NEW MEXICO WATER LAW AND POLICY

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After the first New Mexico water conference last year, I made two statements which, together or separately, may be at least partly responsible for my presence on this side of the lectern today. First, I told Dr. Stucky that I hoped that these conferences would continue each year and that representative points of view on water resources matters would be increased in number. The audience at this conference indicates that my fears on that point were unnecessary. My second remark was that it was surprising to realize how many of the most important questions asked at the conference were essentially legal questions. Many of the inquirers were not aware, so far as I could tell, of the legal implications of some of their questions. Those who were aware of them displayed what seemed to be a rigid, or pessimistic attitude about the functions of legal institutions and their adaptability to the actual processes of society. These observations have been on my mind during the past year. When Professor Stephens asked me to participate in this conference I accepted the opportunity to probe, and perhaps clarify, some of the perspectives that the questions last year brought into view.

I am pleased that your program chairman employed the title "Water Law and Policy" for my discussion. He might have called it "Water Rights in New Mexico." The program indicates that "water rights" will be discussed and emphasized by other speakers. What these gentlemen will say about "water rights" will, I am sure, be of much interest, not only because of the special qualifications of the speakers, but also because the phrase "water rights" itself contains overtones of practicality and certainty. However, the phrase is often misleading. And it may even be too narrow to cover the discussion by members of this panel. Moreover, the term "rights" may premise the existence of correlative "duties." But perhaps the less said about legal duties, the better, because a discussion of legal rights and duties might lead us to ask "What is a duty?" and What is a right?" Further inquiry might be demanded and we could become interested in the origins of legal rights and duties and such questions as: Are we born with them, or are they acquired from the organized community - local, state and national - in which we live? Are property rights, including water rights, created by the community? Or does the community get its existence from property rights?

These may appear to be unnecessarily speculative questions with which to open a discussion of water law. However, all of you must be aware that, whether or not we consciously frame, or ask, these questions, we all act on the basis of assumed answers to these and similarly

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disturbing questions. These questions go to the fundamentals underlying our choices of values and objectives. They assume the method by which our society formulates policies, makes choices among alternative social objectives and enacts laws, including water laws.

We can agree, at any rate, that there are such useful concepts as legal rights and that these concepts describe and generalize relations. Nobody ever saw a water right - the evidence, paper or otherwise, of one - Yes. But the "right" remains an idea of rational or partly rational beings.

These legal relationships, called rights to the beneficial uses of water, which in New Mexico include recreational uses and fishing purposes,[1] are the primary concern of this conference. Other rights must not be overlooked. In New Mexico these include rights to protection from the detrimental effects of water, e.g. from flood,[2] pollution,[3] and wrongful diversions[4] or the obstruction of canals and water courses.[5]

We know that these rights were not created in a cultural vacuum. Thus there are pragmatic or operational answers to the questions suggested. We know that there are some historical answers also. Not too long ago in this region land and water rights were often determined (if not created) at the end of a gun barrel and not by legislatures or courts. When social institutions were weak, when legislators were semi-literate and when legal institutions were largely unformed, and the common good of the community depended upon physical strength (and, I might add, when right was often confused with might), society's grants to the strong were practically and theoretically justified. For what benefited the patron usually benefited the partidario and thus the community was benefited or kept alive. Rights and duties existed largely for those who could seize the former while avoiding the latter. Indeed one accepted writer of the period, Herbert Spencer, held that a balance between them would destroy equality and opportunity. However, our grandparents did not entirely ignore their duties, as is evidenced by their treatment of horse thieves and this statute enacted in 1876, and still the law in New Mexico, which reads:

75-1-5 Interfering with the traveler's use of water--Penalty

Hereafter, if any person or persons, shall embarrass, hinder and molest any person or persons at the time they may wish to take the water for their animals, and shall claim or demand of the traveler any compensation for the use of the water, such person or persons on conviction thereof, before the court of a justice of the peace or district judge, shall be fined in a sum not less than twenty-five dollars ($25.00), nor more than fifty dollars ($50.00), and shall be liable to pay all damages caused thereby to the person so hindered. (Laws 1876, ch 41, sec 2).

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[1]State v Red River Valley Co. 51 N.M. 207, 182 P2d 421 (1947).

[2]See Martinez v Cook, 56 N.M. 343, 244 P2d 134 (1952).

[3]See Carlsbad Irrigation District v Ford, 46 N.M. 335, 128 p2d 1047 (1942).

