



TWV Podcast #070
Prior Appropriation and How it Shaped the West
with Honorable Gregory Hobbs, Jr. (Ret.)
Show Notes at <http://thewatervalues.com/pod70>

Intro: Welcome to The Water Values Podcast. This is the podcast dedicated to water utilities, resources, treatment, reuse, and all things water. Now here's your host, Dave McGimpsey.

Dave: Hello and welcome to another session of The Water Values Podcast! As my son Joey said, I'm Dave McGimpsey. Thanks for joining me.

Great guest coming up today, and before getting to that, thanks for awarding the podcast another 5-star rating on iTunes – would really appreciate it if you enjoy the show to give both a rating and a review on iTunes. It's a great way to help the podcast reach others who might also be interested in water issues.

Today's guest is recently retired, long-time Colorado Supreme Court Justice Greg Hobbs. He was kind enough to come in for the interview just a couple days after he officially retired. He's a well-known speaker on water law issues and you won't be disappointed by the great interview he provides that describes the doctrine of prior appropriation and its role in shaping development in the West. His recall is terrific, and he can name off treaties, cases and other information rapid-fire he's so steeped in knowledge on water law issues. So sit back and enjoy gaining some wisdom from Justice Hobbs.

With that said, let's get on with it. Open the valves, fasten your seatbelts and here we go.

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Dave: Well, Justice Hobbs, thank you so much for your time. Greatly appreciate you're taking some time in and join us on The Water Values Podcast. To start off, could you tell us a little about your background and how you got interested in water?

Justice Hobbs: I guess it was growing up as a kid in Alaska. My dad was stationed in the Air Force up there in '55 to '58. It's still a territory. They have rivers up there, and he was a meat fisherman for the winter. And he would go down there with these snag hooks on the Kenai and the Russian River, and he would snag the salmon runs at different times in the Summer and Fall. Of course my brothers and I, the three of us kind of grew in a pack, Irish family, fifteen months apart, the three oldest boys. So we had these little spin rods, and we'd be screwing around, snagging up our lines while he's catching these big fish. We were getting these little Dolly Vardens, now they're called Bull Trout, and they're endangered in a lot of the country.

And then we moved to Northern California in 1958, and I was always in scouting. That's what our parents did. Air Force family parked us in the scout troop and the Catholic school if there was one available. And then we had the whole Sierra Nevada because the summer camp for



Marin Council, we lived up in San Raphael, north of San Francisco was the Sierra. What could be better than that?

Dave: Oh, I bet that was a great experience for you.

Justice Hobbs: And the Philmont Scout Ranch right out of high school, actually went to three Catholic high schools. The last one was Central Catholic in San Antonio. Went to be a ranger at the Philmont Scout Ranch at the age of 17. That was just terrific. Seven summers in the 1960's, met my wife there. She was on the staff during the summers. Her day was a school teacher. So they'd come down from Denver. So she's my anchor, fourth generation Denver. The Rocky Mountains I discovered through the Philmont Scout Ranch where the Sangre de Cristo fall off onto the high plains.

Dave: Philmont was a fantastic experience for me. I went there as a scout. I didn't make Eagle so I didn't get your benefit of having the option to be a counselor there but again, a great experience. When I went, we did one hundred-thirty miles I think in ten days.

Justice Hobbs: Totally. That's about right but you stretched yourself. Some of those hikes are shorter, fifty-five miles. But you really did the big ones.

Dave: It was a fantastic experience. Well, let's talk a little about water, obviously and water's impact on shaping how the West was formed and how the West has developed. I know that you are quite the historian. Could you tell us a little about water's place in the development of the West?

Justice Hobbs: Well, water is everything. We know that from Mesa Verde. I've done some of the paleohydrologic work with the Wright Water Foundation down there in Mesa Verde in Hovenweep. In fact, we have a trip coming up at the end of September to go to the Square Tower. You know those towers up there in the canyons and the Canyons of the Ancients. So, the story is there were four reservoirs at Mesa Verde operating between 750–1180 AD. There's another one out on the Sage Brush Plain. So any place in the arid, semi-arid lands of the Western North America, Central America and South America because there was an aqueduct just near Cuzco, Peru, that was built in 200 AD, and I guarantee you it wasn't built by the Romans.

