Domestic Groundwater Exemptions:
Will the Right for Water for Human Consumption Trump the
Prior Appropriations Doctrine?

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US History of “Exempt” Unpermitted Wells

- Well water necessary to support domestic needs & agriculture practices in arid American West
Surface & Groundwater Codes

Surface: 1917
Ground: 1945

Surface: 1909
Ground: 1955

Surface: 1971
Ground: 1963

Surface: 1913
Ground: 1939

Surface: 1903
Ground: 1935

Surface: 1914
Ground: 2015
States & Domestic Use Exemptions

- **Nevada**—culinary & household, lawn/garden watering, livestock/ domestic animal up to 1,800 gallons a day
- **Oregon**—No gallon limit for stock watering, reasonable use (no firm gallon limit) for lawn or garden watering under ½ acre, up to 15,000 gallons a day for domestic water use, up to 5,000 gallons a day for industrial use, down hole heat exchange use & watering school grounds that are 10 acres or less and located within a critical GW area
- **Washington**—domestic & stock: No gallon limit for stock watering, reasonable use (no firm gallon limit) for lawn or garden watering under ½ acre, up to 5,000 gallons a day for domestic water use & up to 5,000 gallons a day for industrial use
- **Idaho**—domestic, group domestic, stock watering, campgrounds, & ½ acre agricultural up to 13,000 gallons a day; OR a diversion with rate of less than .04 cubic feet per second up to 2,500 gallons a day
- **California**—‘De Minimis Extractors’ that withdraw less than 2 acre feet per year for domestic uses
- **Utah**—No domestic use exemption
Human Right to Water

- International Law - UN
- U.S. “Right to Life”
United Nations

Universal Declaration of Human Rights (1948)—Everyone has right to life, liberty & security of person Article 3; Everyone has right to standard of living, including food Article 25

Convention on Law of Non-Navigable Uses of International Watercourses (1997)—Idea of human right to water presented; Convention did not pass
United Nations

Committee on Economic, Social & Cultural Rights—“Right to Water” essential to person’s right to health (2002); Set out fundamental conditions of survival: Safe drinking water, Water for sanitation

UN Resolution on Human Right to Water & Sanitation (2010)—Recognizes human right to safe & clean drinking water & sanitation; US abstained

UN Draft Resolution on Human Right to Water & Sanitation (2013)—Weakened language achieve stronger consensus. No final action taken
United States

Fifth Amendment: Federal Government may not deprive a person of life without due process

Fourteenth Amendment: Extends prohibition to states

State Constitutions “Right to Life” provided in: Nevada, Idaho, Washington, Montana
Implications of Right to Life

- Water, food & sanitation essential (to human life)
- Implies water needed to grow food
- Water “free” for sustaining human life?
- Can State deny use of public resource on one’s land that is necessary to sustain life?
- Under what set of facts, if any, would a domestic well prohibition become unconstitutional “as applied”
THE END

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