[4]See Pueblo de Sandia v A. T. S. Ry. Co. 37 N.M. 591, 25 p2d 818 (1933)

[5]Rix v Town of Alamagordo, 42 N.M. 325, 77 P2d 765 (1938).
Jacquez Ditch Co. v Garcia, 17 N.M. 160, 124 p 891 (1912).

The myth of those days hangs over us. The myth is powerful (and it sells well too. Without it I think Hollywood and TV would be selling worse fantasies, or be bankrupt). Those were the days when the West was won; when the only good Indian was a dead one; when at every term of court in Dona Ana and Lincoln Counties there were not less than a dozen homicide cases to be tried (and the defense in all of them was the same - self-defense); when John Wesley Powell went down the Colorado River and later wrote his Report on the Lands of the Arid Region (1879) which collected dust in Washington for years; when government was personal, and when our forebears, as part of the lived and unedited myth, affirmed that "that government is best that governs least!"

Best for whom: we might ask.* The few or the many, the self-seeking or the hard working, the Indian or the white man, the homesteader or the patron?

In those days permits to appropriate water were not issued by a state official who was also a qualified engineer. The help of a lawyer in obtaining a water right was infrequent. Many lawyers, having completed the 8th grade or less, heard the call of the law and crossed into New Mexico territory carrying their entire libraries, sometimes composed of one volume of the Revised Statutes of Texas of 1879. Those were the days when water controversies were often shooting matches, and, if such a controversy reached the court house, the lawyers called it a "swearing march."

Since those days social and political processes, and the legal sanctions that accompany them, have become more refined. But they deal with the same underlying problems. The main one is the search for a better balance between rights and duties, between individual and group desires and community growth and improvement. In short, the real problem is one of balancing the public interest and private rights. This is the role of government. This is the background in which legal institutions develop. This is the area in which law as a method of social control must also perform positive and opportunity giving functions.

Complex problems have required the molding of more complex legal institutions as a method to find fair and useful answers. For example, the old community acequias were recognized as public ditches by the Legislature in 1852.[6] In 1895 these community ditches became corporations with the power to sue and be sued.[7] More recently drainage, irrigation, conservancy

*I borrow this question from Walter Gellhorn with full acknowledgment of the debt. See Gellhorn & Bryse Administrative Law, Cases and Comments (1954) Ch. I.

[6]All rivers and streams of water in this state, known prior to January 7, 1852, as public ditches or acequias, are established and declared to be public ditches or acequias. (Laws 185-52 p 277).

[7]N M STAT. ANN. 1953 COMP. 75-14-11.

and artesian districts became legal institutions.[8] The period from the first artesian well control law in 1905[9] to the ground water law amendments of 1953, 1955 and 1957 parallels the transition from the hand pump to the modern deep well jet pump. The statutory law alone enacted in New Mexico during this period fills a good sized volume. The decided cases would fill several volumes. But this printed evidence of developments in the law is no more than sediment from the flow of social events of a century. The creation of the office of Territorial Irrigation Engineer in 1905, the Water Code of 1907, the State Constitution prepared in 1911, the compiled statutes and the court decisions were the result of individual and group activity - or pressure if you wish - that had as its objective the satisfaction of some interest or want. Many of these demands on the decision-making process, which resulted in new statutes or new decisions by the courts or new administrative policies, had the public interest as an incidental goal only. Yet the public interest was often served. For example, in 1910 the Territorial Supreme Court in construing the legislation of 1907 which handed to the Territorial Engineer and the board of water commissioners the responsibility for approving or denying applications for new surface water diversions, held that the board had construed the concept of public interest too narrowly with regard to the functions of the Territorial Engineer. This official had rejected the application for a private reclamation project he found infeasible because there was insufficient water for the project and the construction of works for small acreage would not be justified. The Territorial Supreme Court said:[10]

"The view, apparently adopted by the water commissioners in their decision, that the power of the territorial engineer to reject an application, if in his opinion the approval thereof would be contrary to the public interest is limited to cases in which the project would be a menace to the public health or safety, is, we think, not broad enough. There is no such limitation expressed in terms in the statute, and, we think, not by implication, * * * The fact that the entire statute is designed to secure the greatest possible benefit from (the waters) for the public should be borne in mind." . . .

". . . The failure of any irrigation project carries with it not only disastrous consequences to its owners and to the farmers who are depending upon it, but besides tends to destroy faith in irrigation enterprises generally."

