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THE DEVELOPMENT OF COLORADO'S WATER LAW

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COLORADO WATER ISSUES AND OPTIONS:
THE 90'S AND BEYOND
Toward Maximum Beneficial Use
of Colorado's Water Resources

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At the last count, there were 231 speeches and articles which started, "Little did James Marshall realize on that fateful day in 1849, when he discovered gold at Sutter's Mill in California...". This is the 232nd.

Little did James Marshall realize on that fateful day in 1849, when he discovered gold at Sutter's Mill in California, that he would be influencing the development of water law in Colorado.

However, the correlation between the mining law developed by the gold miners of California in 1849 and the 1850s carried over into the development of water law in Colorado beginning ten years later.

Frank Trelease, in his "Water Law Cases and Materials", West Publishing Company, 1967, says:

> The doctrine of prior appropriation is a very different form of water law, dominant in the eighteen western continental states, including Alaska. Its two cardinal principles are that beneficial use of water, not land ownership, is the basis of the right to water, and that priority of use, not equality of right, is the basis of the division of water between appropriators when there is not enough for all. The place of use is not limited to the stream bank, as in riparian law, and with few exceptions the water can be used anywhere it is needed. An appropriation is always stated in terms of the right to take a definite quantity of water. Developed in the arid west, appropriation law is usually thought of as a system for water-short areas, where there is not enough for everyone, not even for all riparian owners.

The allocation of water among appropriators according to priority may need some explanation. On a typical western stream where there are many irrigators with water rights initiated at different times, there may be water for all while the mountain snowpacks melt and the stream is high. As the quantity of water decreases during the dry summer, the diversion works of the appropriators are shut off in inverse order of priority. The last ditch is the first closed, and the earliest is never closed. The right of the senior appropriator extends both upstream and downstream. He may take water needed by a junior appropriator below him, while the junior appropriator upstream must permit the water to go past his point of diversion when it is needed to supply the senior rights. The burden of shortage thus falls on those with the later rights, and there is no proration in times of scarcity.

The history of this doctrine is a fascinating chapter in the story of the growth of American laws and institutions. At the mid-point of the 19th century, the common law of waters had definitely crystalized into the law of riparian rights. At this same time, the doctrine of prior appropriation spontaneously developed in the west to meet the needs of pioneers who came to the vast open spaces in search of gold, land and homes. Although it has sometimes been attempted, by doubtful analogies, to trace the doctrine from rather obscure early statements found in pre-riparian English law, or from the early Massachusetts Mill Acts, or from Spanish law, the people who originated the doctrine were not versed in these by-ways of legal learning. They were miners who crowded into the gold fields of California in 1849. Swarming over lands previously uninhabited, they took the gold with the tacit permission of the true owner, the United States. After a lawless period, the miners, essentially law-abiding people from the eastern and mid-western states, organized "mining districts" to create some semblance of order on the then ungoverned public domain. These

de facto governments promulgated rules and adopted customs regulating mining claims, and of equal importance, the right to use water to wash the gold from the gravel in which it was found. They established essentially the same rule for ownership of mining claims and for the right to use water. The discoverer of a mine was protected against all who tried to jump his claim. The first user of water was protected against later takers. This rule was known as prior appropriation -- the law of the first taker.

When permanent settlers took up land for agricultural purposes and recognized the need for irrigation, they adapted to their purposes the water law evolved by the miners. It was a doctrine especially well suited for a pioneering economy based upon the settlement of vacant lands. The first settler to come into a valley chose his land. If irrigation water was needed, he dug a ditch from the stream to his land. Whether his land was located on the stream or not was immaterial, since there was no one to object to his use of the water. The second settler to follow him into the valley had to respect the first settler's homestead and take second choice of the land, and he had to respect the first appropriator's right to the water and irrigate his lands out of what was left. 1/

These customary appropriations were confirmed and authorized by state and territorial decisions and statutes, and insofar as made on the public domain, by federal statutes.

