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Desert Survival: The Evolving Western Irrigation District

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Desert Survival: The Evolving Western Irrigation District

I. INTRODUCTION

In 1887, the California legislature passed the Wright Act, “an act to provide for the organization and government of irrigation districts.”1 This creation of a special governmental district that was empowered to levy assessment against all the lands within its boundaries presented a novel approach to water resource development in the Western United States. The Wright Act sparked much controversy. One opponent termed it “communism and confiscation under the guise of law.”2

These special districts, generally referred to as irrigation districts,3 historically played an important role in the development of the West, and they continue to do so today, even in rapidly urbanizing areas.4 Whether in their present form these districts are appropriate devices to foster and manage Western water supplies in an era of rapid population growth and increasing competition for water is an unanswered, and largely unexplored, question.

This comment first discusses the history of irrigation districts, tracing their evolution through several stages of Western development. The second section details the provisions of the Wright-Bridgeford Act, the original model for irrigation district legislation throughout the West. Modifications of the Act are then highlighted in a discussion of the factors that molded the district structure to better serve the changing needs of district inhabitants. Two of the recent variations on the district structure, improvement and conservancy districts, are also discussed. Finally, the article discusses some of the powers of the irrigation district as manager of water resources, and examines the appropriate scope of these powers, in an urbanizing West.

4. Id. For statistics on the increase of urban populations in irrigation districts, see Leshy, Irrigation Districts in a Changing West—An Overview, 1982 ARIZ. ST. L.J. 345, 364-71.
II. **EARLY WATER ORGANIZATIONS AND DEVELOPMENT OF SPECIAL GOVERNMENTAL DISTRICTS FOR IRRIGATION**

Human development in arid lands is directly linked to an organized method of ensuring a water supply.\(^6\) In the Western United States, especially California, Colorado, Arizona, Utah, Nevada, and New Mexico, irrigation has been the principal function of water management. Native American inhabitants sometimes built irrigation systems and the Spaniards continued to use and improve these systems during their colonial period.\(^6\) Early irrigation organizations developed the available surface waters and usually delivered the water to lands adjacent to a canal system.\(^7\) As the West's population increased, and its agriculture and industry intensified, additional water supplies were developed. One available source of water was the capture of seasonal flood flows.\(^8\) Development of this source, however, required more substantial storage and diversion works. Moreover, the water often had to be transported over greater distances and more difficult terrain.\(^8\) To develop these new supplies, water storage dams and reservoirs were necessary,\(^10\) and irrigation development became a more expensive process.

Western water law reflects the economic value of water. The water rule of the West, developed under early mining law, was that the first person to divert water and put it to a beneficial use, acquired the right to continue such use.\(^11\)

This doctrine of "first in time, first in right,"\(^12\) or prior appropriation,\(^13\) complemented other incentives to develop water delivery and storage systems by protecting the investments of the diverter of water.\(^14\) These other incentives were the profits offered by the growing mining and agricultural industries in the West;\(^15\) however, the storage of water necessary for these pursuits required substantial investments.\(^16\) Miners and farmers might not

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10. Id.
12. Id. at 5.
13. Id. at 6.
15. Id.
16. See id. at 45.
have been willing to make these investments in the absence of the usufructuary right in the water that Western law granted the first diverter of the water.\textsuperscript{17} The mining industry usually enjoyed sufficient capital to finance such expenditures.\textsuperscript{18} Farmers, however, were often without access to such financing and had to resort to cooperative methods of financing.\textsuperscript{19}

Solutions for the financial difficulties of building large-scale water projects took a variety of forms. One of the early types of cooperative organization was the Utah mutual water users association, a non-profit, voluntary collaboration of pioneer settlers that worked together to build canals and reservoirs.\textsuperscript{20}

The Mormon settlements of Utah exhibited certain unique characteristics. The Mormons had come to Utah not to exploit mineral wealth but to establish a new promised land.\textsuperscript{21} Agriculture was an essential part of that development.\textsuperscript{22} Mormon settlements were governed by a cohesive hierarchical assembly of individuals.\textsuperscript{23} The settlements were able to administer the development of cooperative water projects through the existing church organization.\textsuperscript{24} The cooperative attitude among the settlers facilitated the financing of the irrigation projects.\textsuperscript{25}

The Utah mutual water user association consisted of landowners who individually contributed to the building and operation of the water system.

\begin{itemize}
\item \textsuperscript{17} See C. Meyers, supra note 11, at 6.
\item \textsuperscript{18} See generally E. Cooper, supra note 8, at 36-40.
\item \textsuperscript{19} Id. at 40-45.
\item \textsuperscript{20} See A. Maass & R. Anderson, supra note 5, at 349.
\item \textsuperscript{21} Id. at 325.
\item \textsuperscript{22} Id. at 332.
\item \textsuperscript{23} Id. at 348. The construction of the initial irrigation system was governed by a committee whose members were elected by the Mormon settlers. Frequently, the oversight committee included the Mormon bishop of the settlement. Once the system was built, the committee was discharged and a watermaster elected. When disputes arose, however, the bishops of the church usually guided the arbitration and voluntary resolution of the problem. If arbitration failed, the irrigators might appeal to the high council of the Mormon stake, whose decisions were accepted as final. Id.
\item \textsuperscript{24} See id. "These institutions controlled the construction, operation and maintenance of the new settlements' irrigation systems and the adjudication of disputes over their water rights until civil authorities were ready and willing to take over, and where this did not happen, until mutual companies were organized for operating and maintaining canals." Id.
\item \textsuperscript{25} Id. at 334. The irrigation systems built by these early associations were usually small in comparison with development in other states. One reason is each settlement developed its own irrigation system just large enough to serve the lands of the farmers.
\end{itemize}
for their mutual benefit. The success of this system depended upon the cooperation among the individuals involved. Membership was voluntary and the associations had no power to compel contribution other than the church's authority and social pressure. The cohesive nature of the community made these Mormon associations very successful. As non-Mormon settlers entered Utah, the cohesiveness of the settlements decreased. Church-appointed management of the associations was exchanged for secular government, presumably to encourage participation by new non-Mormon settlers. As the population increased, so did the water requirements. Larger water projects were needed, as were correspondingly larger amounts of money.

Financing problems also plagued other types of early water enterprises. Two types of early enterprises that answered some of the financing problems were non-profit, cooperative entities and profit motivated private enterprises. Non-profit cooperatives or mutual water companies, similar to those in Utah, were voluntary, private organizations of local landowners. These companies sought to provide water at cost to members and other local users. Mutual water companies were usually incorporated and their powers included the right to issue stock, to mortgage property, to secure repayment for indebtedness, to acquire water rights and other property, to levy assessments against corporate stock, to obtain revenue for corporate domestic purposes, and to collect tolls for the use and delivery of water. In many Western states mutual water companies also had the power to condemn property for rights-of-way necessary to water delivery.

The actual water users often held the stock of mutual water companies. Capital stock in a mutual water company represented more than a portion of the corporate assets; it represented a right to service of water as well. Some shares might be attached to particular tracts of land if the articles of incorporation, by-laws, or contracts of stockholders considered

26. Id.
27. Id. at 349. "[T]he original system, involving active participation by church authorities, became progressively less viable as population increased. . . . Instead of civil authority, the administrative machinery that evolved was one of voluntary farmer cooperatives—the mutual irrigation companies." Id.
29. See Circ. No. 934, supra note 7, at 7-12.
30. Id. at 9.
31. Id.
32. Id. at 18.
33. Id.
34. Circ. No. 934, supra note 7, at 34.
the right to receive water appurtenant to specific land. When not attached to a parcel of land the shares could be transferred freely from one shareholder to another.86

Mutual water companies could issue bonds which were secured by a mortgage upon the irrigation systems, water rights, and other property of the company.88 The lands of the water users themselves did not serve as security for the bonds except where expressly contracted, and where the assessments against capital stock could operate as a lien on the land.87 Mutual water companies rarely issued bonds for initial development because of the lack of security.88 Promoters who built the system financed the majority of initial development. These promoters were then reimbursed through the sale of water rights or land to which water stock attached.89 Another method of original financing, used in Utah, was the labor and capital of the settlers themselves.40

Commercial, profit motivated companies were the second major form of water enterprise.41 Early versions of these companies often formed to speculate on the appreciation of land values and water rights due to the growing populations of the West.48

There were three major types of commercial companies.48 The first was a development or construction company. These companies developed a water system for the specific purpose of transferring the system to the water user and then retiring the company.44 The second type, private-contract companies, were organized to provide perpetual water service to selected individuals and purchasers of land who contracted with the company.46 Private-contract companies were not subject to public utility regulation because they did not hold themselves out to be available to anyone in a general service area.46 Public-utility companies were the third type. These were also created to offer perpetual service, but anyone within their service area could, to the extent of the available water supply, contract or rent water from the company. This service to the general public subjected

35. See 4 R. Swenson, supra note 6, at §§ 342.2, 342.5.
36. See Circ. No. 954, supra note 7, at 31.
37. Id.
38. Id.
39. Id.
40. See supra note 25.
41. See Circ. No. 934, supra note 7, at 17.
42. See Circ. No. 934, supra note 7, at 10; 4 R. Swenson, supra note 6, at § 345.1.
43. Id.
44. Id.
45. Id. at 10-11.
46. Id. at 10 n.8.
public-utility companies to state utility rate regulation.\textsuperscript{47}

Commercial companies also sold stock; however, stock in a commercial company represented only a share of the company's assets, not a right to water service.\textsuperscript{48} Commercial company bonds were secured by a first mortgage on the works to be constructed and by the deposits of the settlers who purchased contracts for water or lands to which water rights attached.\textsuperscript{49}

Commercial companies earned revenue from payments for the use of water. The contracts of private-contract companies usually contained fixed annual charges, designed to cover costs of operating and maintaining the system. Rates of public-utility commercial companies were subject to approval by a state utility commission.\textsuperscript{50}

Both mutual water companies and commercial companies had several disadvantages. The most important disadvantage was the inability of these companies to raise large amounts of revenue quickly. Adequate security for irrigation company bonds depended upon the ability of the lands to produce enough revenue to pay the charges for water service, an ability which did not materialize until the lands had been developed, irrigated, and brought into production.\textsuperscript{51} If settlement of new lands was delayed or water rights sales were slow, the obligations of the companies would fall due before revenues could be raised to meet them.\textsuperscript{52}

This shortcoming was related to the second problem of both mutual and commercial companies, the absence of a right to compel membership.\textsuperscript{53} The company or association could not compel residents of a watershed area, who saw no personal benefit in belonging to the company, to contribute. Often the landowners who refused to buy from these companies were those whose lands were most able to pay because they had independent water sources.\textsuperscript{54}

Management problems also confronted these companies. Because a water company might not represent the major water users in an area, planning for water use and distribution during times of shortage became more difficult. The diverging interests and water needs made management

\textsuperscript{47} Id. at 10. Public-utility companies and private-contract companies were designed to meet the needs of a service area permanently. Development companies only undertook initial development of a water system, planning that local residents would later assume control. Id.