So, water is the life-blood, the source of community, the source of all living things, and we share this characteristic of the Americas in the dry regions where governance around the available and scarce water supply becomes the whole key to community. And that leads directly to the water laws of the Spanish-Mexicans, the acequia culture in Northern New Mexico borrowed from more Southern Spain, another arid area. By the mid-1800's, there were three hundred-fifty acequias in Northern New Mexico.

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And when we carved after the United States took 40% of Mexico as a result of the Mexican-American War and the 1848 Treaty of Guadalupe-Hidalgo. That treaty required the land grants to be recognized. So the oldest water right in Colorado is on the Sangre de Cristo Grant, right outside of the town of San Luis. It is an 1852 water right that's been in continuous use. So when we came into existence in 1861, and the legislature passed that first land and water act, we recognized the pre-existing water rights of the Hispanos as continuous beneficial use. So, that's our doctrine, actual beneficial use. If you abandon the water right, it goes to someone else.

Dave: Sure. Let's get into a little bit about prior appropriation because that's clearly what you're talking about. Can you give us some of the foundational aspects of the prior appropriation doctrine?

Justice Hobbs: Be glad to. So we become a territory February of 1861. The Civil War has broken out. The South is seceding because Abraham Lincoln has been elected President. The writing's on the wall. He has stood up, in his political career, for a homesteading, free-soil, anti-slavery western settlement in the area brought into the United States by the Treaty of Guadalupe-Hidalgo of 1848 and the Oregon Treaty of 1846.

So the Louisiana Purchase of 1803 is the other big one, right? So, here we go, west of the Mississippi into the arid area. All this public domain land is coming in. Congress, in the Mining Act of 1866, severs the water on the public land from the land itself. Creates separate legal estates. Homesteading, as you know, allows one hundred-sixty acres to be possessed for a five year period and then a patent is issued by the government, but the water was accorded by the United States Congress to the states and territories to be allocated, the unappropriated water remaining on the public domain.

So in 1861 our territorial legislature does two very radical things because the Eastern water law and the law of England, the common law, was the riparian law. Those that own land up and down stream had a correlative right to withdraw water, but when they did that it was really for water power and basic non-consumptive uses, flour mills, saw mills, etc. So you had to deliver the water back in the stream. Where out here beyond the one hundredth meridian, where Stegner points out the John Wesley Powell talked about the arid lands - that demarcation where there's less than twenty inches of annual precipitation - you need irrigation to sustain crops.

So this first 1861 Act says that anyone, and it just mentions agricultural use, that needs to make an agricultural use can take water out of the stream to the place where it is necessary to be used across the intervening public and private lands. Two aspects then; the right to build a ditch and operate and maintain it, despite what the underlying landowners have to say and take the water for actual beneficial use. So a prior appropriation water right is for the actual beneficial use made of what remains in public ownership, the public's water resource. Now that's all confirmed in our 1876 Constitution of the State of Colorado when we get admitted to the Union.

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And so the other wrinkle that came on was that when you have this ditch, right away you have to pay just compensation to the underlying landowner. So it's a private right of condemnation. You have the right to take unappropriated water across the lands of another, put it to actual beneficial use. But actual use is the measure the water right because this is an anti-monopoly, anti-speculation scheme. They did not, our early territorial legislators and basically in the Constitution reaffirms this, did not want landowners tying up the water resource, so this is law of water use severed from the land. Now that startles people. But it is a use right, a property use right in the public's water resource.

Dave: Sure. So how does that right that was created, how did that impact development of the West?

Justice Hobbs: Well, it meant that settlers were rewarded if they were able to harness unappropriated water, subject to the rights of those who came before them, to do all the things you need to do for community. First of all, farming, you've got to feed the miners, right? Law professors like to say the mining law of the West kind of invented the water law. That's crazy. I just never understood that. It might have an idea having to do with the priority of rights, because there were priority of mining claims but that would translate to an agricultural water scheme anyway.

