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Colorado Attorney General Cynthia Coffman
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

Regarding: Fraudulent Water Accounting Complaint

June 24, 2015

Dear Attorney General Coffman,

Please consider this my formal complaint regarding the fraudulent accounting of water as pertains to the South Platte River in Colorado.

Reason for my complaint:

Here's what happen. I live on a 145 year old farm, located near Greeley, CO and on what is considered as a part of the flood plain of the South Platte River.

Though our home is built higher than said flood plain, and even higher than the historic water table, on September 13, 2013, it was subjected to 17" of rushing river...on the first floor! In addition to the mental and physical strain of cleanup, it took over a year and has accrued \$300,000 in cleanup and restoration.

We believe the 17" inches was completely unnecessary for these reasons: 1) Due to over-augmentation (see WAS case following) the upper end of the S. Platte basin has been overhydrated. Over hydration has risen the historic water table of approximately 20 feet, to an approximate non-historic 3 feet and surfacing; one could claim this 17 foot rise easily converts to the 17 inches on the first level of our home.

In addition to the man-made rise in the water table, other contributions to the catastrophic flood include: Advent of streets/highways/rooftops, improper ditch diversions, lack of S. Platte river maintenance.

Today, nearly 2 years later, the water table has risen to points of surfacing. With the advent of the wet April/June it was pretty darn traumatizing moving everything to the highest points on the farm, then wondering if the river would flood out our home again, as we watched it continually approach our patio - then recede.

April 17, 2014, we asked Governor Hickenlooper to take action regarding dredging under the Hwy 85 Bridge between Greeley and La Salle, and to deploy an Executive Order to allow senior water rights to pump. To date, nothing has been done

Background

2006 was a pivotal year on the South Platte River:

Why?

- 1) Lower end junior water users (east of Kersey) claimed upper end senior users used up all the S. Platte water and caused depletions of such severity they did not have any water.
- 2) To satisfy their complaint, Judge Roger Klein (Well Augmentation Subdistrict (WAS) case) ordered the shutdown of senior wells.
- 3) Governor Bill Owens signed a 5 page agreement (South Platte River Implementation Program (PRRIP)) with Governor's Freudenthal (WY) and Heineman (NE) and DOI Secretary Kempthorne, committing Colorado assets (water) and indebting the state (financial commitment) without a vote of the citizenry. Colorado and Wyoming will jointly contribute \$30 million. The remaining portion will come in terms of land and water from the states. In other words, when the lower end complained they didn't have water, Governor Owens "found" enough to give away several thousand acre feet to ESA in Lexington, NE.

Colorado Water Law

Prior Appropriation – First in time, first in right. You must have "water" to put to beneficial use and obtain a decree. In other words, *first in time first in right - goes with the flow.*

The Constitution of the State of Colorado states: Sec. 5. The water of every natural stream, not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.

Sec. 6. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied.

Constitution does not differentiate between ground, surface etc. – it simply states "water;" for it is a given that all water is connected. Therefore, the first date one puts unappropriated "water" to beneficial use (regardless pivot, well, ditch), it is the original and only date that should be honored as *vested property.*

Only "unappropriated" water may be filed on. By approximately 1879, the entire upper end of the S. Platte basin had been appropriated and are considered senior. Water rights further downstream have later dates and are therefore junior.

Analysis

General Assembly drafted and Governor Hickenlooper signed into law, a study of the S. Platte River basin known as HB 1278. In this study, Dr. Reagan Waskom found over augmentation, likely due to the shutdown of wells on the upper end of the S. Platte, contributed to the non-historic high water table. Dr. Waskom made a general hydrological recommendation that to lower the water table, well pumping should ensue.

Conclusion

Knowing some of the contributing factors to the non-historic high water table gives reasons enough to believe who-so-ever is managing the vested property of water rights owners is engaged in fraudulent water accounting.

In many ways, this also smacks of embezzlement, in that water rights owners have no choice but to entrust their vested property to others to manage, and those managers are grossly mismanaging said property and converting it into another use.

Attorney General Coffman, I want you to fix this problem.

Why? Senior water rights owners are being cruelly (albeit illegally) denied use of their vested property. The ripple effect of this denied use is causing severe damage to my property!

Here are some steps I want you to take that will help fix this problem.