\textsuperscript{48} Id. at 34.

\textsuperscript{49} Id. at 36.

\textsuperscript{50} Id. at 11.

\textsuperscript{51} Id. at 37.

\textsuperscript{52} Id.

\textsuperscript{53} Id. at 75-76.

\textsuperscript{54} See, e.g., Fallbrook Irr. Dist. v. Bradley, 164 U.S. 112, 156 (1896); 4 R. Swenson, supra note 6, at § 345.1.
and planning for community water use increasingly complex.\textsuperscript{55} Commercial development companies because of their temporary and speculative nature gave commercial companies a bad investment image.\textsuperscript{64} Overly optimistic predictions of investment returns and water supplies also impaired revenue raising.\textsuperscript{67}

Although mutual water companies and commercial companies were often successful water enterprises, these private water organizations had difficulties raising the funds necessary to build larger projects. The first attempt to remedy the financing and management problems of the private organizations was made in an 1865 Utah Territorial statute that provided for establishment of special governmental districts, political subdivisions of the state, upon petition and referendum of a majority of landholders within the proposed boundaries of the district.\textsuperscript{68}

The early Utah statute was severely flawed because districts could not levy assessments against the lands of the district.\textsuperscript{69} Thus, this form of district organization offered no concrete advantage over the mutual water users associations because it failed to remedy the major disadvantage facing the Utah mutual water associations—the ability to raise revenues by assessing the land to finance bond payments.\textsuperscript{80} Mutual water associations continue to enjoy a measure of success in Utah, however, because the associations survived the initial costs of development in smaller areas or within a single watershed.

The increased desire for larger water projects and the problems of voluntary participation continued to plague water development throughout the West. In 1887, the California legislature passed the Wright Act.\textsuperscript{61} This Act, which was substantially amended in 1897 to become the Wright-Bridgeford Act,\textsuperscript{62} created a political subdivision of the state with sufficient power to guarantee the necessary collective contributions to cre-
III. THE WRIGHT-BRIDGEFORD ACT

A. The Basic Format

The ingredients of the Wright-Bridgeford Act which made it an attractive model for irrigation development were: local control, generalized powers, bonding authority, the power to levy property assessments, and, of great future importance, tax exempt status for district property and bonds.

1. Organization and Local Control

The formation of an irrigation district was initiated by petition to the county board of supervisors by a majority of holders of title to land susceptible of irrigation from a common source. The Act provided for a hearing to allow exclusion of lands which would not benefit from irrigation from the same source.

The next step in district organization was the formation election. The Wright-Bridgeford Act defined a qualified elector as anyone eligible to vote in state general elections and who resided within the proposed district’s boundaries. A two-thirds vote was required to establish the district. Voters also elected district directors at the organization election. Directors had to be resident landowners of the district.

The statute called for partitioning the irrigation district into a number

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64. See Circ. No. 934, supra note 7, at 56-59 (equating the powers of the district directors with the management powers of private and mutual companies).
65. Id. at 77.
66. See infra notes 111-17 and accompanying text.
67. See infra notes 118-21 and accompanying text.
68. Wright-Bridgeford Act, ch. 189, § 1, 1897 Cal. Stat. 254, 254 (current version at Cal. Water Code § 20700 (West 1956)).
69. Id. § 2, 1897 Cal. Stat. 254, 254 (current version at Cal. Water Code § 20845 (West 1956)).
70. Id. § 8, 1897 Cal. Stat. 254, 256 (current version at Cal. Water Code § 20527 (West 1956)).
71. Id. § 9, 1897 Cal. Stat. 254, 256 (current version at Cal. Water Code § 20960 (West 1956) (amended to provide for simple majority approval)).
72. Id. § 7, 1897 Cal. Stat. 254, 256 (current version at Cal. Water Code § 20913 (West 1956)).
73. Id. § 26, 1897 Cal. Stat. 254, 262 (current version at Cal. Water Code § 21100 (West Supp. 1982)).
of precincts with directors elected separately from each. This system was designed to maximize local control of districts. To further ensure local participation and preserve local confidence, the Act required districts to establish an office and to hold regular and public meetings.

2. Generalized Powers

A second ingredient of the Wright-Bridgeford Act formula was the grant of generalized powers allowing the districts to adapt to changing conditions. The Act empowered districts to acquire lands by purchase or eminent domain, appropriate water, and construct reservoirs, canals, and other water delivery systems. Another important provision gave the district board the power generally to perform all such acts as were necessary to fully carry out the purposes of the Act. This general grant of powers closely paralleled the commercial and mutual companies' articles of incorporation and endowed the district with flexibility to operate on a basis similar to that of a private corporation.

The power to include unwilling landowners, as long as their lands were susceptible to a common system of irrigation, enabled the districts to develop around property of some assessable value in order to generate sufficient revenues to carry out the purposes of the district. The Wright-Bridgeford Act specifically provided for the inclusion and assessment of town lots. The power of the supervisors to include town lots and other developed property contributed to the initial financial success of many districts. Even if the benefits of irrigation were not direct, the supervisors had the authority to include town lots if they determined that there would

74. Id. § 6, 1897 Cal. Stat. 254, 256 (current version at CAL. WATER CODE § 20910 (West 1956)).
75. See Harding, supra note 63.
76. Wright-Bridgeford Act, ch. 189, § 14, 1897 Cal. Stat. 254, 257 (current version at CAL. WATER CODE §§ 21377-21403 (West 1956 and Supp. 1982)).
77. Id. § 15, 1897 Cal. Stat. 254, 258 (current version at CAL. WATER CODE §§ 22225-22228 (West 1956 and Supp. 1982)).
78. Although district powers were broad, and vested substantial discretion in the directors, they were limited to the provision of irrigation. Stimson v. Allesandro Irr. Dist., 135 Cal. 389, 392, 67 P. 496, 498 (1902).
80. Id. § 15, 1897 Cal. Stat. 254, 258 (current version at CAL. WATER CODE § 22225 (West 1956)).
81. See Circ. No. 934, supra note 7, at 76. The inclusion of already improved land provided revenue because the undeveloped land had lower assessable value. Id.
82. Wright-Bridgeford Act, ch. 189, § 35, 1897 Cal. Stat. 254, 266 (current version at CAL. WATER CODE § 25500 (West 1956)).
be some benefits.84

The statute allowed some flexibility in the management of water. The district was to apportion water ratably among landowners according to the ratio of the last assessment of the owner to the whole sum assessed by the district.85 The district could divert water only for the ultimate purpose of the irrigation of lands within its boundaries,86 and therefore city dwellers could only receive water for agricultural purposes. The statute did allow the assignment of a landowner's apportioned share of water to another landowner.87

The relationship of the districts to the individual user was, with respect to water rights, that of a trustor to trustee; i.e., the district held legal title to the water rights with beneficial title in the owners of the lands.88

The district board had the power to lease surplus waters of the district if the lease could be made without increased expenditures.89 The revenues generated from the leasing of surplus waters helped stabilize the financial position of the districts. By leasing waters, the district put all the water of the district to full use, maximizing the investments of district bondholders.90

The statute authorized the directors to equitably ration the water among landholders in times of water shortage.91 The language of the statute was very broad, allowing the directors to fit the rationing plan to the locality.92 To prevent shortages, the board had the authority to construct anything necessary to provide sufficient water to each landowner for irrigation purposes.93

To provide additional financial stability, the Act also authorized the

84. See Board of Directors of Modesto Irr. Dist. v. Tregea, 88 Cal. 334, 353, 26 P. 237, 242 (1891). One commentator wrote, "[t]he justification for including town lots, which may themselves never be irrigated is that some municipalities owe their existence in whole or in part to the success of surrounding irrigation districts and should consequently be made to share in the districts' upkeep." Bull. No. 254, supra note 28, at 11.
85. Wright-Bridgeford Act, ch. 189, § 18, 1897 Cal. Stat. 254, 259 (current version at CAL. WATER CODE § 22250 (West 1956)).
86. Jenison v. Redfield, 149 Cal. 500, 503, 87 P. 62, 64 (1906).
87. Wright-Bridgeford Act, ch. 189, § 18, 1897 Cal. Stat. 254, 259 (current version at CAL. WATER CODE § 22251 (West 1956)).
89. Wright-Bridgeford Act, ch. 189, § 100, 1897 Cal. Stat. 254, 285 (current version at CAL. WATER CODE § 22259 (West 1956)).
91. Wright-Bridgeford Act, ch. 189, § 62, 1897 Cal. Stat. 254, 259 (current version at CAL. WATER CODE § 22252.1 (West 1956)).
imposition of water services fees or tolls in addition or in lieu of assessments.94 Levying tolls for the use of the constructed works, instead of annual assessments or liens, was one option available to the directors as a partial or complete substitute for assessments.95 The district board without statutory limitation could determine the amount of the tolls. Because the district delivered irrigation water in proportion to the assessment made, if tolls were levied with assessments, the tolls could only be charged for the quantities of water greater than the specified amount per unit of land.96