As the water comes out of the hills, it's basically used non-consumptively by the miners for sluicing and for those hydraulic hoses that blasted the hillsides. The water would come back in the water course and then as the streams exit onto the plains, they had to be diverted by the farmers and moved away from the stream to the agricultural land. And so then the return flows that come back from that irrigation, irrigation consumes about 50%. Another 50% is going into the subterranean aquifer and overland through tail-water ditches to the stream, comes back as part of the public's resource and then is subject to appropriation again, and again, and again.

That's why eight to ten uses are made from the headwaters of the South Platte down to the border of Nebraska. Sewer plants return the water, irrigation return flows. So we built this agricultural, domestic, municipal, commercial and now the in-stream flow water rights are slotted in by the legislature and the kayak course rights all in order priority.

And here's the thing we do the best in Colorado. The rights must be adjudicated by a neutral water court. So you know where the water's diverted from, how much water is diverted, what the use is and where is it used. And if you want to change that right, you have to quantify the consumptive use measure from the cubic feet per second, which is the head that comes through the ditch. Quantify it in terms of actual beneficial use. Remember, that's the ground of the whole doctrine. And then you can transfer it retaining the senior priority to a new or different use but preserving the return flows for those for those who have already appropriated.

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So the system, works in this mountain-plains kind of alluvial aquifer-tributary-ground water-surface water system. We integrate as opposed to California. They've got a huge crisis going on right now because they're pumping down at the bottom of those aquifers as fast as they can because they don't recognize, even though nature provides this, that tributary ground water feeds the surface stream. They have a pretend division in their law which is coming back to bite them.

Dave: Sure. You've said a lot in there, I think. The first point I want to emphasize is that the prior appropriation doctrine really came about from an economic perspective. In order to get the West to develop, they needed to get that water away from just the riparian system where it could be monopolized.

Justice Hobbs: Whole deal. That's the whole deal. You know Coffin v. Left Hand, 1881, right after our constitution, the Colorado Supreme Court says, "We never have had, in Colorado, the riparian system. We abolished it." Well, California did this hybrid of the common law, riparian system and prior appropriation. And they're paying the price today. Our predecessors recognized that they wanted a clean, bold rule of law for settling Colorado. And most of the western states took this Colorado doctrine, took the Colorado doctrine but they placed in an administrative context. Right after statehood, our legislature put it with the courts, the 1881 Act. Put it in a neutral forum. We distrust full time bureaucrats here in Colorado. You notice that? We try to devolve everything to the local level. And so we didn't want the federal government, or state government or even local government to decide how this most valuable of all resources was going to be allocated. It's an entrepreneurial, pro-settlement policy.

Dave: I agree wholeheartedly. I think you've said a lot there that makes a tremendous amount of sense and really explains a lot of how development, particularly in Colorado, came about. Can you expand on the court system and how that's set up? What are the basics for someone who wants to get a water right? What would they do?

Justice Hobbs: Well, they go to and file an application with one of our seven water courts. In 1969, borrowing from an old chapter of John Wesley Powell, he said, "Watersheds ought to be the county jurisdiction throughout the West." That's really, you know he's misquoted all the time by everybody, but what he said was we ought to have local control of water and watersheds along with the timber, the mining activity, the grazing and all this, settled in districts. And if there were inter-state district, which there could be, then there ought to be special rules for that district and there ought to be a water court.

Now, isn't that interesting? Because, just think about this man who believed that they history of the West was going to be perpetually agrarian. That's really what he said, like Thomas Jefferson and that all the streams in the West might be dried up, but even if they were, only 5% of the land that could be converted to agriculture by irrigation could actually be converted because we have



a limited supply. So he recognized the conflict would be endemic with a system of fair water allocation.

So, he has this idea of courts starting in 1879, perfected in 1890 when he goes to the Montana convention. Well, we have this Act of 1881 that starts with courts issuing decrees, but we made a mistake back then. We allowed the local district court to decide the case. Well, that district court was not looking at all the interrelated water rights that were now coming on to the stream and needed to be adjudicated. So we have twenty-two judicial districts. Well, there they had seventy water districts. And depending on what the water district was, then you would go to that court where the water district was.

