

Chronology of municipal watershed issue

by Gary Sprung

1877

First General Assembly of newly-formed State of Colorado enacts law allowing municipalities to create ordinances controlling pollution within five miles of their water intake. Only municipalities which own their own waterworks may so legislate.

1900

Colorado Supreme Court upholds constitutionality of the law in *City of Durango vs. Chapman*. City sought to protect its water from a pig sty in the watershed. Ruling establishes doctrine of *prospective protection*: A city can protect itself from polluting acts in advance of showing actual pollution.

1900-1985

Various municipalities use the enabling power, some by enacting watershed ordinances, others by threatening to enact ordinances.

1975

Friday, May 2: Tailings of mine wastes from Keystone Mine fails in afternoon and flows into Coal Creek, Crested Butte's water supply. A snowmobiler happens to observe the spill and alerts town officials.

Saturday morning, May 3: Town Manager Bruce Baumgartner digs through six feet of snow and closes intake valve on Coal Creek. His swift action prevents pollution from harming town's drinking water.

Monday, May 5: Colorado Department of Health and federal Environmental Protection Agency begin testing Coal Creek and town's reservoir. Coal Creek found severely polluted, reservoir safe to drink. Town officials turn on water supplies from small nearby creeks.

Tuesday, May 6: U.S. Energy Corp, owner of Keystone Mine, informs town of the spill. (A lawsuit was quickly filed against U.S. Energy. When Amax bought the lease on the property, they were forced to correct the problem. They completed the clean-up in 1981 with the construction of the expensive water treatment plant now operating.)

1976

Town asks its water engineers to advise on best ways to protect local drinking water. The consultants later recommend that one good way is to enact a municipal ordinance based on the 1877 Colorado law.

1979

April: Town asks U.S. Department of Agriculture for a temporary moratorium on mining claims within Coal Creek watershed to prevent water degradation. The request later gets "lost in the fog machine."

Sept. 21: Town complains to Gunnison County Commissioners that a road has been constructed across Coal Creek by prospective resort developers which threatens water quality. Commissioners take no action, deferring the issue to the next meeting. Within two weeks, before that meeting, the culvert clogs, creating a dam and backing up water; the road/dam fails and the surge of water damages town's water intake, with unknown effects on water quality.

October: Forest fire is started by Amax subcontractor drilling crew; erosion possibly affects water quality.

1980

Spring: Town begins process of public meetings on proposed watershed ordinance, seeking input from all affected parties.

1975-1980

Residential construction within watershed (Lake Irwin) raises further questions about activity within watershed.

1980

July 21: Town adopts watershed protection ordinance.

Aug. 19: Amax sues for an injunction against ordinance, citing nine reasons.

1980-1983

Other landowners apply for and receive permits for development within watershed.

1981

June 15: Gunnison District Judge Robert A. Brown grants preliminary injunction to Amax against town on seven counts, dismisses two other reasons.

November: Injunction made permanent.

1982

Town appeals Brown's decision; Colorado Supreme Court decides to review the case.

1983

October: Colorado Supreme Court hears final oral arguments on Amax vs. Crested Butte watershed case.

1984

Nov. 5: Colorado Supreme Court 1) lifts injunction; 2) refuses to invalidate town ordinance until parties produce more information or Amax seeks and obtains action on a town permit.

Nov. 26: Judge Brown requests advisement from both parties on further action: says parties must either 1) agree upon the facts of how the permitting process will affect Amax, or 2) dismiss the case and have Amax seek and obtain action on permit. Recommends #2.

Dec. 31: Both parties respond to Brown. Town says no agreement on facts possible, so only course #2 is available.

1985

Jan. 28: Brown dismisses case, assess court costs on Amax.

Feb. 15: Town submits bill of costs to court.

Feb. 15: Amax submits two motions: 1) to Alter and Amend Judgment, 2) to Dismiss on Amax terms.

Feb. 21: Amax submits objection to town's bill of costs. Town objects to Amax's most recent motions.

Feb. 27: Colorado House Local Government Committee votes 8-2 in favor of bill introduced by Rep. Chuck Berry (R-Col. Springs) that would drastically reduce authority given in 1877 enabling act.