

Rumblin' – Bumblin' – Stumblin'

*Showdown of Water Policy at the
'Hooch*

Donn Rodekohr

James Hairston

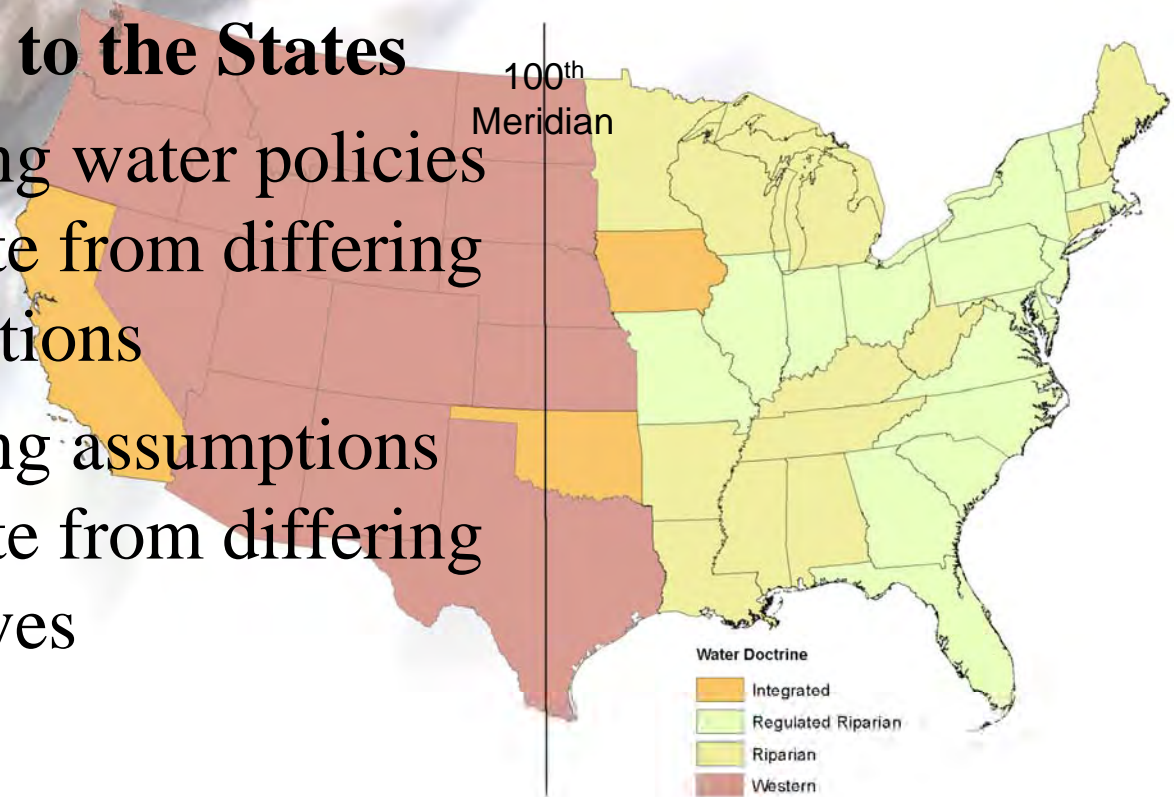
Auburn University



Water is a constraining resource

- *Federal Water Policy is summed up in 6 words:*

- **It is up to the States**
- Differing water policies originate from differing assumptions
- Differing assumptions originate from differing objectives



