

2015 Water Resources Review Committee

October 29, 2015

Animas LaPlata Operation Maintenance & Replacement Association

Exclusion of Out-of-State “Persons” from Colorado Water Court is Bad Policy

- **It Raises Federal Constitutional Problems**
 - Would prevent non-Colorado persons or entities from defending “legally protectable interests” such as property rights, contract rights, water rights.
 - The Constitution guarantees equal access to courts through:
 - The Privileges and Immunities Clause – “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”
 - First Amendment right to petition.
 - Fifth and Fourteenth Amendment due process and equal protection rights. The Colorado Legislature should be cautious about “picking and choosing” due process issues.
 - U.S. Supreme Court – “The right to sue and defend in the courts is the alternative of force . . . and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens.” *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148 (1907).
- **It Raises Colorado Constitutional Problems**
 - Colorado allows any “person” who has a “legally protected right” that could be injured to participate in water court proceedings. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004).
 - In *Bijou Irr. Dist. v. Empire Club*, 804 P.2d 175, 187 (Colo. 1991), a landowner whose land was affected by a water application opposed the application. The Colorado Supreme Court stated that although “Landowners do not assert injury to any water rights of their own[,] . . . where, as here, objectors such as the Landowners assert that the owner of the water right cannot make the requested uses without impermissibly burdening the objector’s own legal rights, we conclude that general principles of standing authorize the objectors to raise that limited challenge to the application.” *Id.* at 187, n. 20.
- **It Would Likely Create Interstate Problems for Colorado**
 - Neighboring states do not discriminate against Coloradans who seek to access their courts.
 - Interstate cooperation on state or federal water projects would be chilled.
 - Other states could retaliate by excluding Colorado entities from participating in their water proceedings.

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