3. Bonding Authority

One of the greatest advantages irrigation districts had over other types of irrigation enterprises was the ability to issue and market bonds.97 The Wright Act enabled private investors who might have otherwise been unable to raise sufficient capital to build large water projects.98

To issue bonds, directors had to have the express approval of the qualified electors of the district,99 and could request the superior court to confirm the issuance.100 Court confirmation was designed to facilitate the sale of district bonds by reassuring investors.101

4. Power to Assess

The power to levy assessments on the real property of the district was

94. Id. § 55, 1897 Cal. Stat. 254, 273 (current version at Cal. Water Code § 22280 (West 1956)).
95. Id. The tolls could be collected from all persons using the canal for irrigation and other purposes. A district might choose to require prior payment of tolls rather than rely on annual assessment collection and lien procedures. One of the main reasons for operating on a toll basis stemmed from the fact that the distribution of water was tied to the value of the assessment paid, see supra text accompanying note 85, and therefore higher valued lands were entitled to more water than they could sometimes use. These landowners could sell the excess amounts, but needy landowners often had no settled or stable method of determining the amount of excess water available from these sources. If a district operated on a toll basis alone, the amount of water available to each parcel of land could be determined solely by the amount of water used. See generally Willard v. Glenn-Colusa Irr. Dist., 201 Cal. 726, 258 P. 959 (1927).
97. Circ. No. 934, supra note 7, at 77.
98. E. Cooper, supra note 8, at 45.
100. Id. § 68, 1897 Cal. Stat. 254, 276 (current version at Cal. Water Code § 22670 (West 1956)).
also a significant advantage over other forms of water enterprise.\textsuperscript{102} Assessments, as distinguished from general taxes, did not, unless otherwise required by statute, have to be levied on a uniform and equal basis.\textsuperscript{103} The Wright-Bridgeford Act provided for two assessments, annual and special.\textsuperscript{104} The annual assessments, made on the basis of the value of the property, were designed to meet payments on district bonds.\textsuperscript{105} The annual assessments divided the costs of construction and bond payments among the landowners of the district in proportion to the value of their assessed lands.\textsuperscript{105} The assessment operated as a lien upon the assessed lands if payment was not forthcoming.\textsuperscript{106} Special assessments could be levied upon approval by district electors in a special election.\textsuperscript{108}

5. Tax Exempt Status

The final major financial advantage of irrigation districts was their exempt status.\textsuperscript{109} All property of the irrigation district was exempt from

\begin{itemize}
\item[102.] Circ. No. 934, \textit{supra} note 7, at 79.
\item[103.] Bull. No. 254, \textit{supra} note 28, at 20.
\item[104.] Wright-Bridgeford Act, ch. 189, §§ 39, 59, 1897 Cal. Stat. 254, 267, 274 (current version at \textit{CAL. WATER CODE §§ 25650, 25701} (West 1956)).
\item[105.] Id.
\item[106.] Id.
\item[107.] Wright-Bridgeford Act, ch. 189, § 40, 1897 Cal. Stat. 254, 267 (current version at \textit{CAL. WATER CODE § 25925} (West Supp. 1982)).
\item[108.] Id. § 59, 1897 Cal. Stat. 254, 274 (current version at \textit{CAL. WATER CODE § 25701} (West 1956)). Special assessments could be levied for any purpose provided for in the Act and the directors could at any time call a special assessment election. \textit{Id. See}, e.g., Imperial Land Co. \textit{v. Imperial Irr. Dist.}, 173 Cal. 660, 161 P. 113 (1916) (assessment levied for salaries of officers and employees); Hughson \textit{v. Crane}, 115 Cal. 404, 414, 47 P. 120, 122 (1896) (the Act was framed on the theory that the affairs of the district should be conducted on a cash basis; assessments could be levied for salaries, wages, expenses of management, and also to make bond payments).
\item[109.] Circ. No. 934, \textit{supra} note 7, at 59-61.
\end{itemize}
state, county, or municipal taxation.110 District property and the interest on districts bonds were exempt from federal taxation as well because districts came under the general exemption for the income of states, municipalities, and other subdivisions.111 As federal taxation on income has become more substantial throughout the twentieth century, the absence of federal taxation on district bonds became one of their foremost advantages over the bonds of other corporations and made it possible for districts to sell bonds bearing a comparatively low interest rate.112

B. Challenging the Wright Act

The most important feature of the original Wright Act was the ability it granted to a portion of the landowners of a district to incur indebtedness for all the lands of the district.113 At the time of its passage, however, many California landholders resented forced membership in districts which could burden their property with revenue raising assessments.114 Landowners satisfied with the amounts of water already available to them organized opposition to the Wright Act.115 These groups had satisfied their water needs through the early appropriation of available water and the construction of the facilities necessary to irrigate their lands.116 Consequently, they were unhappy at the prospect of losing their competitive advantage, as well as being required to help fund the development of new sources of water for the benefit of other landowners.117 They challenged the constitutionality of the Wright Act. These challenges had the immediate effect of reducing the marketability of irrigation district bonds, slowing the advancement of districts.118

In the landmark case of Fallbrook Irrigation District v. Bradley,119 the Supreme Court upheld the constitutionality of the Wright Act, and helped to establish irrigation districts as a main source of water development in the Western United States.120 In Fallbrook, a landowner chal-

112. See Bull. No. 254, supra note 28, at 5.
115. Id.
116. E. COOPER, supra note 8, at 45.
117. Id.
119. 164 U.S. 112 (1896).
120. Id. at 178.

After a lower court found the Wright Act unconstitutional one commentator wrote:

[The decision] was received with surprise and grief throughout the state of California,
lenged the sale of her property for nonpayment of an irrigation district assessment. Her main contention was that the district could levy assessments when the object of the assessment was public in nature and would only deliver more than an indirect collateral benefit. Benefits must be special, the landowner argued, as well as direct, immediate, and certain. The plaintiff contended the assessments were made to secure only private benefits.

The Supreme Court rejected these arguments. Taking judicial notice of the arid nature of Western states and the public interest in irrigation, the Court found that assessments levied for the purpose of funding irrigation districts were for public and not private use, and therefore did not constitute a taking of private property. The Court considered the financial and structural limitations of both private companies and individual enterprise, and recognized that one of the key elements of success for a water enterprise was the ability to establish a general scheme of irrigation for all irrigable lands. The Court concluded that the statutory powers to compel inclusion only implemented what the legislature saw as the most desirable method of designing a water organization. The Court held that in areas where the precise measurement of benefits was not possible, the provisions for assessments of all lands were made within the legitimate boundaries of the legislative power.

The Court further found that the forced inclusion provisions met the requirements of due process because each landowner had an opportunity to object to inclusion within a proposed district. The opportunity provided at the hearing on the petition for formation adequately protected the landowners' rights because by statutory definition, the lands would not be included unless the lands in some way, directly or indirectly, benefited by reclamation.

The Fallbrook case assured the continued development of irrigation districts throughout the Western United States. One commentator noted that irrigation districts combined and strengthened the advantages of both private enterprise water organizations and mutual water compa-

and in a great measure throughout the entire arid portions of our country. The decision was appealed to the Supreme Court at Washington, and it is not too much to say its affirmance would be a profound public calamity.


122. Id. at 162-63.
123. Id. at 161-62.
124. Id. at 176-77.
125. Id. at 173-74.
126. See E. Cooper, supra note 8, at 45.
Irrigation districts combined two features critical to the success of any water organization: local control and a viable means of securing financing. The value of the successful development of a formula for a governmental irrigation district in California has been compared favorably to the 1849 discovery of gold.

The Wright Act formula, modified by the Wright-Bridgeford Act, was rapidly adopted in the seventeen Western states with some additional modifications to reflect varying physical conditions, customs, and local experience. The preference of the Federal Bureau of Reclamation to contract with districts because of their power to levy assessments and place liens on the land also promoted the district formula. In 1917, the California legislature expanded the power of the district directors to contract with the United States government. Districts were also given the authority to contract with other districts within their state of origin or outside their state. This power facilitated the joint construction and acquisition of storage dams and main canals.

IV. Modification of the Wright-Bridgeford Act

Although the California legislature designed the Wright-Bridgeford Act to improve the financial stability of water enterprises, a large number of the early districts defaulted. The main reasons for these failures were the opposition of large and influential landowners, inclusion in the districts of nonproductive lands, inadequacy of water supply, speculation.

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127. See Circ. No. 934, supra note 7, at 74-85.
128. A. MAASS & R. ANDERSON, supra note 5, at 366-68.
129. Circ. No. 934, supra note 7, at 77.
130. Henly, The Evolution of Forms of Water Users Organizations in California, 45 Calif. L. Rev. 665, 667 (1957). "There can be no doubt that the discovery of the legal formula for these organizations was of infinitely greater value to California than the discovery of gold a generation before." Id.
131. See Misc. Publ. No. 103, supra note 96, at 2. The last state to adopt the Wright Act formula was North Dakota in 1917.
132. Circ. No. 934, supra note 7, at 13 n.11.
134. See Misc. Publ. No. 103, supra note 96, at 114.
135. 2 S. WIEL, WATER RIGHTS IN THE WESTERN STATES § 1358 (3d ed. 1911).
136. See E. COOPER, supra note 8, at 44-47.
Inclusion of more land than could be adequately irrigated with the available water supply has been a source of trouble to districts. Remediying such a situation necessarily
tive exploitation,\textsuperscript{139} engineering difficulties,\textsuperscript{140} insufficient settlement of district lands,\textsuperscript{141} and lack of concern for the district's economic feasibility on the part of both promoters and investors.\textsuperscript{142}

In response to these problems, the Wright-Bridgeford Act and its cousin statutes in the other Western states went through several major modifications. These revisions included changes in assessment provisions, voting structure, state supervision, and district authority.

