

**WATER RIGHTS LAWS  
IN THE  
NINETEEN WESTERN STATES**

**Volume II**

**Wells A. Hutchins**

**Completed by  
Harold M. Ellis  
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By

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Thus, in California, where the riparian doctrine has been consistently recognized in numerous court decisions, and where the State courts were called upon to reexamine the question in the light of the *California Oregon Power Company* case, the conclusion was that the State law had been, and still was, to the effect that riparian rights should accrue to the patentees of Federal lands.<sup>314</sup> In a State in which the riparian doctrine has been generally repudiated, the patentee would obviously, under the Supreme Court decision, have no claim to the accrual of a riparian right. And in a State such as Oregon, in which the supreme court had held that the effect of the Desert Land Act was to abrogate the common law rule in respect of riparian rights as to all public lands settled upon or entered after its enactment, *except* for domestic and stockwatering purposes, that restriction would follow as the State law on the subject.<sup>315</sup>

#### *State Lands*

Earlier, under "Accrual of the Right—Source of Title to Land—State land grants," the situations in several jurisdictions with respect to the State as owner of riparian land are discussed. Of the high court decisions that have come to the attention of the author with respect to jurisdictions in which the riparian doctrine is recognized, the consensus is that the State holds title to riparian rights in lands which it possesses in a proprietary capacity. By its appropriation legislation, the State offered such waters to the public for appropriation under the statutory procedure. Purchasers of lands from the State thereby became vested with title to riparian rights in such lands, which were inferior to appropriative rights previously vested in the stream but were superior to appropriations subsequently made. These principles are comparable to those affecting the acquisition of riparian rights in Federal lands.

#### *Municipality*

A municipality occupies a unique position in the field of riparian proprietorship. It may border a stream, or it may extend on both sides of the stream. In either event, the city may and often does own some parcels of land contiguous to the stream, and private parties own contiguous lands. But by far the greatest number of separately owned parcels within the city limits may not border the stream. Questions then arise as to what are the rights of and limitations upon diversion and distribution of water by the municipality based

<sup>314</sup> *Williams v. San Francisco*, 24 Cal. App. (2d) 630, 633-638, 76 Pac. (2d) 182 (1938), hearing denied by supreme court (1938); *Williams v. San Francisco*, 56 Cal. App. (2d) 374, 378-381 (1942), hearing denied by supreme court (1943), certiorari denied, 319 U.S. 771 (1943).

<sup>315</sup> *Hough v. Porter*, 51 Oreg. 318, 383-407, 95 Pac. 732 (1908), 98 Pac. 1083 (1909), 102 Pac. 728 (1909).