- 1) Identify those engaged in fraudulent water accounting.
- 2) Hold them accountable to curing their takings through just compensation to senior water rights owners.
- 3) Inform Governor Hickenlooper that because there are *no open waters of the U.S. in Colorado*, he should order federal to stay the hell out of the way of property owners along the S. Platte River. They have a right to maintain their property without fear of obstructionism and fines by EPA, Army Corps et al.
- 4) Stop the man-made manipulations of the S. Platte River's in-stream flow; it is destroying Agriculture; Colorado's most historically reliable economic foundation.
- 5) Stop use of the upper end of the S. Platte Basin as an underground storage (reservoir); it is rising the water table.
- 6) Recommend Governor Hickenlooper withdraw Colorado from the PRRIP. It serves only as a carriage vessel to move water past its historic dry up (around Kersey), and easterly where everyone knows it's being diverted and sold.

It is my understanding that additional parties, including Charles W. Sylvester and Gene and Jan Kammerzell, will be filing their own independent Fraudulent Water Accounting complaints.

I expect your immediate attention to addressing my Fraudulent Water Accounting complaint. Taking the steps I recommended will truly re-establish justice for many injured parties, and return our rights to "safety and happiness" on our property.

Please contact me anytime! H# (970) 284-6874 * C# (970) 430-0222 I want this fixed!

Thank you.



Roni Bell Sylvester

Charles W. Sylvester

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Colorado Attorney General Cynthia Coffman
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, Colorado 80203

Dear Attorney General Coffman,

Regarding: **Fraudulent Water Accounting Complaint**

July 6, 2015

Please consider this my formal complaint as pertains to what I deduce as fraudulent accounting of South Platte River water in Colorado.

Reason for my Fraudulent Water Accounting complaint:

Here's what happen. I live on my 145 year old farm, located near Greeley, CO and on what is considered as a part of the flood plain of the South Platte River.

Most of my 78 years have been spent living here, where my family homesteaded in the late 1860's.

My passion for water was instilled in me by my father Charles W. Sylvester Sr. He passed along water studies by my forefathers, and taught me how to "read the river."

Sixty five years ago, my classmate Ray Sauer and I rode our bicycles in and around an abandoned beet pulp storage pit, east of LaSalle. Remembering the pit, which had water at the bottom in the deepest parts about 20 feet below surface, I recently asked Ray what he remembered. He confirmed there was scant water at the bottom.

Beginning around 2006, the water has risen to about 2 feet from the surface near the pit, now filled in. With the 2013 flood and this past spring's rains, it's surfaced.

This high water table is destroying crops, as well as the land for future crop production.

Why has this happen? Over augmentation of the upper end of the S. Platte Basin, as confirmed by Dr. Reagan Waskom's study – HB 1278, completed December 2013.

The junior lower end told Judge Roger Klein that senior well pumping was causing them depletions in the upper S. Platte Basin, Denver to Greeley, thus limiting instream flow for the lower end. They didn't have to show scientific burden of proof of harm, and Klein ruled in their favor.

A drain (seepage) ditch, which runs through my farm, has never once stopped flowing in over a hundred and forty years. Therefore, I don't believe pumping by the senior water right owners caused depletions.

When the Pioneers settled along the S. Platte in the Godfrey Bottom area, this is what they found.

Some of the land was swampy, had standing water, cattails and reeds. So they dug this drain ditch (known as Latham Drain) with ox teams, horses and slips. This drained the standing water so the farmers could begin using the fertile land for crop production.

The Latham Drain has drained water continuously for over 140 years.

There's negligible difference between times of severe drought, high precipitation, Allotment Quantity usage, and the increased river flow due to the past 9 years senior water rights have been denied use of their Allotment Quantities from wells.

The water has drained from surrounding areas including east of LaSalle. Water still runs downhill by gravity flow whether above or below the earth's surface.

The Godfrey Ditch Company was formed March 10, 1870 in Weld County, Territory of Colorado, with Allotment Quantities for the stockholders.

The nearby town of Gilcrest, is being subjected to high water levels, due to the over augmentation. This is destroying the town's sewage treatment plant, flooding basements and destroying essential crop land.

As my father used to tell me, when the river was running high or flooding, the water flowed outward under pressure and helped fill the aquifer. Now the aquifer is theoretically filled with water placed on the surface to fill the aquifer below.

Water rights were also bought by a water district, which then dried up productive food production farm land.

When the river receded, the water flowed gradually back to the river and helped develop a continuous instream flow. Depending on snowpack/precipitation, the river would generally dry up around Kersey, CO. in the early 1900's.

