downstreamers have to the the flow

Western States

Prior Appropriation

Eastern States

Riparian Rights

Reasonable Use

Natural Flow

6. Diverting unappropriated water priority of preferred uses. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using water for the same purposes; but when the waters of any natural stream are not sufficient for the service of all those desiring to use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing.

The basic tenant of the Colorado appropriation system to be remembered is "first in time, first in right." An appropriation is made when an individual physically takes the water from a stream and transports it to another locale for beneficial use. The first person to appropriate water and apply that water to a beneficial use has the first right to use that water within a particular stream system. The senior water right user, or first appropriator, must then be satisfied before any other junior rights are fulfilled.

Designated Ground Water

Section 37-90-102(1), C.R.S. affirms the prior appropriation doctrine with respect to designated ground waters of the state. The doctrine is modified to take into consideration the characteristics of the ground water resource that is being pumped to “permit the full economic development or designated ground water resources.” Existing appropriations of ground water are protected along with the maintenance of reasonable ground water pumping levels. These provisions as set forth in the 1965 Act also contain a restriction so as not to allow the maintenance of historical water levels.”

Rainwater Collection

Precipitation collection is allowed on residential properties under certain conditions. In Colorado, water diversion and use is subject to administration under the prior appropriation doctrine... legislation approved in 2016 and 2009 provide for limited situations...

where precipitation can be collected with some exception from strict administration in the water right priority system.

House Bill 16-1005, effective August 10, 2016, allows precipitation to be collected from the rooftop of certain residential properties. Any single family residence or multi-family residence with 4 or fewer units can collect water under

this law...No

permit or other approval is required for capture and use of precipitation in rain barrels with a combined storage capacity of 110 gallons in accordance with

HB16-

1005...The

water can be used for outdoor uses, such as lawn and garden irrigation, on the property where the water was collected. The water cannot be used for drinking water or indoor household purposes.

Absolute Water Rights

An absolute water right is water that has been diverted and placed to a beneficial use. Beneficial use is defined under section 37-92-103(4), C.R.S. as:

“the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made. Without limiting the generality of the previous sentence, "beneficial use" includes:

- (a) The impoundment of water for firefighting or storage for any purpose for which an appropriation is lawfully made, including recreational, fishery, or wildlife purposes;
- (b) The diversion of water by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for recreational in-channel diversion purposes; and
- (c) For the benefit and enjoyment of present and future generations, the appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree.”