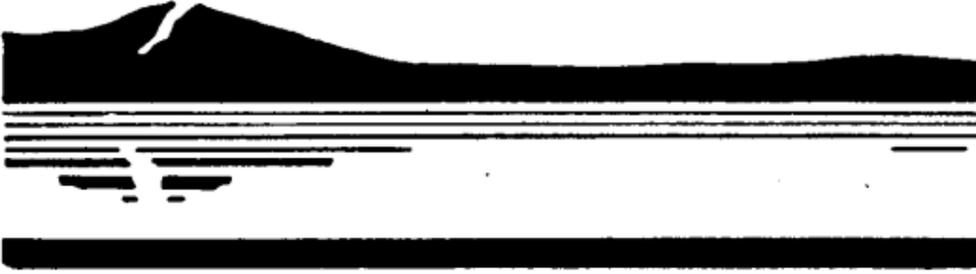


LITIGATION



'1041' defense fails Denver

DENVER, Colo. — The day before Colorado Gov. Roy Romer issued his decision on the proposed Two Forks Dam, the state Court of Appeals handed down a ruling that could prevent construction of the transmountain diversions necessary to fill the controversial reservoir.

The appeals court upheld the laws of two Western Slope counties and rejected Denver Water Department arguments that the city is exempt from the so-called "1041" regulations.

"The building of Denver's water projects in Eagle and Grand counties may have a substantial impact on the environment and may greatly affect the health, welfare and safety of Colorado citizens far removed from the city and county of Denver," wrote Judge Aurel Kelly.

The regulations in question are based on a 1974 state law on land use known as "HB 1041." The regulations allow counties to declare certain activities as "matters of state interest" (counties are technically part of state government) and then regulate them. Grand County enacted regulations in 1978. Denver objected at public hearings, then sued after the local law was promulgated. Eagle County passed its 1041 law in 1980, with the same result. The two legal cases were consolidated for the appeal.

Hank Ipsen of Holme, Roberts & Owen, special counsel for the counties, claimed a significant victory. "The opinion was very well reasoned, very succinct, and well written," said Ipsen. He predicted the case would go to the Colorado Supreme Court.

Wayne Williams, attorney for the

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Wayne Williams, attorney for the Denver Water Board, said he would recommend an appeal to the board. Williams called the decision "disappointing" and said if it is upheld, it will make water development more time-consuming and expensive. In some cases, it may entirely prohibit water projects, he said.

That is just the result some proponents of 1041 laws desire. Denver's legal filing quoted public conversations by Eagle County officials who said the purpose of the regulations is to stop transbasin diversions. In Gunnison County, similar regulations were adopted after Aurora, Colo., filed to divert 70,000 acre feet a year from the Taylor River.

"We're talking about local control here," commented Ipsen. "That's the issue, not water rights."

But Denver claims its powers under the Colorado Constitution are substantial. The state's supreme law specifically denotes the state capital's power to build water projects "within or without its territorial limits." Denver also cites the Constitution's article making water appropriations a sacrosanct private property right regulated only by the unique system of water courts. Denver, Colorado Springs, and Aurora say the 1041 regulations are governing water use, not land use, and thus are unconstitutional.

Case No. 86-CA-0703 and 86-CA-945 (Consolidated Appeal)