Sometimes there wasn't enough water to fulfill Allotment Quantity delivery for either the most senior water rights on the upper end, or junior water rights on the lower end.

It is my humble opinion, Judge Klein was wrong in his decision to shut down the wells. What I've learned is that he was allegedly subjected to a combo of, withholding critical scientific information, and undue influence by power brokers. This resulted in his "Takings without just compensation" ruling.

Please note that where the majority of senior water rights are, from Greeley to Denver we refer to the judge with honor, as Judge Roger Klein. Contrarily, on numerous occasions we've heard those living in the lower South Platte Basin, or about Ft. Morgan to the Colorado Nebraska border, refer to the judge as "Roger." Probably because Judge Klein had a law practice in Sterling, where junior water rights oppose every move senior water rights have tried, to use their own property.

In sporting event terminology, it sure looks evident the lower end "home towned" the upper end.

Coming with the 10 year mark of "senior water rights owners denied use of property" (aka no well pumping), new concerns loom on abandonment. We're already hearing about water brokers trying to claim those wells as "abandoned," and file on them.

If those in charge of managing our water according to *Colorado Water Law had adhered to our *first in time, first in right* law, I strongly believe we wouldn't be subjected to the severe damages brought about by Fraudulent Water Accounting.

Bottom line: The upper S. Platte Basin has become the storage area to insure more water from instream flow for the lower S. Platte to use.

Historically, in the early 1900's, the lower S. Platte Basin had very little water to use after the spring's May and June runoff. Starting around the first part of August through the end of October, the river usually dried up.

I have in my possession, an 1893 book with flow charts, dates and documents that back up my statements.

It wasn't until additional irrigation development in the upper S. Platte Basin, with water being placed on the land and the non-consumptive use, water flowed underground back to the river. This insured a continuous water flow seasonally later and farther east.

In hydrological terms, this is called *timing*; delaying the river flow to insure a continuous instream flow of water in the river.

If you travel on I -76 to the Sterling area and east, you will see an abundant number of pivots on a circle of land, where acreage was historically fallow semi-arid desert. The water run through these pivot irrigation systems are primarily from a well near the circle.

Now, the junior lower end not only has sufficient water from the S. Platte river flow to irrigate their crops, they have additional water to augment new wells.

It's common knowledge the junior lower end users also have enough surplus water to sell to the electrical generating plant at Brush, to federal for the Platte River Recovery Implementation Program (PRRIP), and perhaps to wind turbines and ethanol.

Yes. I believe the junior lower end users are making millions by destroying the rights of senior upper end users, and harming a multitude of private property owners.

Thank you for the time and effort you'll take, looking into my Fraudulent Water Accounting complaint. Your efforts are greatly appreciated.

Please contact me anytime at: H# (970) 284-6874 * C# (970) 430-0110

Thank you,

Charles W. Sylvester

***Colorado Water Law**

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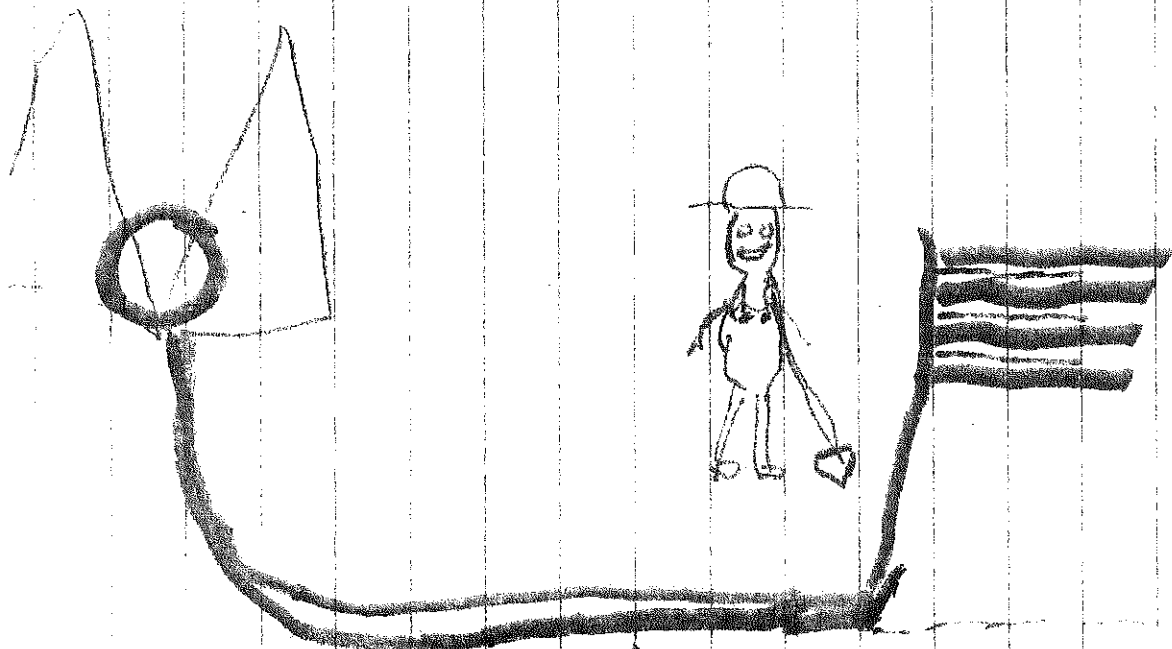
July

