

EXPERT TESTIMONY

Water Rights Engineering

Moyer Ranch, Lake County, Colorado - Defense of Water Rights

Martin and Wood became involved in *Empire Lodge v. Moyer* very late in the game. In 1996, Empire Lodge Homeowners Association filed a Water Court complaint against a downstream ranching family named Moyer.

Empire alleged that (1) Moyer had illegally expanded the area irrigated by the Empire Creek Ditch, (2) Moyer had illegally stored water without benefit of decree, (3) Moyer illegally called for water from Empire's two recreational storage reservoirs, resulting in a fish kill, and (4) Moyer had committed other illegal acts. Moyer counterclaimed that Empire's two undecreed reservoirs, operated under State Engineer approval of a substitute water supply plan, had illegally deprived their Empire Creek Ditch irrigation right of water.

The Water Court trial began in February of 1997 and then continued in August and December of 1997. Engineers at Martin and Wood studied the Moyers' use of their Empire Creek Ditch right over the summer of 1997 and also studied the current and historical use of Empire's diversions from Empire Creek for its two fishing ponds. By the time the trial resumed in August of 1997, Martin and Wood's engineer testified that he had visited the Moyer Ranch



thirteen times, spending all or parts of thirty-four days studying the parties' uses of their water.

One of Empire's primary allegations was that Moyer had recently begun irrigation of a certain part of land sitting uphill from Empire's road through the Moyer Ranch. Martin and Wood's testimony and investigations, including early aerial photography from the late 1930's, showed the Court otherwise, in that the disputed land had been irrigated for sixty years or longer.

In the year 2001, the Colorado Supreme Court affirmed Water Judge John Anderson's Order and Judgment, denying all of Empire's claims and granting all of Moyers' counterclaims, further determining that the State Engineer had no authority to approve substitute water supply plans.

(Partly as a result of the *Empire v. Moyer* case, the Colorado General Assembly quickly enacted legislation to authorize the State Engineer to approve substitute water supply plans. Since then a plethora of substitute water supply plan applications and augmentation plan applications have arisen in the South Platte River Basin.)

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