

Coffin's Shore:

The Battle that Wrought Colorado's Water Law

By Karmen Lee Franklin

As suggested by the old western farmer's warning, "You can fool around with my wife, but not my water rights," (Dyner 2005) Coloradans often placed more value on water than marriage or gold. Even as Colorado reached statehood, droughts sparked disputes which often ended in gunfights or Supreme Court decisions. In 1879, the growing agricultural communities in Colorado faced their first water shortage. By the time summer officially began, many creeks and streambeds in the infant state began to run dry, leaving too little water to go around. All around the state, newspaper editors cried out for water law reform, or clarification of the freshly written Constitution. "As our country settles up, the water question becomes of more and more interest to the people. [...] What is to be done?" asked a letter to the editors of the Boulder County News in 1878. The message was urgent: "No farmer can live in Colorado without water." (quote, Matthews 1878, 1) If the courts wouldn't intervene, embittered farmers would leave the state, or worse, take the law into their own hands. One such case, involving both civilian violence and the Colorado Supreme Court, set a precedent for water law which forever set the West apart from the rest of the nation.

One sunny June morning, Rueben Coffin awoke to discover a field of wilting corn. The St. Vrain Creek, along whose shores lay Coffin's farm, was dry as a bone. Angered, Coffin didn't blame Heaven or Nature. Instead, he gathered a few of his neighbors and followed the stream up some 30 miles to the source of the problem: the creek was dammed. The dam, built 16 years prior to the drought by a group of farmers living beneath Haystack Mountain in the valley

below, diverted the dwindling flow of the St. Vrain into a short ditch leading to nearby James Creek. James Creek then fed into Left Hand Creek, which meandered around Haystack Mountain. Coffin and his neighbors decided water belonged in its natural course and broke the dam, digging out the middle section, allowing some water to return to the St. Vrain. (Abstracts, Coffin et al 1882, 18-19)

Sometime later, Samuel Arbuthnot and his neighbors, Joe Jamison, the Hinman brothers, and Lorenzo Dwight, the founder of the Left Hand Ditch Company, noticed a greatly reduced flow of water dribbling onto their lands. Upon investigation, the farmers discovered the damaged dam on the St. Vrain Creek, high in mountains above. After a few rounds of cat-and-mouse, dam-and-destroy, Arbuthnot and his friends decided to guard the diversionary dam with a gun. Coffin retaliated by taking the Left Hand Ditch Company to court.

Ruben Coffin grew up in Roxbury, New York (Roots Web 2008, 288) where water appropriation was based on Old-world riparian rights. That is, the people living along the shores of a waterway had a right to use the water as needed, as long as they returned enough flow through groundwater discharge to sustain their neighbors downstream. Farmers from England, old and New, with naturally moist lands, gave little thought to water rights. (Schorr 2006, 319) Arid Colorado, on the other hand, begged for an equitable solution. The state's constitution provided such a solution by drowning out riparian law with public ownership.

The constitution, drafted in 1876, stated that “the water of every natural stream, not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public.” (Constitution of the State of Colorado 1876, sec 5) With this law in place, farmers need not own land adjacent to a creek or river to use the water; everyone had an equal chance to claim

the unused resource. Furthermore, the constitution allowed users the right to remove the water from its source and transport it across “public, private, or corporate lands” in “ditches, canals and flumes.” (Constitution of the State of Colorado 1876, sec 7) In these articles, the state of Colorado declared its public waters to be first come, first serve. Users would be allowed to put any bit of water to good use, as long as no one else claimed it. In the words of the constitution, “the right to *divert the unappropriated waters* of any natural stream to *beneficial uses* shall never be denied.” (Constitution of the State of Colorado 1876, sec 6, emphasis added.)