Aug

Sept

Limited runoff months

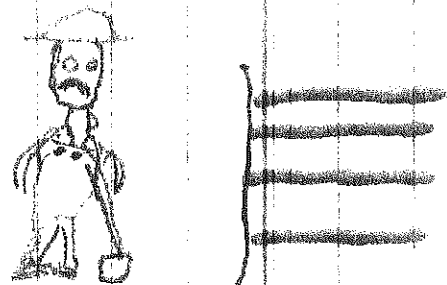
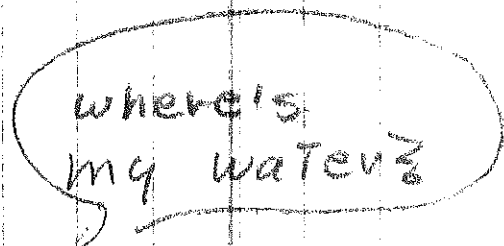
1890 - 1930



S Platte River

Denver

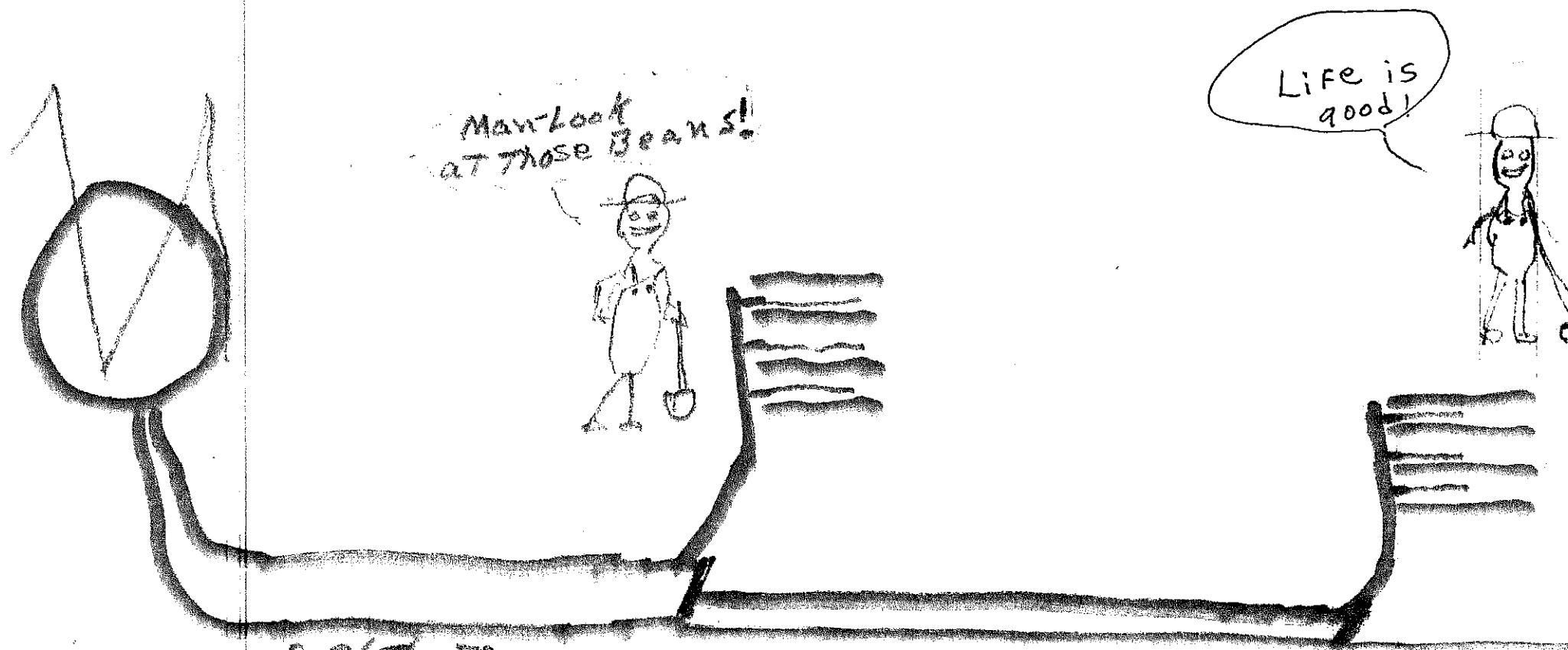