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[8] Ibid 75-19-1 et seq. (Laws 1912, ch 84 Drainage).
" 75-22-1 et seq. (Laws 1919, ch 41 Irrigation).
" 75-28-2 et seq. (Laws 1927, ch 45 "Flood protection, river control, drainage, water storage for supplementing irrigation needs . . all other improvements for public health, safety, convenience and welfare. . .).
" 75-13-1 et seq. (Laws 1931 ch. 97 Artesian Conservancy Districts).

[9] 36 Legis. Assembly, C. B. 20 approved Feb. 22, 1905.

[10] Young & Norton v Hinderlider, 15 N.M. 666, p 1045 (1910); 11 N M STAT., 1953 COMP. Sec. 75-5-6.

This policy decision by the Supreme Court needs no explanation. The knife of policy cut the line between public interest and private right.

Throughout this discussion I use the term "policy" to describe the totality of processes that produces decisions affecting the community and its members. The future development of New Mexico's water resources will involve many policies although only a few may be accepted or be authoritative at any specified time. By water resources policies I do not mean fixed or predetermined plans which ignore man's limitations or overlook the principle of inertia which seems to be an important social factor. Within the term "policy" I leave room for those partly irrational responses of society to myths and symbols and cliches of the past. That there are such responses was recently documented by many of the discussions over proposed structures on the Upper Colorado River.

It is clear, then, that I do not divorce policy from politics[11] and the whole social process. Nor do I believe that policy is a high level abstraction that denotes only the activities of persons who know, or think they know, most of the answers, while leaving politics to the politicians, who, by inference at least, are described by lower level abstractions. Politics is the social-governmental interplay over the choice of goals and methods - good, bad, selfish, idealistic, rational and foolish. It is the essential process by which free people establish institutions for attaining them. Legal institutions are built by this process. Contributions to knowledge by this conference must be put in that framework to be made effective. Our job here, as I see it, is to search for and help to explain rational, technical and useful alternative approaches in the development and administration of New Mexico's water laws and policies.

Among this group of experienced and public minded citizens I feel that there probably exists a wide variety of opinion as to the utility, meaning, or even desirability of some present laws and policies. If suggestions were made for changes in them I suspect the variety of opinion would be even greater. Among some of you - perhaps the engineers and physical scientists - there may be a strong belief that more knowledge of physical conditions and technological advances should be the main criteria of sound policy and effective law. Others may believe that economic considerations and the activity of the market place are the most reliable criteria. Still others - the social scientists perhaps - may seemingly over-emphasize the human condition and affirm that model laws and model dams are desirable but not at the expense of man's individual identity. These are all legitimate points of view. The answers to many water, as well as other, problems, lie in bringing all of the points of view into the open where their merits can be discussed and where selections can be made. It is the social-political process that permits us to expound our various choices and to advocate them to others. Any rational choice implies knowledge of at least

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[11] For a recent statement of this point of view See Wengert, The Politics of River Basin Development, 22 Law and Contemporary Problems 258 (Spring 1957). For the point of view that policy should represent "a clear, accepted, reasonably stable body of principles," see Ackerman, Questions for Designers of Future Water Policy, 38 J. Farm Econ. 971 (1956).

two points of view or alternatives. Often, however, no choices are made because no real knowledge is offered, or the small kernel of it that is offered is wrapped in such a large husk of bias, confusion and ignorance no one can take the time to shuck it out.

Until economists, engineers or philosophers become kings (and presumbaly we all have strong feelings against kings by any name) society will have to depend on the imperfect social process and work of inquiring groups like this once for the development and utility of water law, and other human, institutions.

As a student of New Mexico water law I am fortunate to be able to study very old, and also modern, water law institutions that are perhaps among the most effective, fair and dynamic in the country. Yet these institutions still require constant study, care and improvement. The vital features of these institutions were not the brain children of any water resources conference. The doctrine of prior appropriation, for example, whereby the first beneficial user of water obtains a property right in it, was not a gift of the gods. It was the illegitimate child of necessity by an old Roman Law sire. The California miners have always received excessive credit for developing it. The fact is that they were trespassers on the public domain (which had been taken with blood and gold by the United States for the United States) and they had no rights as riparian land owners. A theory that separated an interest in water from an interest in land was needed. The appropriation idea was handy. Moreover it had been practiced under a variety of names for centuries by the Indians, the Spanish Colonists, the Moslems and the Romans before them.