As Hutchins says in his "Selected Problems in the Law of Water Rights in the West":

> . . . the appropriative principle in the form in which it is now recognized throughout the West -- embodying the essential element of priority -- is not traceable to Mexican laws and customs, but sprang from the requirements of a mining region for protection in the use of water supplies needed to work the mining claims. . . . A rule was adopted as to the

> possessory right to mining claims, giving the first locator of the claim the superior right to the same as against all later comers, and the same rule was applied to appropriations of water for the purpose of working mining claims, this element of superior right to the one who was prior in time having been theretofore unknown in the civil or common law governing waters or in the civil laws modified by Spanish-Mexican law. 2/
>
> Citing Kinney, C.S., a Treatise on the Law of Irrigation and Water Rights, 2nd Ed., Vol. II, Sec. 776, pp. 1345-1346.

Gold was first discovered on the banks of Cherry Creek in 1858, 3/ but it wasn't long until prospectors worked their way west into the mountains in search of more of the precious metal. One of the first expeditions headed for what is now Central City.

As a dues-paying member of the Boulder Chamber of Commerce, I am pleased to report that the discoverers of gold at Central City spent the week before that discovery camping at the foot of the Red Rocks, which is visible from my office window, and which are found at the mouth of Boulder Canyon.

As the Central City area developed, it became a series of three communities -- first Blackhawk, then Central City, then Nevadaville, or Nevada, as it was more generally known. The miners in the various communities adopted their own regulations. For example, on July 30, 1859, the miners of Gold Hill, also near Boulder, who had previously formed what was known as Mountain District No. 1, adopted six resolutions and the second one reads as follows, according to "The History of Gold Hill", by Nolie Mumey:

> RESOLVED, that each miner shall be entitled to take and hold only one mountain claim and one water claim for the purpose of sluicing gold from the quartz, and one gulch claim by a Preemption. Each quartz claim may not be more than 100 feet in length and extend not more than 25 feet on each side, the stakes marking the ends of the claim. Each water claim may be not more than 33 feet in length up and down the stream and may extend not more than 20 feet from each bank. Each gulch claim may not be more than 100 feet in length and 50 in weadth [sic]. 4/

The Town of Nevada, also known as Nevadaville, adopted its own laws on May 25, 1861. The preamble of those laws reads as follows:

> WHEREAS, it has been, and is universally acknowledged by all civilized communities, that government is necessary for the good understanding of the People forming such government; - and WHEREAS, we the Miners of Nevada Gold Mining District have no civil government extended to us, by the Authorities of the United States, of the Territory in which we now reside; - in mass meeting assemble do, for the protection of all our rights, adopt the following Constitution and By Laws: -

Section 8 of Article 2 provides:

> [M]iners working Load claims shall be entitled to One Half the Water from the gulch; - provided, however, said water so used shall not be taken to a greater distance than One hundred feet in a line from said gulch, but that those so using it, shall return it to the gulch by a ditch, unless it be needed for use by parties below; - in which case, those last using it, shall conduct it in a Ditch as prescribed above.

Section 10, Article 3, is entitled "Ditches" and reads as follows:

> When Water Companies are engaged in bringing Water into any portion of the mines, they shall have the right of way secured to them, and may pass over any claim, road or ditch: - Provided, the water shall be so guarded as to not interfere with any vested right. 5/

The territory of Jefferson was created by act of Congress in October 1859 and the territorial legislature wasted no time in adopting an irrigation law, which adopted the priority system of water for mining. That law provides:

> Sec. 1. That any person or persons settling upon any stream and claiming one hundred and sixty acres or less for farming or gardening purposes, and claiming the privilege of using the water of said stream for purposes of irrigation, shall be entitled to the same as hereinafter provided.
>
> Sec. 2. No person or persons making subsequent claims above said first claimant, shall turn out of its original channel the waters of such stream in such a manner as to deprive said first claimant of the irrigation privileges provided in section first.
>
> Sec. 3. That nothing in section second shall be so construed as to deprive agriculturalists remote from streams from applying the waters thereof to irrigation purposes, and they shall have the right to make the necessary dams, ditches and other improvements for that purpose, but shall be liable for damages resulting therefrom.
>
> Sec. 4. Persons wishing to irrigate lands shall not be liable to an action of trespass for entering upon the claims of other persons, for the purpose of making a ditch and bringing water across said other person's claim; provided, they shall pay all damages sustained by said other persons, to be determined by referees as in other cases. 6/

In 1861, the Colorado territorial legislature adopted an act which included the following provision:

> That when any person, owning claims in such locality, has not sufficient length of area exposed to said stream in order to obtain a sufficient fall of water necessary to irrigate his land, or that his farm or land, used by him for agricultural purposes, is too far removed from said stream and that he has no water facilities on those lands, he shall be entitled to a right of way through the farms or tracts of land which lie between him and said stream, or the farms or tracts of land which lie above and below him on said stream, for the purposes as hereinabove stated. 7/

I don't know who the representative was in the territorial legislature from Hardscrabble Creek, a tributary of the Arkansas River which flows into the Arkansas near the Town of Portland in what is now Fremont County, but he was alert because Section 4 of that same act provides:

> That in case the volume of water in said stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, then the nearest justice of the peace shall appoint three commissioners as hereinafter provided, whose duty it shall be to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgment, think best for the interests of all parties concerned, and with a due regard to the legal rights of all; provided, that this section shall not apply to persons occupying land on what is known as Hardscrabble Creek, a tributary of the Arkansas River; but upon said stream each occupant shall be allowed sufficient water to irrigate one hundred and sixty acres of land, if there shall be sufficient for that purpose; and if insufficient, then the

> occupant nearest the source of said stream shall be first supplied. 8/

Section 11 of that act provided:

> That the provisions of this act shall also entail upon the parties using water, as provided above, the careful management and control of said water, that in their waste they shall not injure any one; and if so injured, damages shall be assessed as herein-before provided. 9/

Hardscrabble Creek was not the only local area that received special attention. In 1872, the legislature passed an act concerning irrigation in El Paso County, which provided for the appointment of commissioners who were empowered to levy a tax within the county upon lands using water for irrigation in proportion to the amount of water used by each person to reimburse the commissioners for their fees in supervising the distribution of water and protecting against breaking a ditch or wasting water. 10/

We hear a great deal today about ideas for charging costs of water administration to water users, and I think there are very few of us in this audience who realize that we are 115 years behind the times. Truly, there is nothing new in water law.

Continuing the case-by-case administration of water, in 1872 the legislature adopted an act which made the laws concerning ditches in Conejos and Costilla Counties applicable to ditches in Huerfano County. 11/ A month later, the same act was amended

again to make the Costilla and Conejos County rules applicable also to Las Animas County. 12/

Apparently nobody ever heard of special legislation in those days, because in 1874, in apparent response to the anguished pleas of the representative from Las Animas County, the legislature passed a law providing:

> That the "Acequia" which is about to be constructed by the inhabitants on the river of San Francisco, in the County of Las Animas, Territory of Colorado, and which takes its lead at the south or west side of Manual Ocana's farm, and runs thence in an easterly course until it reaches the farm of Seferino Derrera, be recognized by the name of [Acequia Madre], or Main Ditch.
>
> Sec. 2. That the Superintendent of this Acequia be elected according to section one (1) of the Revised Statutes of Colorado, page 365, that he be empowered to call out all persons using water from the Acequia, respectively to repair the Acequia, or Dam, and he who shall fail to supply his share of work on the Acequia, or Dam, shall be liable to a fine imposed by the Superintendent in a sum not less than two (2), nor more than six (6) dollars for each and every day he is absent when required. And said sum shall be applied to the benefit of said Acequia. 13/

Two years later, the legislature adopted an act that applied only to meadowlands in Huerfano County in certain months. That act, which was approved on February 10, 1876, said:

> That from and after the passage of this act, it shall be unlawful for any person to divert the water of any stream, in the county of Huerfano from and after the 20th day of June, until the 31st day of August, of each year, from its natural course, for the purpose of irrigating meadow or hay land. 14/

I am not exactly sure of the purpose of that statute unless there was a great surplus of hay in Huerfano County in 1876.

When a Constitution for Colorado was adopted on March 14, 1876 (it became effective August 1, 1876 when the President of the United States issued a proclamation declaring Colorado admitted to the Union), it contained an article on irrigation containing four sections.

The first section stated:

> 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. 15/

The second provided:

> 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 shall have preference over those using the same for manufacturing purposes. 16/

The third section provided for rights of way for ditches, canals and flumes for carrying water and for drainage, upon payment of just compensation, 17/ and the fourth provided county

commissioners could fix reasonable maximum rates for the use of water. 18/

These four sections have served us well for almost 110 years.

The Colorado Supreme Court was quick to announce that the appropriation doctrine, as established by the California and Colorado miners, was the proper doctrine for Colorado.