Well, in 1969, some brilliant legislators, after a two year study that the legislature commissioned of fabulous attorneys and engineers, came up with a system of seven water courts. So just think about our basins, the South Platte, division one, the Arkansas, division two, Rio Grande, division three, the Gunnison and Uncompahgre, division four, the main stem of the Colorado, division five, the Yampa-White-North Platte, that silly stream into Laramie that goes north into Wyoming, right, part of the Platte River System, division six and then that whole Southwest Colorado there, the San Juan, the Animas, part of the Delores, the Pine, all of those water division seven.

So you file an application with the clerk of the water court in this hydrologic basin. And the applications can be for new conditional rights, which is a placeholder in the priority system to you get all the permits and financing together. Then you go in for an absolute water right that you have perfected your water right by actual beneficial use. Then you get a decree confirming that. Then if you want to change the water right, keeping the senior priority date, you have to do one of two things, of both things. You have to quantify it in terms of historic consumptive use and you have to protect against injury against all other water rights on the stream. So you can't mess with the return flow pattern. So, change of water rights.

And the fourth category is augmentation plans if you want to divert out of priority in a scarce water year where the engineer is locking down the head gates, junior to senior, you have a plan for replacing your depletions that would hit the stream at another time. Drop it out of a reservoir, put it back in the ground water system on the off-season. We have credits being generated on the Arkansas and the Platte by these unlined ditches and augmentation pits. Then you can generate credits. The state engineer has a water supply where the senior is not injured, you are not curtailed. So that is the most flexible mechanism we have in the West, put into our '69 Act. Water courts plus these four kinds of applications and the ability to disengage from the curtailment scheme if you have a handy supply of water, the state engineer can administer to the otherwise injured seniors.

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Dave: Got it. Now, when you were talking about how the Colorado water court system came about and a lot of the local issues, when you have the prior appropriation state, they have to interact with other states as well. So, how do we go about interacting with these other states? We know that there are compacts but can you talk a little about how that whole interstate relationship and the prior appropriation doctrine work together?

Justice Hobbs: Terrific question. We found out the hard way. Kansas sued Colorado in 1902. We took the position because we were admitted in 1876 under the Equal Footing Doctrine, that means equal to the original colonies. Everybody could see we had prior appropriation in our constitution so we could take what we wanted and the downstream states would get the rest. Well, Kansas position was we were Colorado, which they were. The Arkansas up to the Divide and north to Nebraska territory. And they formed in 1854 and had the riparian system.

So they said in their complaint to the U.S. Supreme Court, by the way, the U.S. Supreme Court has equitable jurisdiction over interstate disputes. This is a prototype interstate dispute over the water allocation that a downstream state can have. So Kansas said, “Riparianism, come on. We were here first, deliver it all!”

And then the Reclamation Act had just been passed in 1902 and the Reclamation Bureau, you know, the Justice Department always arms up with lawyers looking at the federal interest said, “All the remaining water that’s been unallocated, that’s unappropriated still in the West is now for reserved for the use of the Reclamation Program and individual reclamation projects will dispense it.”

Well, in 1907, when the U.S. Supreme Court finally gets around to deciding this, that’s the one they throw at first, the government. They said that’s ridiculous. Congress did not intend in a pro-settlement time, which it still was, to put all the rest of the water in the U.S. to decide how to allocate. So that one went out. Plus, there was a savings clause, Section 8 of the Reclamation Act. It is a savings clause for a state water law and its operation. So then the Court told Colorado and Kansas, “I’m sorry, we have equitable apportionment jurisdiction.” Now they’re just announcing this for the first time, right?

Dave: Sure.

Justice Hobbs: The western states are already in gear and they’re awarding these beneficial use water rights through an administrative, or in our case, a judicial system, confirming them. And, you know, it’s King’s X on that now because the Supreme Court, the nine of them, from time to time, can determine what the equities are between and upstream and downstream state. Can you imagine that? How many westerners do we have on the current U.S. Supreme Court?