Western Water Doctrine

- *Basic Assumption*

- There is **NOT** enough water to go around.
- Based upon Spanish Law

- *Colorado codified western water law*

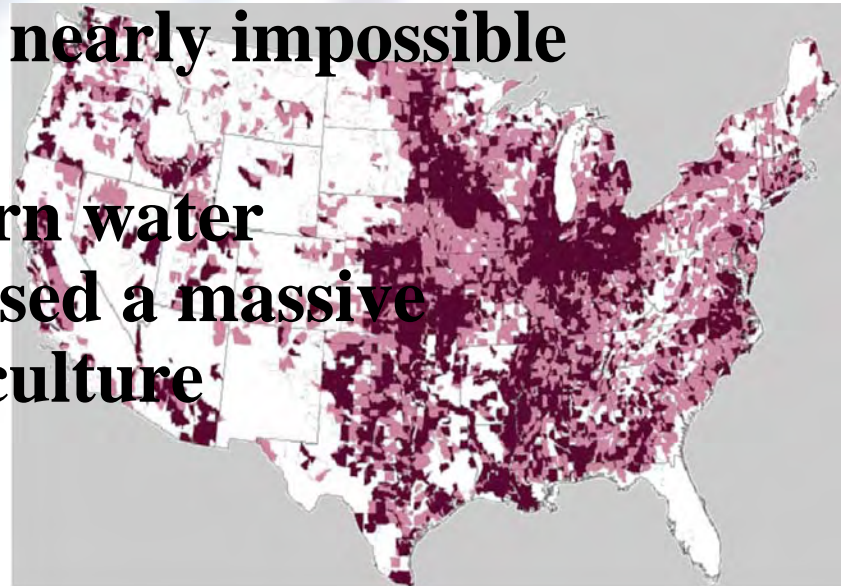
- *All use of water requires an allocation that is granted by the State*



- Temporal order of allocation
- Type of use
- Conflicts settled by rule

Western Water Doctrine

- *Historically evident in western development*
 - Water was viewed as a commodity west of the 100th meridian
 - 100th meridian sidebar
 - Development was nearly impossible without water
 - Large scale western water developments caused a massive migration of agriculture



So what's this got to do with the 'Hooch?

(the 100th meridian approaches....)

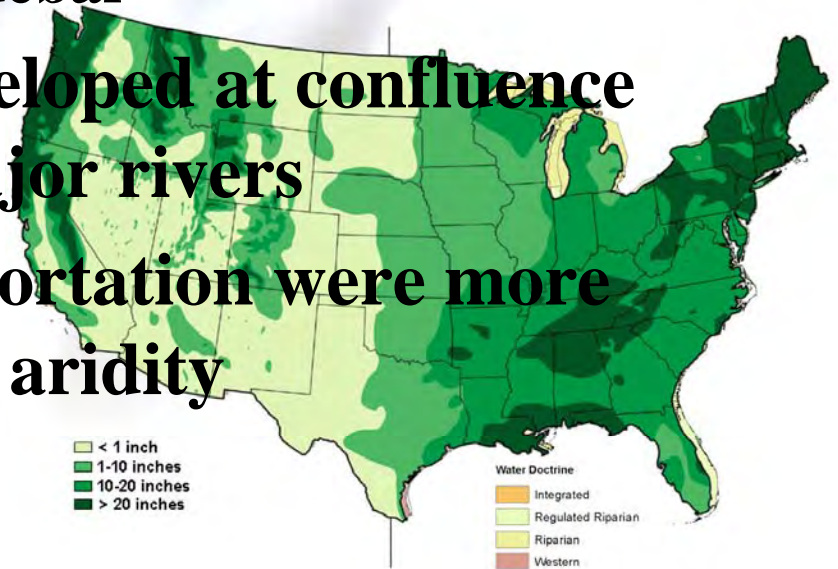
Eastern Water Doctrine

- ***Basic Assumption***
 - *Water is an inexhaustible resource*
 - *Based upon English Law*
- ***13 Colonies codified “Riparian Rights”***
 - *Water withdrawal is tied to land ownership*
 - *Conflicts settled through mutual consent*



Eastern Water Doctrine

- *Historically evident in eastern development*
 - Water was viewed as a resource east of the 100th meridian
 - 100th meridian sidebar
 - Eastern cities developed at confluence and mouths of major rivers
 - Power and transportation were more constraining than aridity



**So what's this got to do with the
'Hooch?**

(aridity takes on many forms...)

Violation of predications

- *Western Doctrine Predication*
 - *There is not enough water*
- *What happens when there IS enough water?*
 - All allocated users get to use the water as needed.
 - Water flows meet instream needs
 - “Excess” water is commonly captured and stored for later allocation
 - Western interpretation of “conservation”
 - Hydrologic data are updated
 - Lawyers lease the house in the Bahamas

Violation of predications

- *Eastern Doctrine Predication*
 - *Water abundance is inexhaustible*
- *What happens when water supplies are stressed and rivers don't deliver?*
 - Wait for rain
 - **All water withdrawals are supposed to reduce their uses equitably**
 - **Injured parties have to document their damage and prove the case**
 - States scramble to develop hydro databases
 - Preference is given to mass
 - **Lawyers pay for the house in the Bahamas**

**What happens if the abundance
does not or cannot return?**

(Al Gore invented climate change...)

