A Court Case

A Rancher Won --

Over Water

In Idaho, BLM claimed instream water rights for stock watering based upon ownership of public lands and management under the Taylor Grazing Act. BLM said the Supremacy Clause allowed them to ignore state laws .... Pg 25

They were incorrect Pg 27

There was no evidence that the United States had appropriated any water by grazing livestock. Pg 3

The United States argues that prior to the enactment of the Taylor Grazing Act, the ranchers should not have been able to obtain a water right by grazing livestock on public lands because they did not have the right to exclude others from those lands or from water sources located on those lands.

The United States is correct that one rancher did not have the right to exclude another from grazing livestock on public lands. Buford v. Houtz, 10 U.S. 305 (1890).

A water right, however, is not based upon having exclusive access to a water source. "[T]wo parties may at the same time be in possession of water from a creek and neither hold adverse to the other; each may justly claim the right to use the water he is using, without affecting the rights of the other." St. Onge v. Blakely, 245 P. 532, 536 (Mont. 1926)). Pg 6

The constitutional method of appropriation requires that the appropriator actually apply the water to a beneficial use. The Idaho Constitution did not create the doctrine of prior appropriation. ***

"The framers and adopters of our Constitution were familiar with the prevailing customs and rules governing the manner in which water might be appropriated..., and they gave it form and sanction by writing it in the fundamental law of the state." ***

"The rule in this state, both before and since the adoption of our constitution, is . . . that he who is first in time is first in right." Brossard v. Morgan, 7 Idaho 215, 219-20, 61 P. 1031, 1033(1900). (This is true in NM and AZ as well) ***

Thus, water rights obtained in a manner that is now called the constitutional method of appropriation are entitled to protection. *** Pg 7

In 1877, Congress passed the Desert Land Act to encourage and promote the economic development of the arid and semiarid public lands of the Western United States... *

"The federal government, as owner of the public domain ... Congress had severed the land and waters constituting the public domain and established the rule that for the future the lands should be patented separately." Ickes v. Fox, 300 U.S. 82, 95 (1937). *

The Desert Land Act "simply recognizes and gives sanction, to the state and local doctrine of appropriation. *

The public interest in such state control in the arid land states is definite and substantial." * Pg 5

"[A]ll non-navigable waters were reserved for the use of the public under the laws of the various arid-land states." Ickes v. Fox, 300 U.S. 82,95 (1937).
--(Compare your State Water Laws)--*

Joyce Livestock cannot water its livestock at water sources located on federal rangeland (BLM) unless the government grants it permission to have its livestock on such land. The water did not give them a possessory interest in the rangeland. Pg 26

When the arid regions of the West were initially settled, local custom and usage held that the first appropriator of water for a beneficial use had the better right to the use of the water to the extent of his actual use. California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935) The acquisition of water by prior appropriation for a beneficial use was entitled to protection." Id. at 15 **

Prior appropriation did not mean that the first appropriator could take all he pleased, but what he actually needed, and could properly use without waste.**

This general policy [of prior appropriation] was approved by the silent acquiescence of the federal government, until it received formal confirmation at the hands of Congress by the Act of 1866."
Section 9 of that Act, codified at 30 U.S.C. § 51, **Pg. 4

This provision was 'rather a voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use,' & Min. Co., 101 U.S. 274, 276 (1879)). Pg 5.

The law does not concern itself with disputes relative to the title to the lands for which it is claimed the water was appropriated. When one diverts water hitherto unappropriated and applies it to a beneficial use, his appropriation is complete, and he acquires a right to the use of such water, which is at least coextensive with his possession. Pg 11

The water rights that ranchers obtained by watering their livestock on federal land were appurtenant to their patented properties.
The district court reasoned, "[M]any livestock owners nonetheless depended on the use of adjacent public rangeland in conjunction with their patented property to support a viable livestock operation. . . . It can be reasonably concluded that both the rangelands well as the water right benefited the livestock owners patented property." Pg 14

A water right does not constitute the ownership of the water; it is simply a right to use the water to apply it to a beneficial use. Pg 25

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