\textit{A. Assessments}

Among the states that adopted irrigation district statutes there developed three principal methods of assessment: (1) ad valorem rates based on value of property, (2) uniform rates per acre, and (3) rates based on benefits received.\textsuperscript{143} The Wright-Bridgeford Act had provided for assessments to be made on the basis of the value of the property.\textsuperscript{144} Ad valorem assessment resulted in high assessment to owners of valuable lands that had independent sources of water. This factor may have helped to fuel the opposition to district formation among existing farming interests.\textsuperscript{145} In an effort to avoid landowner dissatisfaction with district assessments, assessors assigned property a value below its actual fair market value.\textsuperscript{146} Moreover, the subsequent apportionment of water according to land values\textsuperscript{147} involves a higher acreage cost than anticipated, either by securing additional supplies of water for the entire area or by eliminating portions of the district and concentrating all the water and all the cost on the remaining portions. In some cases this has not been fatal, but the wide margin allowed in other cases between the early productive value of the land and the cost of the irrigation system has been sufficient to cause failure.

\textit{Id.}

\textsuperscript{138} Id.
\textsuperscript{139} Id. Districts frequently suffered from the profiteering motives of promoters. \textit{Id.}
\textsuperscript{140} Id. at 9-10.
\textsuperscript{141} Id. at 10.

\noindent Settlement of sufficient land to provide revenue for district requirements is vital to the success of any irrigation district. Irrigation enterprises of all types are dependent for eventual success upon the same thing; but the method of financing an irrigation district through the disposal of bonds makes the rapid settlement of lands especially important, for the district is dependent upon its own efforts for money to operate the system and must in addition provide for interest payments on bonds.

\textit{Id.}

\textsuperscript{142} Bull. No. 254, \textit{supra} note 28, at 91.
\textsuperscript{143} Misc. Publ. No. 103, \textit{supra} note 96, at 55.
\textsuperscript{144} Wright-Bridgeford Act, ch. 189, § 35, 1897 Cal. Stat. 254, 266 (current version at \textit{CAL. WATER CODE} § 25503 (West 1956)).
\textsuperscript{145} \textit{See} E. Cooper, \textit{supra} note 8, at 45.
\textsuperscript{146} \textit{See} Bull. No. 254, \textit{supra} note 28, at 24.
\textsuperscript{147} Wright-Bridgeford Act, ch. 189, § 18, 1897 Cal. Stat. 254, 259 (current version at \textit{CAL. WATER CODE} § 22250 (West 1956)).
froze the relative values of land, because valuable lands remained valuable due to their larger water allotments, while less valuable lands remained less valuable because of their smaller allotments.\textsuperscript{148} In an attempt to help reduce this freezing process the California legislature amended the Wright-Bridgeford Act in 1909 to exclude all improvements from the valuation of property.\textsuperscript{149}

Dissatisfaction with ad valorem assessments led some states to adopt a uniform rate per acre assessment. This type of assessment reflected an attitude or assumption that irrigation districts were in the community's best interest and involved equal benefits to all lands.\textsuperscript{150} The result was that each acre bore a share of the burden equal to that of every other acre. This rigid form of assessment\textsuperscript{151} did not, however, solve the problem of dealing with lands which already had a sufficient water supply.\textsuperscript{152}

In contrast, assessment on the basis of benefits received seemed to allow greater flexibility and equity in levying assessments.\textsuperscript{153} Assessments according to benefits were designed to take care of varying local needs and conditions arising from the installation of irrigation systems.\textsuperscript{154} Utah used a variation of this form of assessment. The basis of the Utah assessment was the amount of water allocated to the land.\textsuperscript{155} The directors could, however, subdivide the district into divisions and assign different values to the water used within that particular division as compared with another division of the same district.\textsuperscript{156} Yet no assessment could be levied where the land could not be irrigated.\textsuperscript{157}

In an effort to make assessments more equitable, and to respond to the increasingly varied uses to which district lands were put, some Western states' legislatures created improvement districts as subdistricts of irrigation districts.\textsuperscript{158} Assessments in improvement districts reflected the

\begin{itemize}
\item \textsuperscript{148} Bull. No. 254, supra note 28, at 62.
\item \textsuperscript{149} Act of Mar. 19, 1909, ch. 303, § 1, 1909 Cal. Stat. 461.
\item \textsuperscript{150} Bull. No. 254, supra note 28, at 25.
\item \textsuperscript{151} Id. at 25.
\item \textsuperscript{152} Id. at 22.
\item \textsuperscript{153} Id. at 24.
\item \textsuperscript{154} Id.
\item \textsuperscript{155} Misc. Publ. No. 103, supra note 96, at 30. This is an interesting contrast to the Wright-Bridgeford Act, which apportioned water on the basis of the assessment. See supra text accompanying note 84.
\item \textsuperscript{156} Id. at 59. The ability to peg assessments to the value of water would seem to allow for greater market influences on water and probably represents the most equitable form of assessment as it is rigidly tied to the benefit received. But see Bull. No. 254, supra note 28, at 25 (criticizes the method as inflexible).
\item \textsuperscript{157} Misc. Publ. No. 103, supra note 96, at 59.
\item \textsuperscript{158} See Bull. No. 254, supra note 28, at 66.
\end{itemize}
greater costs of providing irrigation water to the subdistrict's lands.\(^\text{160}\) Such greater costs could arise, for example, where additional works were needed to provide drainage for low lying lands.\(^\text{160}\)

The model legislation for improvement districts was the 1917 Washington statute.\(^\text{161}\) The statute allowed for two types of improvement district formation; either the district was formed by the petition of landowners representing a portion of the irrigation district, or by proceedings initiated by the irrigation district directors themselves.\(^\text{162}\) The improvement district could assess landowners according to the benefits provided, not according to the value of the lands irrigated.\(^\text{163}\) Also, improvement districts could serve a variety of purposes depending upon the circumstances of the specific area.\(^\text{164}\)

The basic purposes of the irrigation district assessments were to pay the principal and interest on district bonds, to make payments to the United States government where a federal reclamation project was involved, and to pay maintenance and other current expenses.\(^\text{165}\) Some states authorized

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159. Id.

160. Misc. Publ. No. 103, supra note 95, at 107-08.


162. Id. §§ 10, 11, 1917 Wash. Laws 723, 736-38 (current version at Wash. Rev. Code §§ 87.03.480, 87.03.480 (1979)).


164. The evolution of the California Improvement District statute reflects the ever expanding uses to which district lands were put. The original California Improvement District statute, enacted in 1927, permitted the creation of an improvement district only where a particular section of an irrigation district required special laterals, ditches, or pipes. Act of May 25, 1927, ch. 748, § 1, 1927 Cal. Stat. 1416, 1416. In 1929, the Legislature amended the act to permit improvements for domestic water supply and the acquisition of new distribution works. Act of Apr. 30, 1929, ch. 189, § 1, 1929 Cal. Stat. 343, 343. The 1931 revision of the statute allowed for drainage and weed control. Act of May 11, 1931, ch. 289, § 1, 1931 Cal. Stat. 697, 697. The current statute provides:

- Purposes of formation. Land which need not be contiguous may be formed into an improvement district for one or more of the following:
  
  (a) Irrigation or domestic water service by a system of pumps or conduits or both.
  
  (b) Drainage or flood control.
  
  (c) Acquisition of existing works incidental to a water distribution system separate from or supplemental to the works of the district.
  
  (d) Change or improvement of the water distribution system of the district.
  
  (e) Maintenance of irrigation works of the district and works for water supply or drainage or both in or for the improvement district.
  
  (f) Control of weeds in or along conduits.


165. Misc. Publ. No. 103, supra note 96, at 60.
additional uses for revenue derived from assessments, such as for the repayment of the deficiencies of previous years, and the purchase of stock owned by districts in other water companies. Arizona authorized the levy of assessments to enable the district to purchase delinquent lands at tax sales.

To preserve the financial integrity of districts, the statutes usually allowed the directors to estimate in advance the amount which it would lose in a year due to the delinquent payment of assessments by landowners, and add that to that year's original assessment. Further, statutes empowered districts to sell lands for past due assessments.

Amendments to district legislation further bolstered the finances by permitting districts to generate and sell hydroelectric power. California provided that the district directors could, in lieu of levying assessments, use the revenue from the sale of electric power or leases of water for power generation to meet district obligations. The growth in demand for electrical power reshaped the allocation of risk by shifting it from the district landowners to power consumers.

B. Voting Structure

Under the Wright-Bridgeford Act any district resident qualified to vote in general elections could vote in district elections. Other states adopted district statutes with narrowed voter eligibility provisions. Several states required that qualified voters own land within the district; some states further narrowed this restriction by permitting only the owners of agricultural land to vote.

Some states provided for district voting on an acreage basis, rather than on a one-person-one-vote basis. There were several variations of acreage based voting. For example, Colorado provided for one vote per acre.

166. Id. at 61-62.
167. Id. at 60.
168. Id. at 62. Districts could, in some states, also require advance payment of tolls, a supplementary source of district revenue. Id. at 79-81.
169. Id. at 69-72.
171. Misc. Publ. No. 103, supra note 96, at 60.
173. Wright-Bridgeford Act, ch. 189, § 8, 1897 Cal. Stat. 254, 256 (current version at CAL. WATER CODE § 20527 (West 1956)).
175. Id.
176. Id.
177. Id. at 15.
178. Id. at 14.
Utah tied voting to the number of acre feet of water allocated to the land, and New Mexico used one vote per acre but placed a 100 vote ceiling on any single landowner.

A separate manner of altering the allocation of political power inside the district was to limit the power of non-property holding voters to authorize the creation of district indebtedness. For example, in 1897, the Wright-Bridgeford Act prohibited popularly elected directors to call a bond election on their own initiative; rather, a bond election petition needed approval of a majority of the landowners representing a majority of the value of the lands. The collection of signatures to satisfy this requirement proved too time-consuming and expensive in very large and populous districts. The legislature therefore subsequently modified the Act to once again permit directors to call elections.

The changes in voting structure wrought a major change in the political accountability of the district officers. The effect was to deny residents of the district who did not own property, yet were dependent upon district services, an influential voice in the management of district operations. The trend toward acreage voting, however, has continued largely unabated.

A corresponding change was often made by statutory amendment of the qualifications for district directors. Some states merely required that in addition to being a general elector, a director had to be a resident of the district. Other states required directors to own land within the district.