Causes of Stress on Water Supplies

- **Drought 1** : a period of dryness especially when prolonged; specifically : one that causes extensive damage to crops or prevents their successful growth
2 : a prolonged or chronic shortage or lack of something expected or desired
- **Consumption**: the utilization of resources in the satisfaction of wants or in the process of production resulting chiefly in their destruction, deterioration, or transformation. **Consumption ≠Withdrawal**
- **Catastrophic events**: forest fires denude hillsides; earthquakes create sinkholes that drain aquifers
- **Administrative removal**: a “cease and desist” order that halts access to water
- **All of the above**
- **If any of these are long term or perceived as permanent, the Riparian System fails**

Violation of predications

- *Virtually every climate prediction model shows decreasing rainfall in the SE*
- *Virtually every population model shows continued growth in the SE*
- *Several “wet” states (VA, OH, MO) are “westernizing” water code*

Results of Increasing Stress on Water Supplies

- *The Federal Water Policy is “hands off” until*
 - Endangered species impacts
 - Interstate conflicts arise
- Interstate Compacts
 - ACF
 - ACT
 - Both are agreements to come to an agreement

Verbiage in the Compact legislation

- (b) 'Allocation formula'
 - **al·lo·cate 1** : to apportion for a specific purpose or to particular persons or things : DISTRIBUTE <allocate tasks among human and automated components>
 - 2** : to set apart or earmark : DESIGNATE <allocate a section of the building for special research purposes>
 - **ap·por·tion** : to divide and share out according to a plan; *especially* : to make a proportionate division or distribution of

Western Water Doctrine!!

Alabama Water Code

- “allocate” is used 56 times, all referring to distribution of funds.
- “apportion” is used once, referring to taxes.
- The Riparian Water Doctrine has no mechanism to address allocating or apportioning water.

Water Doctrine Shootout at the 'Hooch

- **The Tri-State Water War is a natural outgrowth of the Riparian Doctrine when the underlying predication is removed.**
- **Interstate compacts are predicated on the assumption that the States involved have controlling authority and mechanisms over water.**
- **The resolution of these two positions has been...**

Rumblin' Bumblin' Stumblin'

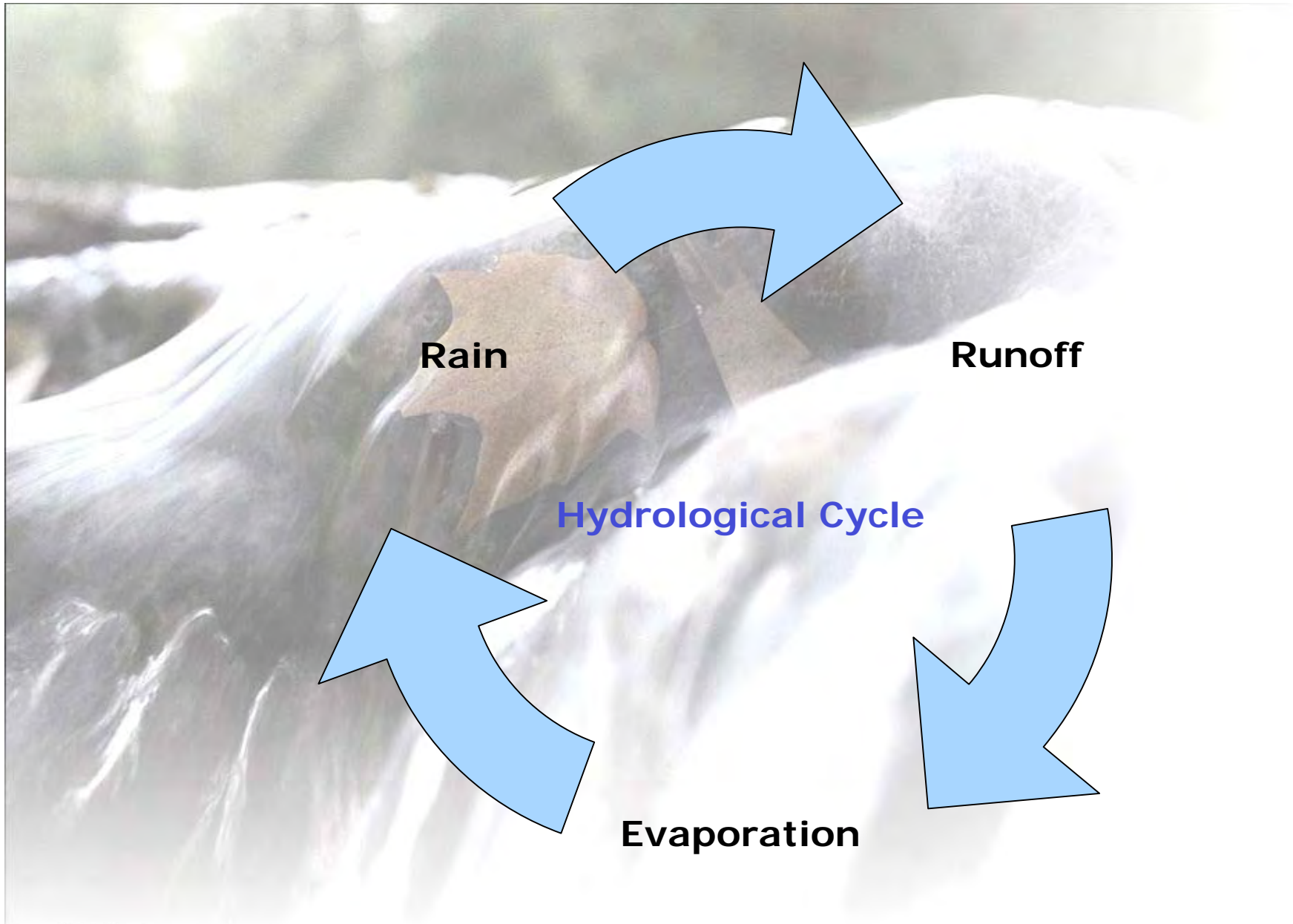
- **Rumblin'** – Form a committee
- **Bumblin'** – State Actions
- **Stumblin'** –
 - *Towards a more Western Water Doctrine*