In Coffin v. Left Hand Ditch Co., the Court said:

> We conclude, then, that the common law doctrine giving the riparian owner a right to the flow of water in its natural channel upon and over his lands, even though he makes no beneficial use thereof, is inapplicable to Colorado. Imperative necessity, unknown to the countries which gave it birth, compels the recognition of another doctrine in conflict therewith. And we hold that, in the absence of express statutes to the contrary, the first appropriator of water from a natural stream for a beneficial purpose has, with the qualifications contained in the constitution, a prior right thereto, to the extent of such appropriation. 19/

The first adjudication act was adopted in 1879 and provided for the county commissioners to consider applications for water rights and also provided for the appointment of a referee to hear the testimony, provided for pro rating a water right when there was not enough to serve everyone who was entitled to be served under that water right, established irrigation districts for the first time, authorized water commissioners for each of the districts and set forth their duties, provided for court adjudication of priority of appropriation and the appointment of

a referee by the court, the giving of notice and all of the things which we are used to now in the determination of water rights. That same law provided, for the first time, for the irrigation of meadow lands by overflow, a practice which was carried on for many, many years. It allowed the owners of a reservoir to use the streams for carriage of water from the reservoir and made the owners of reservoirs liable for all damages arising from leakage or overflow of the waters therefrom or by floods caused by breaking the embankments of such reservoirs. 20/

However, the adjudication act which served the state for 38 years was adopted in February of 1881 and was the method for obtaining decrees for irrigation until the adjudication act of 1919 was adopted. 21/

It will be noticed, however, that all of the statutes to which I have referred have been for the use of water for purposes of irrigation. It was not until 1903, when Chapter 130 of the Session Laws of that year was adopted on April 11th, 22/ which allowed the owners of water rights derived from any natural stream, water course or any other source acquired for appropriation and use for any beneficial purpose other than irrigation, to have his or their right thereto established and decreed by the District Court having jurisdiction of the adjudication of water rights for irrigation purposes. It adopted the same method of

application for decree, notice, etc., that had been utilized since 1881.

Because there had been no means for the owner of a water right to obtain judicial confirmation of that right prior to 1903, the courts gave the applicant the true date of priority regardless of the intervention of general or supplemental adjudications for irrigation purposes prior to the application for purposes other than irrigation.

This practice was ratified when the United States in its federal claims cases sought the true date of appropriation and, in all cases where that true date preceded decrees granted, was given its true date of appropriation. 23/

Another adjudication act was adopted in 1943 24/ and then in 1969 came what is commonly known as the 1969 Pension Plan for Water Lawyers or more formally the "Water Right Determination and Administration Act of 1969". 25/

So much for the development of the adjudication of streams.

However, one of the most vexing problems for the people of the State of Colorado was the construction, after World War II, of thousands of tributary wells, particularly in the South Platte, Arkansas and Rio Grande drainages.

As electric power became available to farmers through the Rural Electrification Act which was passed in 1935, more and more farmers were supplementing their direct flow rights with wells. Owners of surface rights did not complain about the construction

of irrigation wells until thousands of them had been drilled. Suddenly the surface stream appropriators woke up to the fact that there was not as much water flowing in the streams as there had been historically and, putting two and two together, decided that the tributary wells were taking water out of the stream and reducing the quantity of water available for direct flow decrees.

Litigation was stalled for a long time because, in my opinion, many of the farmers not only had wells but also had surface rights and did not want to institute litigation which might adversely affect one or the other.

However, in 1966, when there was not sufficient water in the Arkansas River to fill the adjudicated rights of downstream users having priority dates as early as 1887, the owners of these rights placed a call on the river. On June 24, the Division Engineer notified Roger Fellhauer to cease pumping until further notice. The defendant, asserting that the 1965 act giving the State Engineer the power to regulate wells was unconstitutional, 26/ refused to comply with the order and suit was instituted. The court concluded that the State Engineer's order was invalid because he ordered only 39 of more than 1600 major wells shut down and the Supreme Court said this was discriminating against Mr. Fellhauer, and violated the equal protection clause of the Fourteenth Amendment of the United States Constitution and of the due process clause in article II, section 25 of the Colorado Constitution. 27/

However, the court did state that the requirements for constitutional regulation of wells under the 1965 Act required compliance with three requirements:

> (1) The regulation must be under and in compliance with reasonable rules, regulations, standards and a plan established by the state engineer prior to the issuance of the regulative orders.
>
> (2) Reasonable lessening of material injury to senior rights must be accomplished by the regulation of the wells.
>
> (3) If by placing conditions upon the use of a well, or upon its owner, some or all of its water can be placed to a beneficial use by the owner without material injury to senior users, such conditions should be made. 28/

Following this decision, the State Engineer, with varying degrees of success, established rules and regulations in each of the major ground water producing divisions as to the use of water from tributary wells. Practically all of these regulations have been the subject of much litigation, but nevertheless regulations in some degree are in effect throughout the state.