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179. Id. at 15.
180. Id. at 14.
181. See id. at 32-50. See infra notes 205-08 and accompanying text for a discussion of these limitations.
184. Act of May 16, 1919, ch. 339, § 4, 1919 Cal. Stat. 660, 662 (current version at Cal. Water Code § 21925 (West 1956)). Under this modification directors could in their discretion call a bond election but were compelled to call an election upon petition by 500 or a majority of the district’s landowners. Id.
188. Id. The California statute required that district directors, but not district electors, own land within the district. See id. at 22.
C. Increased State Supervision

Subsequent amendments to the Wright Act resulted in increased state supervision of district activities. This increased supervision took the form of: (1) formation procedures, (2) confirmation proceedings, (3) limitations on indebtedness, and (4) bond approvals. Apparently, this tightened state regulation was in response to widespread failure among early districts. 189

1. Formation Procedures

States altered formation procedures in a number of ways. 190 First, some states changed the requirements for who could petition for formation, others varied the number of landowners required for a petition. Some states altered the land ownership requirements for petitioners.

Several states altered the degree of state regulation of formation procedures. 191 Usually the statutes required an investigation by a state official or review commission into the sufficiency of the proposed district’s water supply. The majority of states provided only for advisory reports; a few states, however, made approval by the state a prerequisite to formation. 192 If a report was adverse, some states required a dismissal of the petitions unless three-fourths of the landholders petitioned the state official or supervisory commission. 193 These provisions for countering adverse reports reconfirmed the basic notion of local district autonomy. 194

Most states required a formation election after the petition hearing. 195 A simple majority was ordinarily sufficient to carry a district election although some states required a three-fifths or two-thirds voter approval. 196 Several states departed from the Wright-Bridgeford Act by allowing for the exclusion from districts of lands already irrigated. 197 For example, the Arizona statute allowed the exclusion of lands which had an irrigation supply for at least twenty-five per cent of their areas. 198

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189. See generally Circ. No. 934, supra note 7, at 65.
191. Id. at 9-10.
192. Id.
193. Id. at 9.
194. See supra note 63.
195. Misc. Publ. No. 103, supra note 96, at 10. Kansas required only the order of the county commissioners. Montana and Wyoming created a district upon the order of the county district court. Id.
196. Id. New Mexico and Idaho required two-thirds; Oregon, three-fifths. Id. The Texas Water Improvement District required the consent of a majority of voters in any municipality included in the district. Id.
197. Id. at 11-13. Several states provided for an equitable assessment credit if lands included within the district were already developed. Id.
Utah law provided for substantial state participation in district formation.\textsuperscript{199} The state water engineer determined the quantity of water available and made allotments to each forty acre tract or a smaller tract if in independent ownership before a district could be formed.\textsuperscript{200} After formation, district directors could not increase this allotment without the consent of the state engineer, nor could the directors decrease the allotment as long as district indebtedness exceeded two percent of the assessed valuation of the lands.\textsuperscript{201}

2. Confirmation Proceedings

Some state statutes provided for confirmation hearings which were designed to determine and to confirm the validity of proceedings leading up to the issuance of bonds.\textsuperscript{202} These hearings served to reinforce investor confidence.\textsuperscript{203} In Wyoming, however, the confirmation procedure was used for a much more basic purpose. The Wyoming legislature amended the district statute in 1920 to require the district to file with the court a plan of procedure for effecting the purposes of the district.\textsuperscript{204} If the court was dissatisfied, it could order modification of the plan as a condition of confirmation, and thereafter the plan as modified controlled the district until changed by the court after a hearing upon the petition of the commissioners. In effect, then, the Wyoming statute placed the court in a role similar to that of a utility commission.

3. Limits on Indebtedness

Irrigation districts, unlike other water enterprises, were able to secure their debts by liens on all of their lands.\textsuperscript{205} To protect landowners and to safeguard against district manager abuse, some states limited the amount of indebtedness a district could incur.\textsuperscript{206} Some states limited district indebtedness to a percentage of the market value of the lands of the dis-

\textsuperscript{199} See Act of Mar. 18, 1919, ch. 68, § 2, 1919 Utah Laws 204, 205 (current version at UTAH CODE ANN. § 73-7-2 (1980)).

\textsuperscript{200} Id.

\textsuperscript{201} Id. § 3, 1919 Utah Laws 204, 206 (current version at UTAH CODE ANN. § 73-7-3 (1980)).

\textsuperscript{202} Misc. Publ. No. 103, supra note 96, at 50. Some states also provided for confirmation of assessments, contracts, exclusion of land, or other acts. Id.

\textsuperscript{203} See Bosley, supra note 118.


\textsuperscript{205} See, e.g., Wright-Bridgeford Act, ch. 189, § 40, 1897 Cal. Stat. 254, 267 (current version at CAL. WATER CODE § 25925 (West Supp. 1982)).

\textsuperscript{206} Misc. Publ. No. 103, supra note 96, at 88-91.
4. Bond Issues

Despite apparent safeguards, including voter approval and confirmation proceedings, early districts displayed a high failure rate resulting from excessive indebtedness incurred by inexperienced management. The default of one irrigation district had the effect of depressing the entire market. By 1911, the market for district bonds was so depressed that the California Legislature responded by creating a statewide commission to review and certify district bonds. The objectives of the Commission were to reduce speculative bond issuance and to revive and stabilize the bond market.

The Commission evaluated the financial status of the irrigation district, as well as the cost and physical feasibility of the proposed bond issue. To determine feasibility, the Commission examined the estimated water supply, water rights, the cost of construction, and the district's general financial and managerial fitness. Bonds could not be sold without the Commission approval. The 1911 Act also sought to improve the market for irrigation district bonds by designating them as legal investments for all trust, insurance, banking, and state school funds. A ma-
majority of states adopted a requirement that the bond issues be approved by a state bond commission.219

State supervision of bond issues also took place in the form of voter approval. In every state but Montana and Wyoming, district electors had to authorize bond issues.220 In all states except California, only landowning electors could approve bond issuance.221 Most states required majority approval to pass a bond issue, but some states had a super-majority requirement.222

D. Expanding District Functions

The early statutes passed in the states other than California did not vary significantly from the Wright-Bridgeford Act.223 Each state legislature usually made several minor changes, however, reflecting adaptations to local conditions.224 For example, several states authorized newly formed irrigation districts to purchase existing irrigation works from private and mutual water companies,225 reflecting the substantial irrigation development that had occurred prior to the enactment of many statutes.226

As the population and industries within the districts’ boundaries became more varied, the changes in the district powers became more dramatic. District powers expanded beyond narrow irrigation functions to include such powers as drainage,227 flood control,228 and the generation and sale of electrical power.229 Electrical power sales created additional revenues for irrigation districts and helped to reduce the costs of supplying irrigation.230 In some cases districts used electrical power primarily for the operation of wells to pump ground water and thus expanded their water supplies.231

220. Id. at 33-34. Wyoming and Montana provided for issuance of bonds upon the petition of the landowners. Id.
221. Id. at 14-15.
222. Id. at 33-34. Idaho, Kansas, Utah, and Nevada required a super-majority. Id.
223. Id. at 26-28.
224. See id. for the particular local variations.
225. Id.
227. See, e.g., CAL. WATER CODE § 22095 (West 1956).
228. See, e.g., CAL. WATER CODE § 22160 (West 1956).
229. See, e.g., CAL. WATER CODE § 22115 (West 1956). See also supra text accompanying notes 170-72.
230. See generally Bull. No. 254, supra note 28, at 64.
To date, modifications of the Wright-Bridgeford Act have empowered irrigation districts to engage in such disparate functions as establishing and managing airports and aviation schools, coordinating sewage disposal, and providing recreational facilities. These expansions of district powers indicate that the needs and concerns of the district populace have changed over the years.

State legislatures have also expressly amended their irrigation district legislation to expand the purposes for which districts may distribute water. Originally the Wright-Bridgeford Act had permitted the supply of water only to irrigate district lands. Subsequent modifications of district legislation document the historical trend toward districts supplying water for purposes other than irrigation. In 1917, the California Legislature amended the Act to allow the delivery of water for domestic purposes. The statute was further amended in 1935, authorizing districts to supply water for fire protection and "any other beneficial use."

E. Irrigation Districts Today

Modern irrigation districts differ only slightly from their predecessors. Some changes have been made to meet non-agricultural needs, such as sewage disposal or domestic water service. Other changes permit districts not only to provide for services peripheral or largely unrelated to irrigation, but also to take advantage of their new functions to preserve or subsidize irrigation uses. For example, districts may have the ability to apply the revenues obtained from the sale of surplus water and power to reduce the cost of irrigation.

234. Id. §§ 22185-22186 (West Supp. 1982).
236. Act of May 19, 1917, ch. 557, § 8, 1917 Cal. Stat. 751, 758 (current version at CAL. WATER CODE § 22075 (West 1956)).
239. See supra notes 236-37 and accompanying text.
The urbanization of lands within many irrigation districts raises some question about the future of irrigation districts. Districts may be able to adapt to changes in land and water uses through the exclusion of lands no longer susceptible to irrigation,\textsuperscript{242} consolidation of districts,\textsuperscript{243} and dissolution procedures.\textsuperscript{244} While the institutional framework within which these changes are made varies from state to state, generally their implementation depends upon action by the district directors.\textsuperscript{2411} Most modern district directors are elected solely by a landholding electorate, and in many states, landowners with larger estates may have a greater number of votes.\textsuperscript{246} Therefore, although statutory provisions allow for flexibility, any actual changes in district boundaries or operation will usually reflect landowner interests.

