

Cities are recognizing the right to go whitewater rafting

By Jon Sarche, Associated Press

DENVER The growing popularity of kayaking, canoeing, fishing, and other sports is helping the recreation industry gain political clout in the battle over one of the most precious commodities in the West: water.

For generations, the lion's share of water went to farmers, cities, and mines. The desire to go floating down a river for fun was rarely recognized as a valid reason to release or divert water from streams and reservoirs.

But in recent years, recreation has gained a seat at the table. Many states have recognized recreational rights through administrative rulings or other provisions that guarantee there is enough water in rivers for people who want to go kayaking or rafting, for example. Colorado has gone even further: Recreational water rights are being secured through court decisions as well as the law.

"Politically and economically and legally, it's a huge change, a shift in the way we view water in the state of Colorado and putting recreational use as a real valid benefit," said Gary Lacy, an internationally known whitewater course designer.

Pueblo, Colo., is one of more than a dozen cities around the state taking advantage of the shift to build a kayak course to draw tourists.

"What you're seeing now is a recognition of the people that they want water for more than just mining, agriculture, and municipalities," City Manager Lee Evett said.

Across the country, recreation and conservation groups are working to guarantee river flows, and more such efforts are expected to occur over the next 15 years or so as hydroelectric dams are relicensed.

Some of the work is being done through the courts; some of it is being done through private agreements.

In the Northwest, outdoors organizations are experimenting with buying water rights for conservation or recreation and exchanging them with other rights holders, said Eric Eckl, a spokesman for the environmental group American Rivers.

In Texas, conservation groups are trying to use a new state water management plan to guarantee minimum river flows for fish and wildlife.

"It's always difficult when there are so many other users that perceive themselves as being at the front of the line," Eckl said.

In states where water is plentiful, various interest groups typically reach agreement to adjust river levels. In West Virginia, for example, where whitewater rafting brings in 250,000 people per year, enthusiasts have worked out agreements with dam operators and anglers to ensure healthy river flows at certain times of year.

In one case, rafting outfitters pay to stock trout on the Gauley River in exchange for guaranteed releases of water from the Summersville Dam, the largest

in the state, said Matt Turner, spokesman for the state tourism division.

The Colorado case began when the city of Golden went to court and won a guarantee of a specific amount of water for its kayak whitewater course on Clear Creek. Vail and Breckenridge won similar rights. Supporters argued the courses do not change the amount of water flowing through the rivers and, thus, leave other users unaffected.

The state argued that guaranteeing a certain amount of water for recreation could dry up future growth by denying water to new subdivisions.

Water judges in all three cases sided with the cities. The state Supreme Court tied 3-3 on the three cases in May, in effect upholding judges' approval.

In court filings, Assistant Attorney General Susan Schneider said the water judges' decisions amounted to a dramatic change that went against what the Legislature authorized.

Both sides say the Golden case marked Colorado's first large-scale guarantee of river flows for recreation.

"It was a foot in the door, and now the door's going to be flung wide open," said Boulder lawyer Glenn Porzak.

While the cases progressed through court, Colorado legislators in 2001 approved a law allowing cities and other entities to apply for rights to ensure a minimum amount of water in streams for recreational purposes. Before 2001, control over river water levels in Colorado rested entirely with the state.

The state argued unsuccessfully that it should retain control in order to make sure Colorado meets its commitments to downstream states to supply a certain amount of water.

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