

Controversy over water rights



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Water Rights: Over 200 Years of History and Still Controversial

Water is essential to life, not only human life, but also the life of plants and agriculture. Water is also the essence of life, which means laws have to be made to “be fair” to everyone that needs water for their land and their agriculture. That is why the Colorado, along with most of the United States, has water rights and laws. Water and water rights have been an issue ever since the mid to late 1800s when “the water laws first originated during the California Gold Rush in 1848” (Waskom, et al.). The laws were then brought to Colorado during the gold rush of 1859, and put into the state constitution in 1876. It was named the Doctrine of Prior Appropriation or the Colorado Doctrine (Waskom, et al.). Ever since then, water has been fought over constantly and will be fought over until the end of times. It is a valuable source to our survival and also controversial.

The history of water rights and water controversy dates all the back to the California Gold Rush during the mid 1800s. As farmers began to migrate in to the state of Colorado, they found a many sunny days and low humidity, and with the right amount of water, they could make crop production rise. However, the Census from 1910 says that Colorado only received about 12-15 inches of rain when farmers first started to arrive. 12-15 inches was not enough for sufficient farming so farmers had to find an alternative water source (qtd. in Penn and Zietz 25). As farmers began to migrate to Colorado, the amount of water needed for farms rose. In the Development of Water Right in Colorado: An Empirical Analysis, Penn and Zietz quote:

Early irrigation works in the 1860s were often simple, consisting of a crude stream diversion and a short ditch. Soon, however, farmers discovered that they must combine to build and maintain expensive irrigation works; these organized efforts were termed 'irrigation enterprises' by the Census Bureau. Between 1860 and 1880, nearly 1,600 new irrigation enterprises came into existence. The number of irrigation enterprises more than doubled in the 1880s so that by 1890, 58.9 percent of all farms and 19.4 percent [sic] all land in farms were irrigated. By 1900, 71.3 percent of all farms in the state were irrigated. (26)

Penn and Zietz speak of 3 distinct time periods that affected the history of water rights. The first period they speak about was from 1872 to the early 1890s where the majority of court cases were held to deal with upholding and refining the doctrine of prior appropriation. During the second period from the early 1890s to about 1904, courts saw many cases involving irrigation enterprises, which dealt with defining the rights of irrigation cooperatives and partnerships. During the third period, which began in 1905, courts saw many cases regarding storage reservoirs, water rights transfers, and changes in the point of diversion (Penn and Zietz, 26-27). The earliest important case according to Penn and Zietz was seen in 1872 when the *Yunker v. Nichols* case was seen in the Colorado Supreme Court. This case recognized the need for diverting water from the watercourse. Chief Justice Hallet came to the conclusion that:

In a dry and thirsty land it is necessary to divert the water of streams from their natural channels, in order to obtain the fruits of the soil. The value and usefulness of agricultural lands, in this territory, depend on the supply of

water for irrigation, and this can only be obtained by constructing artificial channels through which it may flow over adjacent land. (27)

To this day, many cases go in and out of courts regarding water rights. It is an on going battle between farmers, states, and whoever else use rivers, streams, irrigation, reservoirs, etc. These cases will continue to roll through courts around the United States. However, without these water rights and laws, states along with farmers would go into riots. “ Many of the developments in water rights in the rest of the Western United States derive in one way or another from the Colorado System” (Penn and Zietz 24).

Colorado’s laws have impacted the surrounding states along with states that have adopted Colorado’s ways. Colorado has been the stepping-stone for water rights throughout history and will continue to be.

Court cases of water rights are seen around the state of Colorado; however, there is a case that hits close to home in Northeastern Colorado. A small town farmer from the area of Holyoke and near the Nebraska border was involved in a case that changed water rights forever. The *Sporhase v. Nebraska* case of 1982 was a very controversial case that was taken from a small town all the way to the Supreme Court. Sporhase had land in both Nebraska and Colorado because he lived in the Northeastern corner of the state. Sporhase applied to the Colorado Ground Water Commission to appropriate water to irrigate his land in Colorado from the aquifer that was located beneath the ground. Sporhase was rejected of this application and then decided to invest large sums of money into putting an underground pipeline system beneath his ground to extract water from a well that was across the border in Nebraska. The Department of Water Resources received