Colorado’s founders based these laws, not on arbitrary guesses or corporate bribes, but on tradition, prior territorial acts, and dry practicality. One act, created in 1861, declared that not only is a person “entitled to the use of the water” but they are also “entitled to a right of way through the farms or tracts of land which lie between him and said stream.” (An Act to Protect and Regulate the Irrigation of Lands, 1861, sec 2) Another, passed by the territory’s legislative assembly in February of 1864 (An Act to Enable Road, Ditch, Manufacturing and Other Companies to become Bodies Corporate 1864, sec 32) reinforced the concept of “first in time, first in right”, a code used by the first gold miners in Colorado at Gregory Gulch. (Schorr 2005, 16-17) The miners were not the first users of water in Colorado to set a tradition for the law. Even earlier, in the Arkansas Valley in southern Colorado, users followed the *acequias* tradition of earlier Spanish settlers, in which all water belonged to the community. (Hicks 2004, 15)

If Rueben Coffin studied history and law, he might have seen the troubles ahead. Arbuthnot and the Left Hand Ditch Company could claim prior appropriation right, since they filed their claim to the ditch in 1869. (Abstracts, Coffin et al 1882, 31) On the other hand, if water was a public resource, then surely Coffin should be allowed some share of the water. Once decided, the rule would become history. Coffin and the courts headed into uncharted territory

with a new, multifaceted water doctrine, completely unlike the riparian doctrine of old. Coffin's attorneys tried to present his rights to the creek's waters as natural and eternal, emphasizing the most beneficial uses:

“[T]he water of the St. Vrain Creek, a natural stream and water course from time immemorial has flowed and when not diverted from its original channel, still does flow into through [Coffin's] land and thereby moistens and benefits [...] the crops of grass, grain, and vegetables growing thereupon and supplies the said Coffin with water for his stock and for domestic purposes.”

(Abstracts, Coffin et al 1882, 19-20)

While Coffin's lawyer used eloquent descriptions of nature to defend riparian rights, the Left Hand Ditch Company relied on facts. The plaintiff's side began by calling Porter M. Hinman to the stand. “I am one of the original constructors of the ditch,” he claimed. “I think there were 14 original constructors. The ditch was constructed to irrigate a few small patches of ground on Left Hand in 1863.” (Abstracts, Coffin et al 1882, p 31)

After Hinman detailed the construction of the ditch and the incorporation of the Left Hand Ditch Company, Coffin's lawyer cross-examined him. Hinman reluctantly admitted the identity of the other constructors, including one of the defendants, John Andrews, and another man, not present, named Porter R. Penrock—Reuben Coffin's brother-in-law. (Abstracts, Coffin et al 1882, pp. 32-33; Roots Web 2008, 288) What a dilemma. Did Coffin and his neighbors have a stake in the dam they destroyed? No, John Andrews admitted on the stand. “I had an interest on the ditch,” he said, “but I never done anything to it since.” Without putting the water from that diversion to beneficial use, Coffin's party could not claim a firm right. On the other

hand, the ditch company was unable to show they protected public property. The local and appellate courts were baffled. Motions were argued, overruled, and appealed, until in December of 1881, the case went to the Colorado Supreme Court to be decided once and for all.

The Supreme Court reviewed the appellate cases carefully, considering the possibility that the settlers on both the St. Vrain and the Left Hand Creek once held an agreement. “If the agreement were actually made,” they wrote, “that fact would not excuse their act in forcibly destroying appellee’s dam without notice or warning.” (Coffin et al. 1882, 445) They noted that the whole incident might have been avoided had the agreement been legal and binding. Setting the issue of agreements aside, the court weighed the major question at hand: does riparian doctrine apply in Colorado? They found it unlikely, given the area’s desert-like reputation. “The climate is dry,” they declared, “and the soil, when moistened only by the usual rainfall, is arid and unproductive; except in a few favored sections, artificial irrigation for agriculture is an absolute necessity. Water in various streams thus acquires a value unknown in moister climates.”(Coffin et al. 1882, 446)

Acknowledging of the value of water in the west, the court praised and predicted the entrepreneurial and engineering spirit of the American West. According the court, the success and future of a civilized land depended on the protection of prior appropriation doctrine:

“Vast expenditures of time and money have been made in reclaiming and fertilizing by irrigation portions of our unproductive territory. Houses have been built, and permanent improvements made; the soil has been cultivated, and thousands of acres have been rendered immensely valuable, with the

understanding that appropriations of water would be protected.” (Coffin et al. 1882, 446)

