

SURFACE WATER BUILT VALLEY FARM WEALTH  
by Cover Mendenhall

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The drouth of the past few seasons has served to point up a conflict that is becoming of ever increasing importance to the water users not only of this valley but of the entire state--the conflict between the appropriators of surface waters and the users of under ground waters. Mr. Sabin in his recent article in this paper has ably presented the view point of the underground water user. It is the purpose of this article to present the contentions of those whose source of water is our rivers and streams.

In order to understand their argument we must first review the law of water. There are three systems or doctrines of water law, the riparian system, the appropriation system and a combination of the two systems. The doctrine of riparian rights was developed in England and is applied in the humid eastern part of the United States. The basic theory of this system is that water should flow as it was accustomed to flow in the past.

In other words the owner of land on a stream or river is entitled to a stream flow undiminished in quantity and unimpaired in quality. Non-riparian owners, whose lands do not boarder on the stream, have no right in stream flows and mya not demand or receive water for their lands.

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In the dry and arid West, for reasons which should be obvious, the reparian system is unworkable. To take its place for the appropriated waters of natural streams to beneficial uses shall never be denied and that he who is first in time is first in right.

A combination of the two systems has developed in California and a few other states where a riparian system had developed before widespread agricultural mining development made it, by itself, unworkable.

Here, in Colorado, we are concerned only with the appropriation system. It is recognized by our Constitution, and our courts have said that the constitutional provisions were but the recognition of an already existing system. The unappropriated waters of every natural stream are declared to be the property of the public and dedicated to the use of the people of the state, subject to appropriation.

PREFERENCIES

The constitution sets up an order of preferential use which is (1) domestic, (2) irrigation, and (3) industrial. This preference system must not be confused with priorities. A preferred use does not thereby automatically obtain a senior priority. The only practical effect of the preference is to give a preferred use the right to condemn a subordinate use.

A water right is a right to the use of the flow, or a portion of the flow, of a water course. It is not a private ownership in the water itself, but it is a property right in the use of water while in possession.

Appropriation rights attach to water flowing in defined water courses. Surface water falling on the land and not constituting a part of a water course may be used by the individual on whose land the water falls. Water arising in a spring on a man's land may be used by him, provided that the water from the spring is not tributary to a natural stream and there covered by a prior appropriation. There is a rebuttable presumption that all water is tributary to the natural stream.

## WELLS

Developed water, such as that taken by a mine tunnel from an underground pocket, not tributary to a stream, may be used and controlled by the person developing the water, and he may transport the developed water in a natural water course to the point of use.

Underground water occupies an uncertain status in Colorado at the moment. There is no statute clearly defining and regulating rights to such water.

The surface appropriators contend that the diversion and use of ground waters must be fixed and controlled in strict conformity with the constitutional and statutory provisions for the appropriation of water from natural streams.

They argue that any departure from these fixed and well defined principles would not only be in direct conflict with our constitutional provisions, but would seriously impair, if not destroy, vested rights to the use of water which had been acquired through long years of effort and the expenditure of large sums of money, and would and could only enrich the junior appropriator of ground water (where the ground water is tributary to, or is the underground flow of a natural stream) at the expense of senior appropriators of surface rights upon which the agricultural wealth and prosperity of the state had been founded.

## COURTS

They further point out that under the decisions of our appellate courts all waters whether above or below the ground or whether flowing in surface streams or in subterranean channels, or by percolation, are a part of the natural streams of the state, and as such must be controlled by the existing provisions of our constitution and statutes.

They believe that their 1876 decrees are senior 1946 wells and that consequently the wells should not be operated until the surface appropriations are satisfied, or until they can be shown definite proof that the ground water being pumped is not tributary to the surface stream.

Naturally, without further exploration and study, we cannot tell and do not know whether the subsurface water underlying most of our Arkansas Valley area is or is not tributary to any stream. Almost everyone who is very deeply interested in water has strong feelings and beliefs on the subject; but feelings and beliefs, however strong, cannot take the place of expert detailed scientific findings of facts.

## OUR ECONOMY

Practically the entire farming economy of the Arkansas Valley, and therefor the economy of all the towns and cities serving our magnificent farming area, has been built and based upon the doctrine of prior appropriation of water.

There is undoubtedly a potential expansion of that economy by the judicious use of our underground waters where such use does not affect or in any way disturb the existing rights and duties of our people and the land they use. It would be a most disturbing thing for the entire economy (and remember that the economy is made up of lots of individual people), if irresponsible use of underground water were allowed to disturb what we now have.