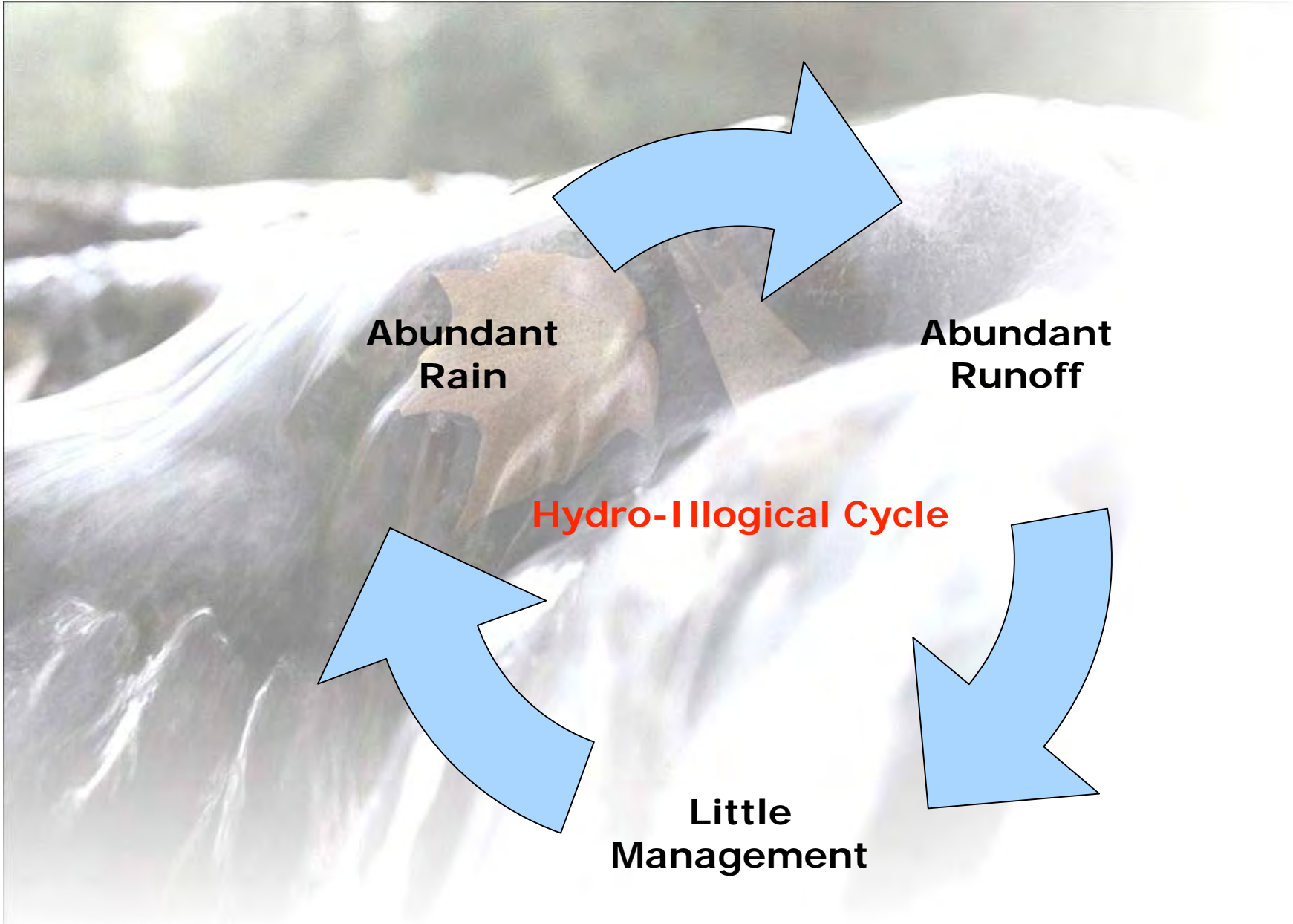
Is there a solution to this problem?