Dave: Well, I hadn’t thought about that.

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Justice Hobbs: That are all familiar by growing up or by working in the system?

Dave: I'd say zero.

Justice Hobbs: Yep. I agree with that. Justice Kennedy is from California but you know, as far as I can see, he's one of those coasters, you know, the East Coast, the West Coast. We had O'Connor and Rehnquist from Arizona and White from Colorado. They knew the western water laws, prior appropriation. They worked with it. So, just imagine if the U.S. Supreme Court, without any of this background, depending on individual briefs gets to decide from time to time gets to decide from time to time, what the equities are in interstate disputes.

Well, to head all of that off, Delph Carpenter of Colorado, first generation, growing up in the union colony we now call Greeley. Served in the Colorado legislature. Served one term, 1909 to 1911, got voted out. All the legislators turned to him and said, "You're our water guy." Now, we were in interstate disputes now with Kansas and Wyoming under this Equitable Apportionment Doctrine. And so Carpenter seizes on the Compact laws of the U.S. Constitution that had been used to adjust boundaries in the East as rivers changed course. Can you imagine the problems that that causes with taxing districts and where you reside and all that? So this guy was constitutional scholar, Delph Carpenter of Greeley, Colorado, and he suggests this compact idea.

And of course the 1922 Colorado Compact Commission convenes in Washington D.C. in January of 1922. See, that's the key year. And then of course, we get the Colorado River Compact and eight others apportioning the water that arises off the Continental Divide, mostly through snowmelt, but you know, augmented by precipitation events. Aren't we getting some terrific precipitation events now other than snow pack? The punch line is because of this equitable apportionment jurisdiction, the compacts, we can only consume in Colorado, one third of the water that Colorado produces in the South Platte, the Arkansas, the Rio Grande and the Colorado River tributaries that arise in Colorado. One third, we have to deliver two-thirds of the water out of state.

Dave: Yeah and this was all agreed upon in the 1922 Compact?

Justice Hobbs: On the Colorado River. And then all the other rivers were compacted. And also this strange Republican River that arises on the Eastern Plains. We Coloradans forget about it when we're facing the Continental Divide from the east we're looking west and those on the west are looking east and they forget that one-third of Colorado is the high plains and this Republican River arises, arises, out of the high plains and flows into Kansas and Nebraska. So there's a Republican River Compact, as well.

Dave: Right. and one of the things I found very interesting that I hadn't really thought about was you indicated the dearth of justices on the U. S. Supreme Court and the number of water

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disputes that are going on. There's the Red River dispute a few years ago. New Mexico and Texas are embroiled in a fight right now.

Justice Hobbs: Yeah, on the Pecos.

Dave: Yeah. It will be very interesting to see how the U.S. Supreme Court handles those cases without someone on staff, I shouldn't say on staff, without a justice that grew up in the prior appropriations.

Justice Hobbs: Well, these are smart people and they like to delegate. So special masters are appointed to be in effect, the fact-finding judges who make reports. And then if you study those decisions, they generally defer to that special master unless they get a wild hair in there and decide to fiddle with it a little bit. But mostly, they have been fiddling with damages and equitable remedies and stuff.

Generally, the factual findings which they consider themselves bound by, just like any trial court. When you go to an appellate court, the appellate court is not making a finding. So the Supreme Court has figured out how to use their powers. And I think they do love these water cases when they get them. They pretend that they don't, but it's a special breed and brand. And you know, the one that Justice Sonia Sotomayor decided a couple of years ago when Texas wanted to go into Oklahoma and divert water they claimed they had a right to under the Red River share? They felt that they would be able to go right into Oklahoma and erect diversions points. And the Supreme Court says no, "There's an idea of sovereignty here. Get your Red River water when it comes into Texas."

Dave: Good point. So you are very engaged and active in water education matters. And I know that you're heavily involved with the Colorado Foundation for Water Education. Can you tell us a little about your experiences with the CFWE.