The justices saw the amount of progress that occurred in the prior decades, acknowledging the necessity of ditches and dams. Without some diversions of the water, the towns of Boulder, Denver, and Golden would have since blown into the dust. A ditch, carrying water to where it was needed most, brought immeasurable value to the entire area. The riparian law, according to the court, was “inapplicable to Colorado.” They concluded, “Imperative necessity, unknown to the countries which gave it birth, compels the recognition of another doctrine”—the Colorado doctrine, incorporating public ownership, prior appropriation, beneficial uses, and the right to divert waters. Furthermore, these aspects supported one another, according to the court. They decided, “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.” (Coffin et al. 1882, 447)

Riparian rights didn’t stand a chance in Colorado. Still, the Coffin party hoped to find some legal rights to the water flowing into the Left Hand Ditch system. Could Coffin claim prior appropriation? Reuben’s brother, George Coffin (who was later murdered), held title to lands along the St. Vrain Creek dating back to 1866, three years prior to the incorporation of the Left Hand Ditch Company. The Supreme Court examined George’s titles, but found they “contained no reservation or exception of vested water rights.” (Coffin et al. 1882, 448) In other words, the Coffins owned their land, fair and square, but not the waters flowing past, because the Left Hand Ditch got to the patent office first.

After examining the language in the 1861 and 1864 and the pertinent articles in the constitution, the Colorado Supreme Court formed a working model of the state's unique water doctrine. Citizens are entitled to use the water in their neighborhood, even to great distance, as long as they do not harm any previously existing beneficial use. They found the territorial acts and the constitutional articles neatly supported this. "Our conclusion above," they wrote, "is supported by the fact that the succeeding assembly, in 1864, hastened to insert [...] the clause, 'who have a priority of right,' in connection with the idea of 'detriment' to adjacent owners." (Coffin et al. 1882, 451) Thus, the Supreme Court upheld Colorado's unique, multifaceted water doctrine, even though it was apparent that Coffin lacked any rights to the water, be they riparian or appropriated. In the end, they declared the destruction of the dam was an "action of trespass" and found Coffin's claim to the water to be "insufficient." (Coffin et al. 1882, 451)

Despite the fairly obvious outcome and loss for Coffin, the case became known as the precedent for "first in time, first in right." Dale D. Goble described this multi-headed conclusion in a chapter on Western water law entitled "Making the West Safe for Prior Appropriation Doctrine":

"This is assertion masquerading as an analysis: the decision to adopt prior appropriation was presented as a recognition of existing law rather than the creation of new doctrine. The language of the 1861 and 1862 statutes failed to overcome the court's assertion that the state's climate necessitated the adoption of the prior appropriation doctrine. As such, the taking issue never arose because there had never been any riparian rights to be taken." (Goble 2000, 156-7)

The four-legged doctrine determined by the Supreme Court, combining prior appropriation with public ownership, beneficial use, and right-of-way, would spread to other parts of the West. “Eventually,” Gobel wrote, “all of the interior western states adopted the ‘pure appropriation’ or ‘Colorado’ doctrine.” To support this, he cited cases in Arizona, Idaho, Utah, and Wyoming. (Goble 2000, 157)

Over the years, many court cases and history books referred back to Coffin vs. the Left Hand Ditch Company as the seminal case in prior appropriation. However, this included criticism along with praise. Over the years, prior appropriation doctrine has become associated with greed and land use. David B. Schorr described the hypocrisy of this view for *Ecology Law Quarterly* in 2005. He wrote, “Analysis of the available historical evidence makes it quite clear not only that the doctrine of appropriation as developed in nineteenth-century Colorado was viewed at the time as striking a blow at private property in order to advance distributive justice, but that it had that very effect as its central goal.” (Schorr 2006, p 5)

Misunderstood or forgotten today, the case of Coffin vs. the Left Hand Ditch Company set the tone for nearly all water rights in the American West. The unique, four-legged doctrine outlined by the case, allowed citizens to live on arid lands, away from the moist (and flood-prone) shores of temperamental creeks and rivers. Without such efficient management, putting a public resource to beneficial use in an orderly manner, the American West could only support a small fraction of the civilization present today.

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