(..please ObeWon Kenobe, we need your help)

Where is this Water War going?

- No where
 - Wait for rain
 - Nothing will change but the litigation continues
 - Lawyers pay for the yacht in the Bahamas





**Abundant
Rain**

**Abundant
Runoff**

Hydro-I llogical Cycle

**Little
Management**

Where is this Water War going?

- No where
- Feds are forced to take control
 - Nobody wants this but it is an option for the courts
 - Implement Water Basin Controls
 - Lawyers pay for the 2nd yacht in the Bahamas



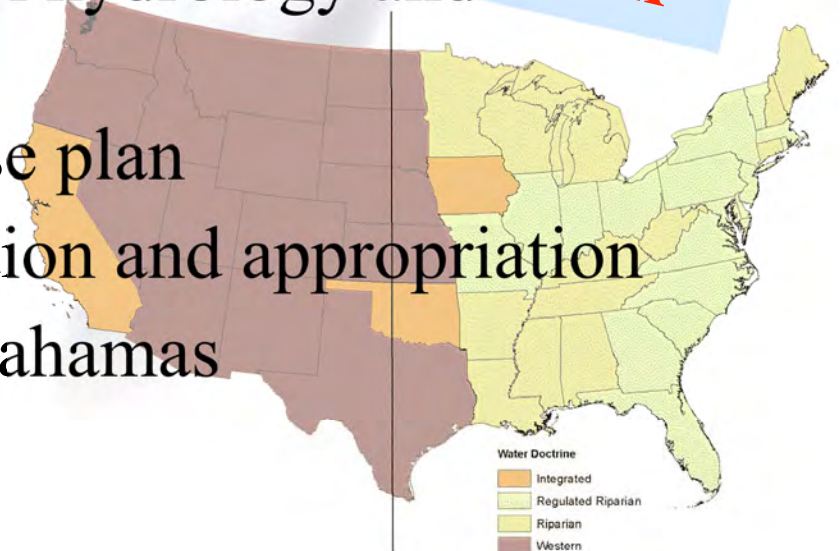
Where is this Water War going?

- No where
- Feds are forced to take control
- One TriState westernizes water policy
 - Accumulate data on hydrology and flows
 - Develop a water use plan
 - Implements allocation and appropriation
 - Lawyers buy the Bahamas

Rumblin'

Bumblin'

Stumblin'



What's in it for SWCS?

(who wants to go the Bahamas?)



Water Conservation is more than Hydrology

- “Future of Irrigated Agriculture”
 - Council for Agricultural Science and Technology (CAST)
 - Policies creating...
 - Policies establishing...
 - Policies facilitating ...
 - Policies providing for ...
- Importance of Water Policy increases proportionately with the stress applied to water supplies.
 - SWCS needs to provide model legislation for SWC that can be implemented under either Water doctrine.

By the numbers...

- 1.3 trillion -- gallons of oil the world uses annually
- 3.9 trillion -- gallons of water the U.S. consumes monthly
- 5 – gallons of water the average African family uses daily
- 176 – gallons of water the average American individual uses each day
- 97.5% -- earth's water that is salty
- 2.5% -- earth's water that is fresh
- > 1% -- earth's fresh water is accessed by people