Justice Hobbs: Well, it's an incredible water foundation. There's one other, in California, based in Sacramento, that we were kind of patterned off of. But in 2002, you remember, huge drought, lasted into 2003. The reservoirs were going bone dry, the dust was coming off Dillon Reservoir. The legislature decided they needed to engage Coloradans in all matters of water. So they set up a legislation for a non-profit, non-political water foundation. It became the Colorado Foundation for Water Education. I've been on there since the original board meeting in October of 2002. I'm chair of the publications committee.

This has been a fabulous organization. We put out ten citizens guides in-depth review of topics like water law, interstate compacts, which you and I just went over, trans-basin diversions, seven other topics and then thirty-eight *Headwaters* magazines which talk about the people, the basins, the uses, everything water in Colorado. Water touches everything.

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So it is interesting. We wondered when we started this magazine in 2003, “What are we going to talk about? Are we going to run out of topics?” Never possible in the water world to run out of topics. So the legislature puts in, through the Water Conservation Board, \$150,000 a year in seed money. It’s up to the board to try and get individuals and organizations to come up with three times that amount to get the foundation where we can have a very good staff, which we do right now. We need to keep it going.

Dave: Sure. And how have you seen it grown over the thirteen intervening years? Obviously, you got a good foundation and things are going well. What’s been the path to the current state?

Justice Hobbs: Good boards. A lot of terrific interest. Dan Luecke, who was instrumental for doing the environmental planning for the Two-Forks veto, which vetoed that big twenty-four miles of stream that would have been inundated just west of Denver. Just to give you an idea, he serves on our board.

We try to get people from all elements of the water community. Obviously, the Denver Water Board is involved, and the Northern Water District and the Southeast District and the River District and the Southwest District, the Rio Grande District. Beyond that, engineering firms, individuals interested in water.

We have a water leadership program that’s in its fifth year bringing up water leaders, twelve to fifteen a year. We have a course now in water fluency that’s open to members of the public. Now, it seems like a lot of local government officials are getting into this: special district people, city council people, county commissioners and others. This water fluency course is a basic six-part course in water law and policy. So we’re doing that. We have these river basin tours every year. We alternate to another river basin and invite the public and interested legislators. Everybody else can come in and be part of a tour. Take a look on the ground at the water and environmental problems in that basin and the infrastructure that’s been put in.

So you can go to yourwatercolorado.org, the website. You can see all these different activities, bike rides, down this great bikeway we have in Denver looking at water features. Just seeing now how we’ve rebuilt Denver since the early 70’s along Cherry Creek and the South Platte, remember that? When it was a trash-way, a sewer-way, car bodies, the industrial dump has been reclaimed for the high-end residential, commercial, recreational pathway all through Denver.

Dave: And I’d say throughout the country. You see cities are realizing the potential of the waterfront. Whereas it used to be, the last place you’d want to live or the last place you’d want to go because of the pollution. Now cities are cleaning it up and finding water to be instrumental to economic development to bring us full circle to how we kind of started our talk today with the Doctrine of Prior Appropriation really being an economic policy doctrine of how the West was developed.

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Justice Hobbs: Truly. But we have different values now. Now recreation and environment are very important to Coloradans. And so now we have water rights for in-stream flow, nine thousand miles held by the Water Conservation Board. Local governments and special districts can appropriate kayak course rights. You know, you do the flipsy-doozy during lunch time on your break. Or they bring in these events, kayak course events. Hey, so recognize that generates money, too.

Let's face it, still you got the right idea here. Economic and nature has always driven the water law and when your values are tied into the great land and water we have and the preservation of it, well then we need a water system that's responsive to that. Well, we figured it out. We don't let the federal courts run our river systems under the Endangered Species Act. We've been proactive. We're adopting minimum stream flows, seasonal flows, to make sure there's pulse flows when you need to move the sediment. Take account of when the fish spawn. Reservoir releases during a dry summers times, you know. Managing these compact deliveries so we're integrating, we're optimizing as the water cases say we should do. Optimizing, stretching as far as possible the public's water resource but recognizing that water rights are valuable use rights, they're a form of property.