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a complaint about Sporhase extracting water from Nebraska and using on Colorado land, which was said to be a violation of the Nebraska statute. Nebraska later sued Sporhase “ to enjoin him from irrigating the Colorado land from his Nebraska well” (Green 924). “ A Nebraska statute required the permission of the Director of Water Resources before groundwater could be transferred across enemy lines.” (Garrett 715-716). During the case, the Supreme Court had to solve an issue that dealt with whether water should be classified as an article of commerce, which would be subject to Congressional Regulation like other natural resources (Green 927). “ An article of commerce is an article (or a resource in this case) that can be offered for sale” (Article of Commerce). Nebraska brought forward three main points that they hoped would sway the decision of the jury. Nebraska first attempted to distinguish water from other natural resources by saying the state makes saving water their top priority because water is the essence of survival for their citizens. In their second argument, Nebraska argued that its water statute was “ a legitimate exercise of the state’s police power to protect the health of its citizens and conserve natural resources.” The third argument, Nebraska argued that congress had given them permission to engage in impermissible groundwater regulation (Green 928-929). In defense, Sporhase used the *City of Altus v. Carr* case as an example and argument to help his side of the present case. This case “ invalidated a Texas statute that prohibited interstate exportation of groundwater without prior approval of the Texas legislature on the grounds that such restrictions violated the commerce clause” (927). This case was relevant to Sporhase because, in Texas, like Nebraska, landowners do not have a comparable right because water is not privately owned. In the end, the Supreme Court

decided in a 7-2 decision, that water is an article of commerce and Sporhase was allowed to keep pumping water from his Nebraska well to his Colorado field (927-930). The decision of this court case set the tone for future court cases that had to do with water because of the decision of water being an article of commerce.

When laws and rights are made, they have to be followed. Water rights go along the same lines and this was seen in 2011 when Bonny Reservoir in Yuma County had to be drained to repay Kansas and Nebraska for water that Colorado had used. This came from a 1942 agreement between the three states that claimed the three states had to share water. Colorado had to give up 4 billion gallons of water in order to repay the debt that Kansas claimed Colorado owed them due to the Republican River Compact. “ The compact collected dust for years until Kansas water officials noticed they were not getting enough water from Nebraska’s and Colorado’s portion of the river” (Bonny Reservoir). Colorado looked for many alternatives rather than draining Bonny Reservoir, but all seemed too expensive. The reservoir was drained during Labor Day weekend of 2011, and pushed up the Republican River towards the Kansas-Colorado Border in order to repay the debt to Nebraska and Kansas under the Republican River Compact (Bonny Reservoir).

Water rights are seen throughout the United States and very much so in the western part of the United States. Water rights come up very often in our local news in Northeastern Colorado along with Colorado. With the increase in technology and agriculture, disputes over water will continue and be on the rise during the future. There will never be an end to this madness

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because no one will ever be able to get a fair or equal amount as the next person. As water becomes scarcer, the disputes will become more intense and farmers and ranchers will need to find alternatives. Until then, water rights will be taken to courts all across the country to try and make these disputes as fair as possible.

Work Cited

“ Article of Commerce.” *Dictionary. com* . Dictionary. com, n. d. Web. 17 Feb. 2014.

.

“ Bonny Reservoir Could Be Drained Because of Water Deal with Nebraska, Kansas.” *The*

Denver Post . The Denver Post, 27 Aug. 2011. Web. 17 Feb. 2014.

http://www.denverpost.com/ci_18771111

Garrett, J. S. *Federal Intervention in Groundwater Regulation: Sporhase v. Nebraska Ex Rel.*

Douglas, 18 Tulsa L. J. 713 (1982)

Green, Mary A. “ Water Law- Sporhase v. Nebraska.” *Natural Resources Journal* 23 (1983):

923-31. *The University of New Mexico* . The University of New Mexico. Web. 17 Feb. 2014. <http://www.unm.edu>

<https://assignbuster.com/controversy-over-water-rights/>

Penn, David, and Joachin Zietz. “ The Development of Water Rights in Colorado: An Empirical

Analysis.” *The American Economist* 55. 2 (2010): 24-35. *EBSCOHOST* . Web. 17 Feb.

2014. .

Waskom, R., et al. “ Irrigation Ditches and Their Operation.” *Natural Resource Series* (2011): n.

pag. *Colorado State University Extension* . Colorado State University, Feb. 2011. Web. Feb. 2014. .