

Federal Jurisdiction in Water Law

State ex rel. Martinez v. City of Las Vegas, 2004-NMSC-009, 135 N.M. 375, 89 P.3d 47

New Mexico does not recognize equitable distribution as the system of water law; rather, doctrine of prior appropriation prevails. West's NMSA Const. Art. 16, § 2.

(Holding that the State Engineer's reliance on equitable apportionment, conflicts with this Court's longstanding interpretation of water law applicable in New Mexico under Spanish and Mexican rule outside the context of the pueblo rights doctrine.)

Citing to: Colorado v. New Mexico, 459 U.S. 176, 103 S. Ct. 539, 74 L. Ed. 2d 348 (1982)

Under the prior-appropriation doctrine, recognized in most of the western states, water rights are acquired by diverting water and applying it for a beneficial purpose; a distinctive feature of the prior-appropriation doctrine is the rule of priority under which relative rights of water users are ranked in the order of their seniority.

(The mere fact that Colorado had no existing uses of the waters of an interstate river and that current users in New Mexico might suffer some detriment from a diversion did not bar Colorado's suit to divert water of interstate river for future use, but those circumstances did bear on the burden of proof that Colorado had to satisfy to justify the possible disruption of existing uses.)

Equitable apportionment is the doctrine of federal common law that governs disputes between states concerning their rights to use the water of an interstate stream; it is a flexible doctrine which calls for the exercise of informed judgment on consideration of many factors to secure a just and equitable allocation.

Our aim is always to secure a just and equitable apportionment "without quibbling over formulas." ... state law is not controlling. Rather, the just apportionment of interstate waters is a question of federal law that depends "upon a consideration of the pertinent laws of the contending States and all other relevant facts. [id at page 184].

We have invoked equitable apportionment not only to require the reasonably efficient use of water, but also to impose on states an affirmative duty to take reasonable steps to conserve and augment the water supply of an interstate stream.

The laws of contending states concerning intrastate water disputes are an important consideration governing equitable apportionment of the rights to use water of an interstate stream, and when both states recognize the doctrine of prior appropriation, priority becomes the guiding principle in an allocation between competing states; however, state law is not controlling, but rather, the just apportionment of interstate waters is a question of federal law that depends upon consideration of pertinent laws of contending states and all other relevant facts.

In action brought by Colorado against New Mexico to divert water of an interstate river for future use, *it was entirely appropriate to consider the extent to which reasonable conservation measures by New Mexico might offset proposed Colorado diversion and thereby minimize any injury to New Mexico users; similarly, it was appropriate to consider whether Colorado had undertaken reasonable steps to minimize the amount of diversion that would be required.*

In proceeding for equitable apportionment of water of interstate river, in determining whether state seeking the diversion has carried the burden of establishing that benefits of the diversion substantially outweigh the harm that may result, *an important consideration is whether existing users could offset the diversion by reasonable conservation measures to prevent waste.*

In determination of an equitable apportionment of water of interstate river, the rule of priority is not the sole criterion; while equities supporting the protection of established, senior users are substantial, it is also appropriate to consider additional factors relevant to a just apportionment, such as conservation measures available to both states and balance of harm and benefit that might result from the diversion.

Tri-State Generation & Transmission Ass'n, Inc. v. D'Antonio, 2012-NMSC-039, 289 P.3d 1232
Water rights are determined under state law, not federal law." Hydro Res. Corp. v. Gray,
2007-NMSC-061, ¶ 16, 143 N.M. 142, 173 P.3d 749. "The prior appropriation doctrine governs
water law in New Mexico. See N.M. Const. art. XVI, § 2 ('Priority of appropriation shall give
the better right.')." Walker v. United States, 2007-NMSC-038, ¶ 21, 142 N.M. 45, 162 P.3d 882.
"Under the doctrine of prior appropriation, water rights are both established and exercised by
beneficial use, which forms 'the basis, the measure and the limit of the right to use of the water.'

Elephant Butte Irr. Dist. v. Regents of New Mexico State Univ., 1993-NMCA-009, 115 N.M.
229, 849 P.2d 372

In states that have adopted a prior appropriation regulatory scheme, water adjudications are intended to create a detailed hierarchy of users for times of shortage. See DuMars, *supra*, at 1045–46. Adjudication also facilitates conveyance of water rights, which are recognized property interests. See New Mexico Prods. Co. v. New Mexico Power Co., 42 N.M. 311, 77 P.2d 634 (1937). Because of the huge federal presence in prior appropriation states, attempts to fully adjudicate water rights require federal participation in state adjudications. [id at page 376]

New Mexico, like most Western states, follows the prior appropriation doctrine. N.M. Const. art. XVI, § 2 (Repl.Pamp.1992); see also NMSA 1978, § 72–1–1 (Repl.1985). This doctrine may be characterized as a "first in time, first in right" system, under which "[b]eneficial use [is] the basis, the measure and the limit of the right to the use of water." N.M. Const. art. XVI, § 3 (Repl.Pamp.1992); see also NMSA 1978, § 72–1–2 (Repl.1985).

This waiver of federal immunity [McCarran Amendment] from state procedures to quantify federal water rights was intended to avoid the "piecemeal adjudications of water rights in a river system,. In Dugan v. Rank, 372 U.S. 609, 83 S.Ct. 999, 10 L.Ed.2d 15 (1963), the Court held that the United States could not be joined in a suit between private water users because the McCarran Amendment required a general stream adjudication.