Judges, like me, well, I'm retired now for a week, but when I did the job for nineteen years, I felt like I'd taken an oath to the federal and state constitution to protect people's property rights against taking without just compensation. So, I've been in on this water policy since 1975 and law when I came to the Attorney General's Office out of EPA as a young attorney and recognizing that we had been blessed in this state with this prior appropriation doctrine. All we needed to do was work on the flexibility piece of it.

Dave: Yeah. Terrific. Well, Justice Hobbs, you have been absolutely fantastic sharing with us a lot of the background and history of how the West developed with prior appropriation and your experiences with the Colorado Foundation for Water Education. And just want to thank you very much for your time. For those folks who want to find out more about you and what we've spoken about today, where would you send them?

Justice Hobbs: Well, that's interesting. Go to the web page, you'll find me there. I've given a lot of water talks. I'm now going to probably take on teaching at DU Law School so that's where I may hang out. Check the Water Foundation publications. I've authored a number of them and I continually work on reviewing all of them. That's where I would send people right now. Don't talk about me so much as what's been in place and what we need to carry forward as Coloradans.

Dave: Terrific. Well, thank you so much for your time. Really appreciate it.

Justice Hobbs: Dave, great to talk to you.

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Dave: You bet. Bye.

I hope you liked that interview with Justice Hobbs. What a terrific man and public servant that the people of the State of Colorado are fortunate to have had serving them for so long.

My big takeaway from the interview was that the doctrine of prior appropriation is at its core based in economics. The riparian system, should it have been implemented in the West, would have resulted in potential monopolization of water rights and that would have been a disincentive for economic development. I took an economics and law class in college, and we read a lot of authors advocating the link between law and economics, people like Coase, Posner and others. There was a lot of persuasion in the arguments they advanced, so I shouldn't have been surprised that the legal doctrine of prior appropriation really has its roots in economic policy. And Justice Hobbs did an absolutely fantastic job of laying out how the doctrine of prior appropriation works can comparing and contrasting it a little bit about how Colorado does it versus how California does it. And how the method California chose to deal with their water law has gotten them into some trouble. I know that they're trying to rectify that by tying ground water back to surface water, but that's a few years off now.

In any event, I think Justice Hobbs made some great points. And as you would expect from a man of his stature, he has so much great knowledge about water law, and we could have plowed much deeper into that but we ran out of time.

I also think that Justice Hobbs' involvement in the Colorado Foundation for Water Education shows his dedication to this important issue and issues on water law and water in general. It just shows his dedication to those issues. If you want to find out more about the Colorado Foundation for Water Education, you can go to their website. You can also tune in to the interview that I did with Nicole Seltzer of the Colorado Foundation for Water Education back in session 11 of The Water Values Podcast. And you can find the Show Notes for that episode at <http://thewatervalues.com/pod11>.

Back to water law and water policy, I'm curious about your thoughts on how the law and economics interrelate in water policy. Please let me know by commenting on the Show Notes for this session, which can be found at <http://thewatervalues.com/pod70>. You could also email me at david@thewatervalues.com, and you can tweet at me @DTM1993. Please tweet about the podcast using #WaterValues. And as I stated at the top of the show, please do me a favor and rate and review the podcast on iTunes, Stitcher, TuneIn and other podcast directories. You can also sign up for The Water Values Newsletter and take the listener survey to let me know about topics you'd like to hear about at <http://thewatervalues.com>.

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In closing, please remember to keep the core message of The Water Values Podcast in mind as you go about your daily business. Water is our most valuable resource. So please join me by going out into the world and acting like it.

Outro: You've been listening to The Water Values Podcast. Thank you for spending some of your day with my dad and me.

Dave: Thank you for tuning in to the disclaimer. I'm a lawyer licensed in Colorado and Indiana. And nothing in this podcast should be taken as providing legal advice or as establishing an attorney-client relationship with you or with anyone else. Additionally, nothing in this podcast should be considered a solicitation for professional employment. I'm just a lawyer that finds water issues interesting and that believes greater public education is needed about water issues. And that includes enhancing my own education about water issues because no one knows everything about water.