The much later application in New Mexico of appropriation doctrine to ground waters was the result of various pressures to establish some economic equilibrium in the Roswell artesian area. The legislation of 1927 and 1931,[12] and the amendments to it, pitted those advocating uncontrolled uses ("absolute" legal rights, if there were such a thing) against those who have identified their welfare with that of the community over a continuing period of time. This group sought regulation as a means to achieve wise use. They were not entirely pure of heart, of course, since fewer wells meant less market competition in the sale of crops, too. But that ground water legislation of a generation ago or the motivation behind it, needs no defense. The late Herbert Yeo, and the men who helped prepare that legislation, may not have anticipated the eventual declaration of a ground water basin along the Rio Grande. Yet their efforts, the desires of the people on the East Side, the technical knowledge of the State Engineer's staff, and the decisions of the courts have all combined to uphold a law and develop a policy that provides a flexible framework for continued development in New Mexico far beyond anything imagined thirty years ago. If you doubt this, examine the ground water anxiety of some of our more thoughtful neighbors in Colorado and Texas.

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[12] 11 N.M. STAT. 1953 COMP. 75-11-1 et seq.
See Yeo v Tweedy 34 N.M. 611, 286 P. 970 (1930);
Bliss v Dority 55 N.M. 12, 225 P2d 1007, App. dismissed
341 U. S. 924 (1950).

I do not wish to create an illusion that we have model laws. On the contrary, they contain seeds of misunderstanding and possible controversy. For example, the legislative amendment of 1953 declares a strong policy against a neighboring state depleting ground water resources from sources common to both states.[13] This law cannot be enforced short of a suit between states. Suits of this type, a little research will show you, cost many thousands of dollars, take on the average of 11 to 14 years to decide and have no effect whatsoever on the hydrologic cycle. The statute remains a declaration of sound policy, but we must await action by our thinking neighbors in Texas who know that eventual ruin awaits a wonderful area of production today.

The law should require cooperation between the oil drilling companies and the State Engineer just as it does between the water well drillers and the State Engineer in any artesian area.[14] Some of the practices of oil drillers need careful scrutiny. In Lea County Mr. Minton reported last year[15] that about 176 acre feet of salt water was being allowed to flow out on the ground every year in that one county alone. The results of the practice of flooding wells to increase output by using fresh water should be studied.

The inability under present law to obtain better cooperation between municipalities and the State Engineer's office is resulting in the residents of towns drilling shallow domestic wells which in times of high water or flood become contaminated. This supply often reaches the public water because these people have attached their pipes to the city system. This calls for stronger local policy and better ordinance enforcement. Cooperation between the State Engineer and the towns on the question of issuing well permits within the town limits would also help.

Most of you know that in New Mexico all surface waters are appropriated except some waters of the Canadian and water from the Colorado system. The San Juan diversion will import legal problems into the Rio Grande Basin. These will have to be met and solved.

Current problems of the law and the administration of surface waters have not been concerned with the initiation of rights so much as with changes in types of uses and places of uses, i.e., with transfers of rights or to different uses. With these new problems go new policies of

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[13] 11 N.M. STAT. 1953 COMP. 75-11-29 (Laws 1953, ch. 64 sec. 2).

[14] Ibid, 75-12-5.

[15] Minton, Underground Water Problems in New Mexico and Specifically in the High Plains Area. Report of First Annual New Mexico Water Conference (1956) p. 37.

encouraging and insuring maximum, and also wise, use. There will be decisions of fact made as to ground waters as to whether certain uses will or will not "impair existing water rights,"[16] or be a "detriment (to) the rights of others having valid and existing rights."[17]

Future developments involve extremely important policy functions of the State Engineer with which he is charged by statute. A 1955 amendment declares that "The State Engineer shall permit the amount allowed to be diverted at a rate consistent with good agricultural practices and which will result in the most effective use of available water in order to prevent waste."[18] (My emphasis). In effect this statute establishes a rule of reasonable diversion and use. Some policy will or should emerge as to its application. Inquiry is needed as to the effect of such a rule, both in theory and in practice, on the doctrine of prior appropriation. This provision may also raise questions about the feasibility and legality of metering wells, or controlling their depth or diameter.