In the meantime, the thorny question of nontributary wells had been concerning the legislature since as early as 1957. In that year, an underground water act was passed which established a ground water commission and provided for the determination by the commission of designated ground water basins and also established a procedure for someone desiring to construct a well in a designated ground water basin to obtain a conditional and final

permit. The commission was also empowered to establish reasonable ground water pumping levels in areas having a common designated ground water supply and provided:

> Water in wells shall not be deemed available until the water right therefor or withdrawal therefrom of the amount called for by such right would, contrary to the declared policy of this article, unreasonably affect any prior water right, or result in withdrawing the ground water supply at a rate materially in excess of the reasonably anticipated average rate of future recharge. 29/

This last provision would have prevented the construction of any wells in most of the designated basins in Colorado because withdrawal of water from wells in those areas is a mining operation and the recharge is negligible. In addition, the well owners of Colorado disliked having a central body with as much authority as the 1957 act gave the Ground Water Commission. Therefore, in 1965, the 1957 act was repealed and a new ground water and ground water management district act was enacted. This is the act which, with amendments, now controls the construction of wells in designated basins. 30/

The 1965 act provided for the formation of management districts with boards of directors which had authority to adopt local rules and regulations which controlled unless modified by the Ground Water Commission. The 1965 act also provided for permits to construct wells outside designated areas. Under this act, numerous designated ground water basins were established,

and in most of them, ground water management districts were formed and boards elected.

In Whitten v. Coit, decided September 9, 1963, the Colorado Supreme Court had held that there had been no previous legislation affecting nontributary ground water and the court said:

> If, however, underground water does not belong to the river and does not contribute to a natural stream it is not public water and is not subject to the doctrine of prior appropriation. 31/

The court also held:

> Holding as we do that underground waters which are not tributary to any natural stream are not subject to the doctrine of appropriation, it necessarily follows that the original decree entered by Judge Littler in the adjudication proceedings of 1948, under which the court purported to award priorities to the plaintiffs in this action, were void for want of jurisdiction over the subject matter and for a lack of power to adjudicate such rights. 32/

The legislature, thinking it was solving the Whitten v. Coit problem, passed Senate Bill 213 in 1973, which reads with reference to the issuance of a well permit for water outside a designated basin:

> . . . except that, in considering whether the permit shall be issued, only that quantity of water underlying the land owned by the applicant or by the owners of the area, by their consent, to be served is considered to be unappropriated; the minimum useful life of the aquifer is one hundred years, assuming that there is no substantial artificial recharge within said period; and that no material injury to vested water rights would result from the issuance of said permit. The

> state engineer may adopt rules and regulations to assist in, but not as a prerequisite to, the granting or denial of "permits to construct wells" and for the administration of this underground water. 33/

Water lawyers were relieved to have the Whitten v. Coit problem resolved and a large number of well permits were obtained and many of those went to decree in the water court.

All was serene until the decision in July of 1983 in the case of State of Colorado Dept. of Natural Resources, et al. v. Southwestern Colo. Water Cons. Dist., et al., generally known as the "Huston" case. 34/ In that decision, the Colorado Supreme Court held:

> Because we conclude that nontributary ground water is not subject to appropriation under the Colorado Constitution or to adjudication under the Water Right Determination and Administration Act of 1969, article 92 of title 37, C.R.S. 1973 (1982 Supp.) (the 1969 Act), we hold that all applications for adjudication of rights to nontributary ground water under the 1969 Act must be dismissed.
>
> * * * *
>
> Reading these statutory provisions together leads inescapably to the conclusion that the water right determination proceedings authorized by section 37-92-302(1)(a) do not extend to rights in nontributary ground water. See also section 37-82-101(1), C.R.S. 1973 (1982 Supp.). This result is implicit in the analysis on which we based our holding in State ex rel. Danielson v. Vickroy, supra, that a water judge has no jurisdiction over matters involving designated ground water. 35/

To say that this ruling was a bombshell is to be guilty of understatement.