Irrigation districts today are often only one part of a complex water management system. The individual district's role in that system will vary according to the involvement of other types of water districts, state administrative bureaucracies, and relevant physical and environmental conditions.\textsuperscript{247} Irrigation districts may serve primarily as distribution systems within a multi-county water conservation district,\textsuperscript{248} or evolve into key suppliers of municipal water and power.\textsuperscript{249} Analysis of the role of the boards to pledge revenues from the sale of water and power to meet bond obligations); Cal. Water Code §§ 25400-25403 (West Supp. 1982)(providing for Revenue Improvement Districts whose only source of revenue is water charges); see also Ariz. Rev. Stat. Ann. §§ 45-1578(10), (16) (permitting directors to establish tolls for water and electrical power to apply surplus revenues to the liquidation of district debt); cf. N.M. Stat. Ann. §§ 73-12-1 to 73-12-57 (1978) (providing for Electrical Irrigation Districts which can sell power not necessary for pumping water, and apply revenues to defray the annual assessments on district lands).


\textsuperscript{245} See, e.g., Ariz. Rev. Stat. Ann. § 45-1545 (1956), which provides for exclusion upon a determination by the board of directors that the lands are "alkaline, slick, unsusceptible of economic leveling, water-logged, caliche, hard pan or otherwise unproductive or incapable of carrying their proportionate district liabilities." Id. The second method may be inappropriate today where the lands are susceptible to municipal or industrial uses.


\textsuperscript{247} See generally K. De Cook, J. Emel, S. Mack, & M. Bradley, Water Service Organizations in Arizona (Water Resources Research Center, College of Earth Sciences, Univ. of Arizona, 1978) [hereinafter cited as K. De Cook].

\textsuperscript{248} See infra note 310.

\textsuperscript{249} For example, the Lake Havasu Irrigation District, in northwest Arizona, provides water for domestic purposes and a golf course only. See K. De Cook, supra note 247, at 43-45. But see City of
modern irrigation district requires an examination of several different forms of special water districts.

1. Improvement Districts

District residents initially formed improvement districts as sub-districts designed to meet specialized needs within the larger Irrigation District. Arizona has developed a unique form of improvement district called the Agricultural Improvement and Power District (AIPD) of which the Salt River Project is the only example.

The AIPD varies from the general Arizona irrigation district in several ways. First, voting for AIPD directors is based upon one vote per acre, with fractionalized acreage voting. Second, the purposes of the AIPD encompass both the sale of power and the sale of surplus water to reduce the costs of irrigation within the district. Third, the purposes of the AIPD include financing or refinancing the debt of any private or public agency which is incurred in the construction, maintenance, improvement, or replacement of the irrigation and power works. Fourth, the district can be formed only within a federal reclamation project.

Recent amendments to the AIPD Act give the Salt River Project the power to develop a variety of forms of energy to ensure a supply of electricity to district customers, and the power to issue revenue bonds. Because these revenue bonds are secured by the revenues of the district, they in no way create an obligation on district lands.

Scottsdale v. McDowell Mountain Irr. and Drainage Dist., 107 Ariz. 117, 483 P.2d 532 (1971) (holding that a petition to organize an irrigation district must state that the purpose of the district is to irrigate agricultural lands).

250. *See supra* note 161 and accompanying text.


254. *Id.* This provision allowed the District to contract with the Salt River Valley Water Users' Association to satisfy the Association's obligations by allowing those obligations to become the District's debt. Stipulated Statement of Facts, *supra* note 251, at 26-27.


The AIPD is an example of a form of special district which has a large role as a manager of both agricultural and municipal water.\textsuperscript{259} The district statute permits the AIPD to contract with municipalities, counties, political subdivisions, persons, corporations, or the United States government to arrange for these entities to be agents for the management of water or works under their control.\textsuperscript{260} As land use has shifted from agriculture to urban uses, several cities have contracted to pay the district past and future assessments on certain lands within their boundaries.\textsuperscript{261} In return, the district delivers the water appropriated to those lands directly to these cities in its capacity as the landowners' agent.\textsuperscript{262} The district provides water to eight cities for municipal use; in five of these cities, over fifty percent of the municipal water is supplied by the district.\textsuperscript{263}

The AIPD also has several arrangements with smaller irrigation districts to provide drainage for waterlogged lands within the AIPD.\textsuperscript{264} In exchange, these irrigation districts receive the pumped water, much of which is derived from reclamation project water without payment to the AIPD or the federal government.\textsuperscript{265}

As the AIPD's water functions have grown more complex and diverse, the Arizona Legislature has amended the statute to provide additional safeguards to the landowners of the district. For example, the statute prohibits construing the contracts to modify or affect the rights of any landowner in the district to the use of water for irrigation of land within the district.\textsuperscript{266} Further, the District may veto a transfer of water within wa-

\textsuperscript{259.} See C. SMITH, supra note 251, at 28-29.
\textsuperscript{260.} Id. See also Comment, Reclamation Subsidies and Their Present Impact, 1982 Ariz. St. L.J. 499.
\textsuperscript{261.} ARIZ. REV. STAT. ANN. § 45-936(c) (Supp. 1981-1982).
watersheds where it owns water rights. This gives AIPD directors authority to control water use both within and without the district.

2. Water Conservancy Districts

Water conservancy districts are a second variation on the basic irrigation district format. Legislatures designed conservancy districts to facilitate the construction and financing of larger, more costly water diversion, storage, and delivery systems. These systems were needed not only to provide supplementary irrigation water for irrigation, but also to meet burgeoning municipal and industrial water requirements. Conservancy districts are also designed to promote water conservation through stabilization of water flow in streams and increased return flow to these streams.

The creation of water conservancy districts represents more than just an effort to supply municipal water. It also represents a departure from the irrigation district’s traditional pattern of special assessments for special benefits. Conservancy districts have a split level financing structure. They levy a general tax on all real and personal property within the district, and special assessments on municipalities, individuals, water companies and irrigation districts which contract for conservancy district water. The district’s general taxes, levied upon all district lands, pay for the expenses of the organization, for surveys and plans, and for construction, operation and maintenance in the district. The assessments levied by conservancy districts fall upon three separate classes of beneficiaries: municipalities, public corporations and landowners. These entities

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268. See infra notes 341-44 and accompanying text.
269. The first statute to provide for such a district was the Metropolitan Water District Act, ch. 429, 1927 Cal. Stat. 694 (current version at Cal. Water Code § 71000 (West 1956)). This and other similar statutes were adopted in response to the need for an entity which would contract with the United States Government to construct reclamation projects too large for any one city to undertake alone. See Lehi City v. Meiling, 48 P.2d 530, 534 (Utah 1935). Such acts are not discussed further in this Comment because of their primarily municipal functions. This section will focus primarily on the Colorado Water Conservancy Act, Colo. Rev. Stat. §§ 37-45-101 to 37-45-152 (1973) and similar statutes which have been enacted in Utah, New Mexico, and Nevada. See Nev. Rev. Stat. §§ 541.010 to 541.420 (1981), N.M. Stat. Ann. §§ 73-14-1 to 73-18-43 (1978), and Utah Code Ann. §§ 73-9-1 to 73-9-43 (1980). For a discussion of Arizona Water Conservation District see infra notes 298-311 and accompanying text.
271. Id.
272. See supra notes 102-08 and accompanying text.
must pay their assessment in addition to their general taxes.\textsuperscript{278}

The conservancy district formation and management provisions vary from those of basic irrigation districts. Districts with assessed land values of $20 million or more are subject to somewhat different formation rules than are districts with assessed values of under $20 million.\textsuperscript{278} In either case, however, formation petitions must have the endorsement of both owners of irrigated lands and landowners from each city or town to be incorporated in the district.\textsuperscript{280} If a municipality with a population of over 25,000 persons is to be incorporated, the express consent of the municipality’s governing body must accompany the petition.\textsuperscript{281}

The landowners file their petition in the district court of any county in which all or part of the proposed district lands lie.\textsuperscript{288} The court must determine if the formation petition satisfies the statutory requirements; if so, and if no landowners protest, the court must declare the district formed.\textsuperscript{288} If a sufficient number of landowners file a petition of protest, however, the court must order an election on the question of formation.\textsuperscript{284} The court that establishes the district appoints its directors.\textsuperscript{288} All district directors must reside in, or own land within the district.\textsuperscript{288}

The board of directors of a water conservancy district enjoys broad

\textsuperscript{276} COLO. REV. STAT. § 37-45-124 (1973). In Colorado, counties, cities, irrigation districts, and all other governmental agencies empowered to levy taxes or assessments are public corporations. 
\textsuperscript{277} COLO. REV. STAT. § 37-45-125 (1973).
\textsuperscript{279} COLO. REV. STAT. § 37-45-109 (1973 & Supp. 1981). Proposed districts in which the assessed valuation of the improved irrigated lands exceeds $20,000,000 require the signatures of: (1) 1500 owners of irrigated lands within the boundaries of the proposed district but not inside the limits of any incorporated city or town; also these irrigated lands must each represent ownership of $2,000 in assessed valuation; and (2) the signatures of 500 non-irrigated landowners within an incorporated town or city, representing assessed valuations of at least $1,000 each.

Proposed districts of less than $20,000,000 assessed valuation require the signatures of (1) 25% of the owners of irrigated lands, exceeding $1,000 in assessed valuation and not lying within the boundaries of any incorporated city or town to be included in the proposed district, and (2) the signatures of at least 5% of the non-irrigated landowners within an incorporated city or town. These lands must have a minimum of $1,000 assessed valuation. \textit{Id.}

\textsuperscript{280} \textit{Id.} An alternative procedure, available for any proposed district, is to file a petition approved by 10% of the proposed district’s electors, or 200 electors, whichever is less. If such a petition is filed, however, a formation election is necessary. \textit{Id.}

\textsuperscript{281} \textit{Id.}

\textsuperscript{282} \textit{Id.} §§ 37-45-109, 37-45-111(2) (1973).
\textsuperscript{284} \textit{Id.}

\textsuperscript{285} COLO. REV. STAT. § 37-45-114 (1973). Upon petition of 15% of the district’s taxpaying electors, a board vacancy may be filled by election rather than court appointment. \textit{Id.}

powers, including the power to withhold water service because of delinquencies, forfeit water rights for defaults, resell or otherwise dispose of such forfeited water, allocate and re-allocate the use of water to lands within the districts, transfer water from lands to which it had been allocated to other lands within the district, and fix rates at which water which is not allotted to specific lands is sold or leased. In setting rates for both the allocated and surplus water the directors have wide discretion. They may establish different units within the district and fix a different value per acre-foot in the respective units. The statute requires that rates be equitable, although not necessarily equal or uniform for like classes of service.