The legal duties of the State Engineer are enormous, and the power granted him by the Legislature and confirmed by the courts is commensurate with his responsibilities. This grant of power is not a recent development. It did not originate at the time of the widespread condemnations of bureaucrats. The 1905 Territorial Legislature created the office of Irrigation Engineer.[18a] Since statehood, the State Engineer has been given the chief responsibility for husbanding one of the principal resources of an arid state. Many more duties have been added to the office since that time.[19] The tasks connected with the various interstate compacts are another aspect of the State Engineer's legal functions.

His job of Compact Commissioner under several Compacts, and his connection with the National Reclamation Association involve important inter-state and intra-state policies. The job of keeping down intra-state frictions alone is a big job. The State Engineer's liaison activities with the Bureau of Reclamation, the Corps of Engineers, the Department of Agriculture and various other agencies of the United States are large legal responsibilities. They require much more than the execution of policy; they involve policy making functions also.

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[16] 11 N.M. STAT. 1953 COMP. 75-11-3 (Ground water).

[17] Ibid 75-5-23 (Surface water)

[18] Ibid 75-5-17.

[18a] A.H.B. No. 98 approved March 16, 1905. Laws 1905, 36th Legislative Assembly, ch 102, Sec 11, Page 274. (The salary was fixed at $2000 per year, Sec 14). This act was repealed and replaced by the Water Code of 1907.

[19] See Ibid 75-2-11 (The board of water commissioners was abolished in 1923 and the records transferred to the State Engineer. Laws 1923, ch. 28, sec. 4).

I have used the State Engineer's office as an example of the functions of law and policy because the example is particularly relevant. These functions of that office are not always appreciated. The regulatory tasks of the office are often overemphasized and the importance of other policy functions slighted. Here we have a public official appointed by the chief executive, who is required by law to be a "technically qualified and registered professional engineer." He is chief administrator of the laws passed by the legislature at the behest of or with pressure from some groups or individuals in the community that want government to do or refrain from doing something. This same official is called, in cases involving conflicts over claims to certain uses, to hold hearings and sit as a semi-judicial official to find facts and make decisions under the law. In the process of carrying on the duties of that office we have an engineer trained in technology and the sciences, interpreting statutes, interstate compacts and decisions of the courts applicable to water resources. And let no one think he does not do this. The system could not function adequately if he did not. Apparently, he has the Supreme Court's sympathy too.[20] Sometimes he is called upon to defend or announce policies no longer tenable. These are often embodied in statutes. Other statutes are so vague or ambiguous or so lacking in scientific outlook, that the State Engineer has to give them some technical or scientific interpretation that squares with the physical facts. Or he must make rules and regulations which are within his power that announce some clarified policy. The whole idea of well spacing is an example.[21]

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[20] In Spencer v Bliss; 60 N.M. at 28 (1955) 287 P2d 221, the Supreme Court said: "The administration of the public waters of the state, especially the underground waters is a task requiring, expert scientific knowledge of hydrology of the highest order. The administration of surface waters alone, where the trained and experienced engineer may see and observe what he does, or should do, and what the agency he administers is doing, is beset by difficulties enough. But when the administration is turned to underground waters the engineer's troubles are multiplied a hundredfold."

[21] See Spencer v Bliss, Supra at 23:
"Q. Will you state what his (the State Engineer's) policy is in that regard? A. Well, his policy is not to permit more moved into more dense areas of pumping or toward more-toward more dense areas of greater intensity-density, in pumpage or diversion from ground water."

New Mexico District Court cases approving well spacing formulae: Lawrence v State Engineer, Lea County (#9979); Cooper v State Engineer, Lea County (#9565); See Harris, Water Allocation Under the Appropriation Doctrine in the Lea County Underground Basin of New Mexico. (Contribution to Symposium on the Law of Water Allocation in the Eastern United States, to be published by Conservation Foundation, 1957).

You will find no express authority for this practice anywhere in the Statutes. Another example is the State Engineer's handling of the relationship between ground and surface waters. He has had to lead the way toward a new approach to legal concepts or categories of ground and surface waters. He has had to make policy based on technical as well as other kinds of facts. For example, was the decision to make Elephant Butte the southern boundary of the new Rio Grande underground basin based on scientific knowledge, or on other non-scientific facts? If the scientific facts support the conclusion that ground and surface waters in the basin are related, then by any scientific criterion the underground basin boundary should have been the Texas state line. Why was a different decision made? The policy announced by the State Engineer's decision to draw the line at Elephant Butte only magnifies the other intrastate and interstate problems which underlie that decision.