All of the water lawyers who had obtained decrees in the water court for nontributary water under Senate Bill 213 joined forces to obtain the passage of a curative statute. On October 11, 1983, the legislature passed Senate Bill No. 439 which provided:

> Water matters include determinations of rights to nontributary ground water outside of designated ground water basins. Judgments and decrees entered prior to the effective date of this subsection (1), as amended, in accordance with the procedures of sections 37-92-302 to 37-92-305 with respect to such ground water shall be given full effect and enforced according to the terms of such decrees. 36/

After the legislature had blessed existing decrees, it become necessary then for the legislature to redefine the whole matter of nontributary ground water and this was accomplished in the 1985 session of the legislature by the passage of Senate Bill No. 5. That bill provides for a number of things, but until the courts have had a chance to act on them, we don't know how the provisions are going to be interpreted. As my task is not to predict the future but to tell what is happened in the past, I will stop here.

I should not stop, however, without saying two things. If one wants a really learned discussion of the development of Colorado water law, certainly Justice Lohr's exposition in the Huston case should be consulted. Secondly, it has been a delightful excursion backward into time for me to review the

development of Colorado water law, especially the efforts of the early territorial legislatures to solve the problems vexing the water users of that long-ago period.

Certainly, little did James Marshall realize on that fateful day in 1849, when he discovered gold at Sutter's Mill in California, that he would be influencing the development of water law in Colorado.

Thank you.

NOTES

1. Trelease, Water Law Cases and Materials, West Publishing Company, St. Paul, Minn. (1967).

2. U.S. Dept. of Agriculture, Misc. Pub. 418, U.S. Govt. Printing Office (1942).

3. Henderson, Mining in Colorado, in State Historical and Natural History Society of Colorado's History of Colorado, Vol. II, p. 525, Linderman Co., Denver, Colo. (1927).

4. Johnson Press, Boulder, Colo. (1960), p. 13.

5. Mumey, History and Laws of Nevadaville, Johnson Press, Boulder, Colo. (1962), pp. 6, 29-30.

6. Territorial S.L. 1859, Chap. XIX, adopted December 7, 1859.

7. Gen. Law. 1861, p. 67, "An Act to Protect and Regulate the Irrigation of Lands," adopted November 5, 1861.

8. Ibid., p. 68.

9. Ibid., p. 69.

10. Territorial S.L. 1872, pp. 140-142, adopted February 5, 1872.

11. Ibid., p. 143, adopted February 9, 1872.

12. Ibid., p. 145, adopted March 9, 1872.

13. Territorial S.L. 1872, pp. 167-168, approved February 12, 1874.

14. Territorial S.L. 1876, p. 79.

15. Art. XVI, December 6, Colorado Constitution.

16. Art. XVI, December 7, Colorado Constitution.

17. Art. XVI, December 8, Colorado Constitution.

18. Art. XVI, December 9, Colorado Constitution.

19. 6 Colo. 443 (1882).

20. S.L. 1879, pp. 94-108, approved February 19, 1879.

21. The Adjudication Act was adopted February 23, 1881 and is found at pages 142-161 of the 1881 Session Laws. The 1919 Adjudication Act is S.L. 19, pp. 487, et seq.

22. S.L. 1903, pp. 297-298.

23. Denver v. United States, 656 P.2d 1, 35.

24. S.L. 1943, pp. 613, et seq.

25. S.L. 1969, pp. 1200, et seq.

26. S.L. 1965, ch. 319, Sec. 148-18-9, pp. 1253-4.

27. Fellhauer v. People, 447 P.2d 986, at 993.

28. Ibid.

29. S.L. 1957, pp. 1257, et seq.

30. S.L. 1965, ch. 319, pp. 1246, et seq.

31. 385 P.2d 131, at 140.

32. Ibid.

33. S.L. 1973, ch. 441, p. 1520.

34. 671 P.2d 1294.

35. Ibid., p. 1303.

36. S.L. 1983, ch. 516, p. 2079.

37. Note 34, supra, at pp. 1307-18.

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