The rights to individual water service in conservancy districts unlike that in irrigation districts derives from the execution of a voluntary water-service contract between the individual landowner and the district. In Colorado, the water right attaches to the land described in the contract, yet the water use itself is not limited to that parcel. Legislatures created water conservancy districts in response to the need to foster cooperation among irrigators and municipal water users, and thus detailed statutory provisions allow for the protection and promotion of both water uses. Some individual conservancy districts, however, may serve municipal or agricultural interests exclusively.

In general, water conservancy legislation, with its provisions for voluntary participation in districts, and cooperation among municipal and agricultural interests, seems more carefully tailored than irrigation district legislation. In this regard, water conservancy districts are better able to meet the needs of varied land and water uses. The provisions of these statutes, however, do not always fully describe the current water conditions and policies operating within the district, and some revision may be needed.

287. Id.
290. See Matthews v. Tri-County Water Conservancy Dist., 613 P.2d 889 (Colo. 1980) in which the Colorado Supreme Court held that such rate setting was not subject to regulation by the Colorado Public Utilities Commission or County Boards of Commissioners.
291. COLO. REV. STAT. § 37-45-118 (1973). Water within each unit must be assessed on a uniform value per acre-foot. Id.
292. Id.
293. Circ. No. 934, supra note 7, at 50.
294. Id.
295. See Kelly, supra note 373, at 434. See supra note 279 (both interests must be represented in formation procedures).
296. See COLO. REV. STAT. § 37-45-109(3)(c) (1973) (individual districts need serve only one of the statutory purposes).
in order.\textsuperscript{297} Other provisions may possibly be cured or updated through liberal construction to preserve district purposes.

3. The Arizona Multi-County Water Conservation District (MCWCD)

While water conservancy district legislation in general permits districts to extend into several counties, Arizona has created a special Multi-County Water Conservation District (MCWCD).\textsuperscript{298} The only such district formed to date is the Central Arizona Water Conservation District which was designed to secure repayment to the federal government for the Central Arizona Project (CAP).\textsuperscript{299}

An MCWCD is formed upon the filing of a petition with the Arizona Director of Water Resources,\textsuperscript{300} who conducts a formation hearing.\textsuperscript{301} If the director determines that “the public convenience and welfare will be served by the establishment of the district,” he must declare the district formed.\textsuperscript{302} A board of directors elected by residents, not just landowners, of each member county governs the MCWCD after formation.\textsuperscript{303}

The powers of the MCWCD reflect its main purpose of serving as a repayment entity for federal projects.\textsuperscript{304} The District Board has the authority to enter contracts with other water districts, but it has no power to allocate the waters of the CAP.\textsuperscript{305} Congress has reserved this allocation authority to the Secretary of the Interior.\textsuperscript{306}

Because the MCWCD is primarily a repayment entity, the financing provisions of its statute are of special importance. Unlike other irrigation districts, the MCWCD levies an annual ad valorem assessment on all assessed property within its boundaries.\textsuperscript{307} The assessments and charges for the water delivered are supposed to repay those costs associated with the CAP allocated to the district by the federal government.\textsuperscript{308}

Unlike an irrigation district, the MCWCD enjoys little local autonomy.

\textsuperscript{297} See Leshy, supra note 4, at n.90.
\textsuperscript{298} ARIZ. REV. STAT. ANN. §§ 45-2601 to -2634 (Supp. 1981-1982).
\textsuperscript{299} See K. De Cook, supra note 247, at 187.
\textsuperscript{300} ARIZ. REV. STAT. ANN. § 45-2604 (Supp. 1981-1982). This petition may be filed by the Boards of Supervisors of three or more counties or by a designated number of state electors. Id.
\textsuperscript{301} ARIZ. REV. STAT. ANN. § 45-2605 (Supp. 1981-1982).
\textsuperscript{302} ARIZ. REV. STAT. ANN. § 45-2605 (Supp. 1981-1982). The director's determination is subject to review by the state supreme court. Id.
\textsuperscript{303} ARIZ. REV. STAT. ANN. §§ 45-2608 to -2609(B) (Supp. 1981-1982).
\textsuperscript{304} ARIZ. REV. STAT. ANN. § 45-2612 (Supp. 1981-1982).
\textsuperscript{305} Id. § 45-2616 (Supp. 1981-1982).
\textsuperscript{307} ARIZ. REV. STAT. ANN. § 45-2614 (Supp. 1981-1982).
\textsuperscript{308} Id. § 45-2613 (Supp. 1981-1982).
This lack of social control results from the district's primary purpose, to serve as a repayment entity for a large federal project. The Secretary of the Interior exercises primary supervision over MCWCD actions.  

The MCWCD exemplifies the usefulness of the special district structure to meet changing environmental concerns and water uses. For example, in order to deal with increased urbanization of its lands, the statutory structure empowers the District to contract with water users for the delivery of the water. These contracts may be with municipal corporations, political subdivisions, and irrigation districts; they are, however, subject to the provisions of federal reclamation law, the Secretary's oversight, and the terms of the repayment contract between the district and the Secretary.  

V. Districts as Water Managers

The legislatures of the Western states clearly anticipated some water management role for the districts they created. This role has never been precisely defined, however. While districts may exercise power over certain transfers of water rights and over the rationing of water, individual water rights and statutory apportionment schemes may limit district powers. This section discusses the interplay between district and individual water rights, the statutory apportionment schemes, and the role which districts may play in the transfer of water rights and rationing of water.

A. District and Individual Water Rights

Untangling the web of water rights involves inspection of historical state water appropriation law, examination of the current water uses, and analysis of the entities which control original and supplemental water. Generally, state laws, which govern the appropriation and use of water, apply to individuals, private organizations, and public institutions such as irrigation and conservancy districts. The relationship of the water rights of the district to those of the individual user within the district historically took one of three forms. The district might hold the formal title to the water right with the users having a beneficial ownership or other interest in the right. Alternatively, the individual users might hold the legal as well as the equitable title and the district would only

311. Id.
hold title to the works. Finally, in one state the district and individual users held the appropriative right in common.

There could be a combination of the above forms of water rights ownership where districts had not acquired title to all preexisting water rights or where a district had purchased a commercial or mutual water company subject to the company's preexisting contractual obligations. These preexisting rights would retain their priorities and appurtenance to specific tracts.

1. Distribution of District Water

Where a district develops a new water supply, statutory provision controls the distribution of that water. The Wright Act, as well as the later Wright-Bridgeford Act, provided for the distribution of water in direct proportion to the ad valorem assessment of individual parcels of land, and entitled landowners to transfer the water. Thus, the most valuable lands were entitled to the largest water allotments. In Fallbrook Irrigation District v. Bradley, the Court found that this type of apportionment,

when followed by the right to assign the whole or any portion of the waters apportioned to the landowner, operates with as near an approach to justice and equality as can be hoped for in such matters, and does not alter the use from a public to a private one. Despite this approving language the Supreme Court did not foreclose alternative apportionment methods, and several states provided for substantially different methods of apportionment.

The Wright-Bridgeford Act apportionment system perpetuated the disparity in the land development of the district. Districts assessed lands at a greater distance from water or water facilities at a lower rate, and

314. Id. at 476. See also Slosser v. Salt River Valley Canal Co., 7 Ariz. 376, 65 P. 332 (1901) (holding that the sale of water is not a beneficial use and therefore a water company could not be an appropriator).

315. See Board of County Comm'rs v. Rocky Mountain Water Co., 102 Colo. 351, 79 P.2d 373 (1938).

316. Circ. No. 934, supra note 7, at 48.

317. Wright-Bridgeford Act, ch. 189, § 18, 1897 Cal. Stat. 254, 259 (current version at CAL. WATER CODE § 22250 (West 1956)).

318. See supra note 95.


320. Id. at 162.

321. See id. at 178.

322. See infra note 327 and accompanying text.

323. See Bull. No. 254, supra note 28, at 62.
those lands correspondingly received a smaller amount of water, even when supplying more water would have increased the land's productivity. In effect, the Wright-Bridgeford Act method delivered water in proportion to the value of the land prior to the receipt of water.

When states enacted legislation with apportionment provisions different from those of the Wright-Bridgeford Act, they were careful to maintain the link between apportionment and assessment, because it was upon this link that the constitutionality of the district format rested. The variations from the Wright-Bridgeford Act made in several states seem to reflect the efforts of state legislatures to accommodate the vested financial interests of landowners with preexisting water supplies, and to design a more efficient method of apportioning the water. The state statutes used one of five methods of apportionment: (1) apportionment based on the ratio of the assessed value of the land to the total assessments of the district, (2) equal allotments to each acre assessed, (3) an amount determined by the state engineer and district directors to represent the amount of water that each parcel of land could put to beneficial use, (4) pro rata apportionment among the assessed acres of the district; as long as the district took over the distribution of already appropriated water, it did not abridge any prior appropriative rights, and (5) apportionment of an equitable quantity of water on the basis of beneficial use.

Several states also provided that water which was acquired under contract with the United States would be distributed pursuant to the contract provisions and federal law.

Contracts into which the district enters after its formation control the distribution of water in water conservancy districts. An entity may contract with a district for only as much water as will, in the judgment of the board of directors, when added to the contracting entity's current supply of water, maintain "an adequate supply" for that entity.

This statutory language grants the water conservancy district broad power to shape water use throughout its boundaries. The apportionment is

324. Id.
325. For example in Utah, the statute, unlike the Wright-Bridgeford Act, vested discretion in the state water engineer to apportion district water. This discretion seems not to raise constitutional questions, however, because the engineer's apportionment then formed the basis of the assessment. UTAH CODE ANN. § 73-7-18 (1980). See supra note 155.
327. Id.
328. Id. See also Comment, Reclamation Subsidies and Their Present Day Impact, 1982 ARIZ. ST. L.J. 499.
330. This is just one of the water conservation district's broad powers over water distribution and allocation. See also COLO. REV. STAT. § 37-34-134 (1973) (additional water powers).
not tied to the assessed value of the property, or any rigid pro rata standard, but may vary with the needs of the individual user. Nor is there any requirement that the water apportioned must be directly tied to any specific parcel of land because water can be allotted to a municipality or irrigation district. These entities can then apportion the water in response to local needs.