Greeley



Starving

Question - what is your historic water right when there is no water in the river?

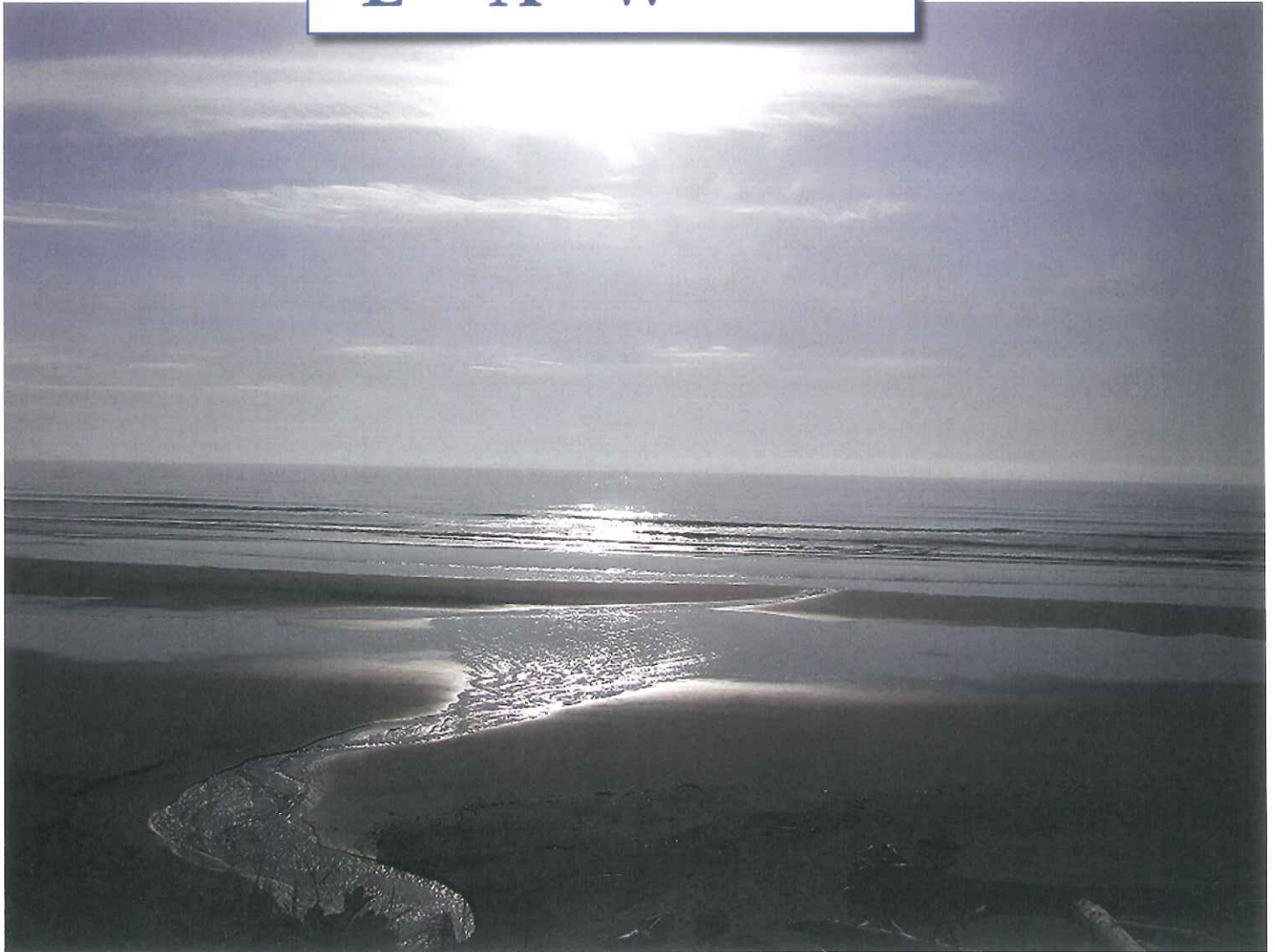
Apr May June 1870 - 1930
Spring and summer view of



