

Issue erupts over public values

MONTROSE, Colo. — Environmentalists, sportsmen, and property owners are trying to establish a precedent in Colorado water law by asking the state water court system to interject public values into the water rights appropriation process.

The groups are opposing an application by the City of Aurora to divert water out of the Western Slope's Gunnison River basin to the burgeoning cities of the Front Range. The transmountain diversion would cause irreparable harm to the Western Slope economy and environment, the groups contend, and that concern should be included in the court's considerations.

Gunnison River Water Court Judge Robert Brown rejected the request. But Chris Meyer, the pro-bono attorney for the Colorado and National Wildlife Federation, promised to take the plea to the Colorado Supreme Court.

"As a result of the ruling, Colorado an anachronism," he added. states in clinging to the 19th Century notion of water law that the courts are blind to the consequences of their actions," Meyer stated. "We think this is inconsistent with the state Constitution, because the Constitution declares the water belongs to all people. We think as a consequence of that Constitutional instruction, the court not only has the power, but also has an obligation to protect public interests when it allocates the resource." Meyer said. "Instead, the court ruled that Aurora is free to plunder the Western Slope and citizens of the Gunnison basin are powerless to stop it. It's really anachronism," he added.

Bruce Driver, attorney for the High Country Citizens Alliance in Gunnison County, introduced arguments to show that the framers of the Colorado Constitution wanted to avoid "political 'manipulation' and other influences by 'monopolists' over Colorado's waters." Mindful the state legislature might be dominated by such monopolists, the Constitutional Convention placed the duty of

protecting public interests with the court system.

Colorado is the only state in the nation with a water court system, a fact which is often bemoaned by critics wanting policy reforms. But this new proposal could reshape the courts and perhaps make them a decentralized agent to represent much broader concerns than are traditionally considered.

David Getches, a University of Colorado water law professor representing area homeowners, argued, "The trade-offs must be considered whether the value of green lawns in another part of the state outweighs the value of a free-flowing river with all its life, its enterprise, and the well-being it produces."

Colo Dist Court, Water Division Number Four; case numbers: 86-CW-37; 86-CW-226; 86-CW-202 and 86-CW-203.

Wyo. rights case may go national

CHEYENNE, Wyo. — Every major party in the 11-year-old Big Horn River water rights case has asked the Wyoming Supreme Court to rehear portions of its recent decision, but the state's high court has refused.

Appeals were filed in April by the State of Wyoming, the federal government, and the Shoshone and Arapahoe Indian tribes.

The state's high court had spent almost three years considering the case and the denial ends the case, at least at the state level. The state and other parties are now considering appeals to the U.S. Supreme Court, said Jane Katon of the Wyoming attorney general's office.

The case finally awarded the tribes about half of all the water in the basin and gave them a priority date of 1868, the year their reservation was established. This could eventually conflict with current water usage by non-Indians who have younger priority dates.

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