2. Transfers of Water Rights

The Wright-Bridgeford Act allowed landowners to transfer their water allotments to any tract within the district’s boundaries. This transfer right may have been initially designed by the California Legislature to appease landowners whose lands were included in the district but who had previously developed sufficient water supplies. Thus, even though the Wright-Bridgeford Act did not originally provide for the exclusion of these lands, by allowing landowners to lease water allotments, the Act enabled landowners to recover the costs of the assessments, and put water to beneficial use.

States which did not allow landowners to transfer their water allotments usually provided for other forms of compensation. Districts might give landowners an equitable credit in reducing their assessments because of reduced water needs or in some cases, districts might exempt landowners who had already developed sufficient water supplies from compulsory inclusion of their lands in the district.

The issue of transfer becomes more important as lands within an irrigation district become increasingly urban. Individual tracts no longer under irrigation may not need a full allotment of water and landowners may desire to transfer their rights. The ability of individuals and districts to effect these transfers reflects to some degree the flexibility of the irrigation district to meet changing needs.

Although there are varied impediments to transfer of water within district boundaries, to the extent districts have the ability to influence or

331. See Misc. Publ. No. 103, supra note 96, at 95-96.
332. See supra notes 114-15.
334. Id.
335. For example, in Arizona lands already under an existing system of irrigation would be exempt from inclusion if the works had been operating one year and had actually delivered water to 25% of the area. ARIZ. REV. STAT. ANN. § 45-1503 (1956).
337. One commentator has identified three major obstacles to the transfer of appropriative water rights: (1) federal reclamation laws forbidding individuals and districts receiving project water to transfer water rights, (2) state laws forbidding transfer, and (3) state laws which make the water
control transfers, they have significant power to shape water use both within and without their boundaries. For example, districts can use transfer powers to promote conservation. Districts can encourage landowners to use agricultural methods which require less water and then transfer the remainder of their appropriation to the district itself. In return, the district could reduce the costs of irrigation to these landowners by selling the surplus water to higher paying users such as municipalities and industry. In addition, the district could overcome landowner fears that conservation will permanently reduce the amount of their water right by contract provisions granting conserving landowners a preference right to the purchase of surplus water.

Statutory reforms which would give the districts clearer title to the water within their boundaries would enhance the ability of districts to effect conservation policies. When districts hold title to all or most of the water within their boundaries, the complications and costs of internal transfers are greatly reduced.

The law governing transfers of water from within districts for use outside district boundaries is extremely confused. In addition to the impediments confronting transfers within district boundaries, such external transfers may violate state law, and seem to contradict the fundamental purpose of a district to provide water for its lands.

Even if districts are unable to effect external transfers, they have sometimes been given the ability to affect water use outside their boundaries. For example, along with water users' associations, Arizona irrigation districts and the AIPD hold an absolute veto power over applications for transfer of any water rights within any watersheds in which they have water rights. This unguided veto gives districts the power to promote the water interests of their landowners or of the districts themselves, without any state supervision.

The veto power held by districts and by the private water users' associations raises issues about the propriety of these institutions making independent decisions affecting state water policy. The statute provides for the state Director of Water Resources to evaluate and approve or deny applications for transfer. Allowing districts and water users' associa-

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338. Id. at appendix 1, p. A1-14.
340. Id. at 25.
342. Id.
tions to veto the transfer duplicates the evaluation of the director. In fact, the district or association veto may preempt the director's decision because permits for transfer cannot be issued over a district's or association's veto. The district or associations might even veto a water transfer which might otherwise be consistent with express state water policy, even where the transferee and the transferor are outside the district and have no voice in its management. The district can exercise its veto power, in other words, without regard to state policy concerning the relative value of uses.

In order to promote consistent state water policy, the independent vote of districts and associations should be restricted. The district veto should be subjected to override by the state water director, or similar state oversight. This would allow transfers to occur in response to market conditions, but under restrictions which protect both the district's legitimate concerns and the larger public interest.

B. Water Rationing

Another important area of water management is the ability of districts to ration water during shortages. The statutes usually employ the general but largely unhelpful guideline that during a shortage a district may distribute available water to achieve the best interests of all parties concerned.

The ability to ration may have an increasingly important role in water management in the future. Yet district statutes typically do not adequately define the term shortage. Conceivably, available water might

343. See, e.g., Salt River Valley Water Users Association v. Kovacovich, 3 Ariz. App. 28, 411 F.2d 201 (1966). In Kovacovich, the defendant had saved sufficient water through conservation to apply water to a second parcel of land. The Water Users' Association objected to this transfer. The court held that the water was appurtenant to the land for which it had initially been appropriated, and therefore application of the water to a second parcel was a transfer subject to the plaintiffs' veto. Because the court found the plaintiffs unharmed by the transfer, its holding indicates that Arizona law affords a blanket veto of transfers within the watershed to water users associations and districts.

344. See, e.g., ARIZ. REV. STAT. ANN. § 45-147 (Supp. 1981-1982) (setting forth priorities for the director to give to competing uses).

345. Id.

346. A determination by the state water director is subject to judicial review. ARIZ. REV. STAT. ANN. § 45-156 (Supp. 1981-1982). Provisions for judicial review of such decisions help safeguard the interests of both individuals not represented in district management, and state water policy. See Bruff, Judicial Review in Local Government Law: A Reappraisal, 60 MINN. L. REV. 669 (1975-1976). In New Mexico elimination of the Water District veto of transfers has facilitated the implementation of state water policy by the state water engineer. See Comment, Water Law—Legal Impediments to Transfers of Water rights, 7 NAT. RESOURCES J. 433, 440 (1967).

347. See, e.g., ARIZ. REV. STAT. ANN. § 45-1589 (1956).

348. See, e.g., CAL. WATER CODE § 22252.3 (Supp. 1982) (which defines shortage as an amount
be sufficient for domestic uses but be inadequate to meet agricultural demands. At issue then would be whether a shortage triggering the district's rationing powers actually exists. Further, if such a shortage existed the district could allocate available water in disregard of general state water policy.349

Legislatures should amend state statutes governing district rationing powers to require consideration of state water policy in the rationing decision. For example, rationing plans should incorporate the priority of water uses established in state statutes.350

VI. CONCLUSION

The Wright Act gave the Western states a blueprint for a governmental special district designed to meet the objective of providing new or supplemental irrigation water. Legislatures first modified the formula in response to early district failures and abuses of bonding authority. The statutory format was later adapted to enlarge some of the basic functions of the district, especially to supply electrical power or water for municipal and industrial uses.

State legislatures have also altered the district structure to embody somewhat different approaches to water supplies and distribution. The newer and larger conservancy districts represent adaptations which provide expressly for the coordination of both agricultural and urban needs. Similarly, financing structures have shifted from the special assessments for special benefits to more generalized taxing power combined with special assessments voluntarily assumed.

The modern irrigation district and the more sophisticated improvement and conservancy districts have become central suppliers and managers of water in an increasingly complex market. As the demands for municipal and industrial water continue to expand, the political and legal ability of districts either to satisfy or resist that demand becomes increasingly important. These pressures have placed into controversy many of the characteristics of irrigation districts.

In *Ball v. James*,351 the Supreme Court upheld the Arizona AIPD's acreage based voting scheme as constitutional, and in doing so answered some of the questions about the limits on irrigation district authority. The

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349. *Cf. supra* notes 343, 344 and accompanying text (discussing the ability of districts to veto water transfers in disregard of state water policy).
350. See W. HUTCHINS, *supra* note 312, at 400-36.
majority opinion in *Ball v. James* tracks the rationale of the landmark decision in *Fallbrook Irrigation District v. Bradley.* The fundamental approach of the two opinions is strikingly similar; both refuse to question seriously the judgment of state legislatures in creating governmental entities to respond to the specific problems of water supply in the arid West. The main problem with the Court's analysis is that it focuses on the historical and statutory purposes of the district and may ignore the actual operating reality. In *Ball v. James*, the Court frames the analysis of the district's acreage-based voting structure in terms of the narrow and specialized statutory purposes of the district, sidestepping any real recognition of the district's significant power operations and governmental characteristics.

This type of analysis is not confined to constitutional questions alone. Courts reviewing many aspects of district structures or actions tend to look to the statutory authority of the district and uphold district actions unless clearly excessive. In light of this kind of court review, the districts' statutory provisions become the most important factor in assessing the role districts will play in water management. If legislatures do not amend these statutes to reflect current land and water uses and to provide definitive procedures or substantive standards for resolving conflicts between water uses, judicial review of district activities will not provide a vehicle to achieve reforms which may be necessary: such as providing more adequate representation of urban needs or better means to resolve conflicts.

These issues were underscored by Justice Powell in his concurring opinion in *Ball v. James*. The concurring opinion emphasized the ability of states to experiment with political structures to meet the novel problems of local communities, and concluded that state legislatures are the best institutions to design and subsequently modify the powers of such special districts.

This comment has traced some of the historical alterations in the district statutes. In the past, when districts have created issues of general concern such as bond defaults, legislatures have taken steps to provide additional state supervision and guidance to protect the public interest. When districts could benefit the public by producing electrical power or

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352. 164 U.S. 112 (1896).
356. *Id.*
draining water logged lands, legislative action has given them the authority.

To the extent statutes governing districts still retain their historic emphasis on serving agriculture, questions can be raised about their continuing vitality when, in many areas of the West, rapid urbanization is replacing or restricting continued agricultural operations. In many situations, especially with respect to the ability of districts to shape water usage, the time has come for legislatures to consider modifying district acts once again. Such modification would, just as the original statutes once did, be aimed at better meeting the needs of the communities they serve.

Lenni Beth Benson