Denver

Greeley

sterling



WHOSE WATER RIGHT IS IT?

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Whose Water Right is it?

In addressing Water, it must first be recognized as someone's *Vested Property Right.

Legal ways Water is known to be Property: It is bought, sold, conveyed and stolen, and is taxable by state.

Therefore, the first question that must be answered before proceeding in any public or private matter as pertains to Water, is: "Whose Water Right is included?"

Water Rights included in a Water discussion should be identified and Owners present.

Questions

1. Whose Water Rights are being discussed?
2. What is Water Right's first date of Appropriation?
3. What is Water Right's Allotment Quantity?
4. Who wants the Water Rights?
5. Who will benefit from Water Rights?
6. Who will be harmed by Water Rights?
7. Who will pay for Water Rights? Private party, state, city, ditch, federal etc.?
8. What is the "fair market value" of Water Rights?
9. What is the acre feet difference between Water Right's Consumptive Use and Allotment Quantity?
10. What is the fair market value of the difference between Consumptive Use and Allotment Quantity?
11. Has Owner retained and put to beneficial use said acre feet difference between Consumptive Use and Allotment Quantity?
12. Is Sale of Water Rights a matter of legislation, or is it a private sector matter between Seller and Buyer?
13. Are there Members of State's General Assembly who have a personal or private interest in this measure? If yes, member has a responsibility to disclose the fact and not vote. Article V Constitution of the State of Colorado Sec.'s 40 to 43. Check your state's constitution.
14. Have the vested rights of Water Rights ever been impaired? If yes, has Owner been justly compensated?
15. Has Owner been denied use of his or her Vested Water Rights? If yes, by whom? Has Owner been justly compensated?

Some state's governors have agreements (Not compacts. Look it up.), with federal and other states that commit Water Rights (assets) and money (indebt a state) to "recovery programs" for species. In many states, this violates state's constitution and the Commerce Clause.

Answers to the following questions will show whether or not your state's involved in such.

1. Has your governor signed an agreement with federal and other states that commit Water Rights and money to a "recovery program" for a species?
2. Are Water Rights being diverted/used for any species program, conservation easement etc.? If yes, has Owner given written permission? To whom? How many acre feet is/was Owner compensated?
3. Are Water Rights on federal land being diverted/used for use by any federal agency? If yes, has Owner given written permission? To whom? How many acre feet is/was Owner compensated...and by whom?
4. Has a species recovery program caused injury (loss of income, devaluation of Property etc.) to agriculture? If yes, have injured parties been justly compensated?
5. Because recovery species programs are "ageements," said agreements are likely to have a withdrawal clause that allows governors to withdraw without penalties, litigation etc. You have the right to demand your governor withdraw your state from any such agreement.
 - a. ***ESA** has prohibitions of the killing (taking) of species except when:
 - b. "... (They) become seriously *injurious to the agricultural or other interests in any particular community..." Protection of Migratory Birds, Article VII, 1916
 - c. "... (They) become injurious to agriculture and constitute plagues..." Protection of Migratory Birds and Game Mammals, Article II E, 1937

- d. "...For the purpose of protecting persons and property..." Protection of Birds and Their Environment, Article III (b), 1974;
- e. *Injurious includes "significant economic impact, violation of customs and cultures of community."

KNOW YOUR STATE'S WATER LAW

Most states west of the One Hundredth Meridian are under Spanish Water Law, Prior Appropriation - *First in time, first in right*.

If your state is east of the One Hundredth Meridian, you may be under English Water Law (Riparian).

Find out which Water Law your state's under- then learn it well.

Hereon, we'll use Colorado as an example of Spanish Water Law.