In other states, Colorado for example, where the State Engineer wears heavier legal hobbles, the development of any kind of flexible solutions to problems is difficult. The Colorado consitituion and statutes set up a hierarchy of preferences among various uses, domestic, agricultural and industrial. These reflect the agricultural expansion period of the West, but they do not provide for or reflect the growth of a city like Denver, or Colorado's policy of encouraging industrial-urban development.

Along the Rio Grande these same conflicts exist and will become sharper. Larger and larger residential and industrial uses in urban centers like Albuquerque and El Paso are being projected. Legal recognition of the relationship between these two sources must be clarified. This means a complete analysis and reappraisal of present water law concepts and categories. The operational meanings of "beneficial use" or "reasonable beneficial use" or "non-consumptive beneficial use" are far from clear. The classification of waters developed by the legislature or sanctioned by the courts, e.g. "artificial" waters, "seepage" waters, "shallow ground" waters, "percolating" waters and "spring" waters belongs to the age of myth.

This once useful verbal classification needs critical study in the light of scientific and technical knowledge not available in 1907.[22] One or two court decisions cannot take the place of systematic research and scholarly inquiry. Decided cases are limited to the narrow issues of the litigation. Policy considerations are important factors in many of these decisions. But there may be alternative policies that are not presented to the court because the particular litigation presents issues of private rights which, to the litigants, or to the courts, may not appear to involve the public interest or future policy. Sound water resources policy requires study, discussion and, in some instances, new legislation. The development of New Mexico depends to a large extent on water law institutions that continue to be responsible to underlying social needs and human expectations.

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[22] 11 N.M. STAT 1953 COMP. 75-5-25; See Langenegger v state, decided August 26, 1957.

There is in existence (it may not exist in this audience) a belief that the law is like the multiplication tables; that a water right is always a water right; that legal institutions change scarcely at all, or that any changes are due to a mysterious and unknowable process, and that "justice" is always an objective, readily determined fact. If these beliefs are acted upon it is an easy step to the conclusion that everything is hopeless, or nearly so, and therefore there is no point in trying to change anything. Or an even worse conclusion is reached: that all is well or nearly perfect. My few examples from New Mexico history are some evidence that this reasoning is false. I could cite other examples also of emphasis on this mechanical type of thinking.

Lately there has been some public discussion of Russia's "trespass" to U. S. sovereignty with her satellites. Before men could fly they claimed that any invasion of the air space over any real property was such a trespass. The appropriate Latin maxim was quoted, (Cujus est solum est usque ad coelum et ad infernos) which roughly translated states the dogma that "to whomever the soil belongs, he owns also to the sky and the depths." This same maxim, I might add, was the one involved in the early New Mexico ground water cases in support of the proposition that a land owner should have the right to unlimited ground water withdrawals, and is still being contended for by people in the Rio Grande Valley, including some people in the unregulated Mesilla valley.

In a suit brought by a chicken farmer who claimed his property, his chickens included, had been "taken" by the fact that military aircraft flying over his farm during the war had made so much noise they ruined his egg business, the United States Supreme Court said:[23]

> "It is the ancient doctrine that at common law ownership of the land extended to the periphery of the universe - - * * * But that doctrine has no place in the modern world. The air is a public highway, as Congress has declared. Were that not true every transcontinent-flight would subject the operator to countless trespass suits. Common sense revolts at the idea. To recognize such private claims to the air space would clog these highways, seriously interfere with their control and development in the public interest, and transfer into private ownership that to which only the public has a just claim."

The concept of legal rights somehow leads people to jump to the conclusion that these rights are absolute rights. In 1945 Justice Jackson of the U. S. Supreme Court said: "Rights, property or otherwise, which are absolute against the world are certainly rare, and water rights are not among them.[24] In other words, the United States constitution, state constitutions and due process requirements protect rights against

[23]United States v Causby, 328 U. S. 256 (1946).

[24]United States v Willow River Power Co. 324 U. S. 499 (1945).

unjustified or unreasonable infringement. However, this does not make these rights absolute as against claims of the community and the general development of society. This has been the history of our society and it is the tradition of which we are the fortunate beneficiaries.

One law writer[25] said: "The law must be certain yet it cannot stand still." With respect to the development of New Mexico's water resources and legal institutions, I think that statement outlines the size and difficulty of our task. This conference will, I believe, suggest wise and fair directions in which improvements can and should be made.

[25] I think it was Dean Roscoe Pound.