1. When "Water" is put to beneficial use, user perfects Water as his or her Vested Water Right: i.e. "First in time, first in right."
2. For example, in Colorado, the first person to use a quantity of water from a water source for a beneficial use has the right to continue to use that quantity of water and in the first in time, first in right order.
 - a. One can discern Senior from Junior by date of beneficial use, for it "*goes with the flow.*"
 - b. Colorado Constitution states "Water." It does not differentiate surface and ground; only chronological dates of beneficial use of "Water."
 - c. Ground, surface, alluvial aquifers, wells etc. are connected, inseparable, (and should be used in combo) and therefore constitute "water."
 - d. The water molecule never completely vanishes. It relocates. Example: Once upon a time, surface water was ground water, and ground water was surface water and so forth.
 - e. Beneficial Water users were given an "Allotment Quantity" that Water Engineers recorded along with their date of Adjudication.
3. Subsequent users from the same source can use the remaining water for their own beneficial purposes provided that they do not impinge on the rights of previous users.
 - a. Allotment Quantity trumps Consumptive Use in overall value.
4. Each water right has a yearly quantity and an appropriation date.
 - a. There's a margin between "Allotment Quantity" and "Consumptive Use." Unless specified otherwise, a water seller usually sells the Consumptive Use amount and retains the difference between that and his original Allotment Quantity.
5. Each year, the user with earliest appropriation date (known as the "senior appropriator") may use up to their full allocation (provided the water source can supply it). The user with the next earliest appropriation date may use their full allocation and so on.
6. In times of drought, both senior and junior users might not receive their full allocation or even any water at all.
7. Shortages do not result in sharing of the resource or any diminishment of the amount the senior appropriator can take, provided there is enough water for that.
8. When a water right is sold, it retains its *original appropriation date*.
 - a. Date "Water" is put to beneficial use is the "original appropriation date" and only date that legally counts; not the date of surface or well.
9. Only the amount of water historically consumed can be transferred if a water right is sold. Example: If alfalfa is grown, using flood irrigation, the amount of the return flow may not be transferred, only the amount that would be necessary to irrigate the amount of alfalfa historically grown.
10. If a water right is not used for a beneficial purpose for a period of time it may lapse under the "doctrine of abandonment."
 - a. If you have a senior date and been denied use of your Water Right, before 10 years are up, at the least use the margin between your Allotment Quantity and Consumptive Use.

11. No law, act of congress or statute has extinguished the Beneficial Use of Water as Vested Property. Water as a Vested Property Right can be *bought, sold, conveyed and stolen, and is taxable by state.*
12. Federal does not naturally own water. It must purchase water from states/private parties/ditch companies etc.
13. No federal agency has control over Water that does not fall within the strict definition of "Navigable for Interstate Commerce." *Example:* Colorado does not have Water that is used in Interstate Commerce. Therefore, no federal agency (includes EPA) has authority over Water in Colorado. Partial source: http://water.wikia.com/wiki/Prior_appropriation_water_rights
14. Food security is a matter of national security. Therefore, we should take every measure possible to insure our Water goes foremost... to food production.

***Vested Property Right**

C.R.S. 37-82-104 (2013)

37-82-104. Not to impair vested rights

Nothing in sections 37-82-103 to 37-82-105 shall be construed to amend or repeal section 37-82-102; or impair, diminish, or destroy any valid appropriation of water for any beneficial use which has been made or decreed in accordance with law; or modify, amend, or affect any decree of court or the statutes limiting the time wherein appropriators must appear for determination of priorities of right for diversions from natural streams or the decisions of the courts construing the statutes. C.R.S. 38-30-102 (2013)

38-30-102. Water rights conveyed as real estate - well permit transfers - legislative declaration - definitions 2. No diversions allowed
C.R.S. 37-81-101 (2013)

37-81-101. Diversion of water outside state - application required - special conditions - penalty "...it is unlawful for any person, including a corporation, association, or other entity, to divert, carry, or transport by ditches, canals, pipes, conduits, natural streams, watercourses, or any other means any of the water resources found in this state into any other state for use therein..."

***Irrigation**

Section 5. Water of streams public property. The water of every *natural stream*, **not heretofore appropriated*, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.

Section 6. Diverting unappropriated water - priority preferred uses. The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes.

**It is our understanding that all water of every natural stream in Colorado, is in beneficial use and is therefore appropriated.*



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