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Who owns Colorado's rainwater?

Environmentalists and others like to gather it in containers for use in drier times. But state law says it belongs to those who bought the rights to waterways.

By Nicholas Riccardi

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Reporting from Denver — Every time it rains here, Kris Holstrom knowingly breaks the law.

Holstrom's violation is the fancifully painted 55-gallon buckets underneath the gutters of her farmhouse on a mesa 15 miles from the resort town of Telluride. The barrels catch rain and snowmelt, which Holstrom uses to irrigate the small vegetable garden she and her husband maintain.

But according to the state of Colorado, the rain that falls on Holstrom's property is not hers to keep. It should be allowed to fall to the ground and flow unimpeded into surrounding creeks and streams, the law states, to become the property of farmers, ranchers, developers and water agencies that have bought the rights to those waterways.

What Holstrom does is called rainwater harvesting. It's a practice that dates back to the dawn of civilization, and is increasingly in vogue among environmentalists and others who pursue sustainable lifestyles. They collect varying amounts of water, depending on the rainfall and the vessels they collect it in. The only risk involved is losing it to evaporation. Or running afoul of Western states' water laws.

Those laws, some of them more than a century old, have governed the development of the region since pioneer days.

"If you try to collect rainwater, well, that water really belongs to someone else," said Doug Kemper, executive director of the Colorado Water Congress. "We get into a very detailed accounting on every little drop."

Frank Jaeger of the Parker Water and Sanitation District, on the arid foothills south of Denver, sees water harvesting as an insidious attempt to take water from entities that have paid dearly for the resource.

"Every drop of water that comes down keeps the ground wet and helps the flow of the river," Jaeger said. He scoffs at arguments that harvesters like Holstrom only take a few drops from rivers. "Everything always starts with one little bite at a time."

Increasingly, however, states are trying to make the practice more welcome. Bills in Colorado and Utah, two states that have limited harvesting over the years, would adjust their laws to allow

it in certain scenarios, over the protest of people like Jaeger.

Organic farmers and urban dreamers aren't the only people pushing to legalize water harvesting. Developer Harold Smethills wants to build more than 10,000 homes southwest of Denver that would be supplied by giant cisterns that capture the rain that falls on the 3,200-acre subdivision. He supports the change in Colorado law.

"We believe there is something to rainwater harvesting," Smethills said. "We believe it makes economic sense."

Collected rainwater is generally considered "gray water," or water that is not reliably pure enough to drink but can be used to water yards, flush toilets and power heaters. In some states, developers try to include a network of cisterns and catchment pools in every subdivision, but in others, those who catch the rain tend to do so covertly.

In Colorado, rights to bodies of water are held by entities who get preference based on the dates of their claims. Like many other Western states, Colorado has more claims than available water, and even those who hold rights dating back to the late 19th century sometimes find they do not get all of the water they should.

"If I decide to [take rainwater] in 2009, somewhere, maybe 100 miles downstream, there's a water right that outdates me by 100 years" that's losing water, said Kevin Rein, assistant state engineer.

State Sen. Chris Romer found out about this facet of state water policy when he built his ecological dream house in Denver, entirely powered by solar energy. He wanted to install a system to catch rainwater, but the state said it couldn't be permitted.

"It was stunning to me that this common-sense thing couldn't be done," said Romer, a Democrat. He sponsored a bill last year to allow water harvesting, but it did not pass.

"Welcome to water politics in Colorado," Romer said. "You don't touch my gun, you don't touch my whiskey, and you don't touch my water."

Romer and Republican state Rep. Marsha Looper introduced bills this year to allow harvesting in certain circumstances. Armed with a study that shows that 97% of rainwater that falls on the soil never makes it to streams, they propose to allow harvesting in 11 pilot projects in urban areas, and for rural users like Kris Holstrom whose wells are depleted by drought.

In contrast to the high-stakes maneuvering in the capital, Holstrom looks upon the state's regulation of rainwater with exasperated amusement.

Holstrom, director of sustainability for Telluride, and her husband, John, have lived on their farm since 1988. During the severe drought at the start of this decade, their well began drying up. Placing rain barrels under the gutters was the natural thing to do, said Holstrom, 51.

"Rain out here comes occasionally, and can come really hard," she said. "To be able to store it for when you need it is really great."

Holstrom had a vague awareness of state regulations. She decided to test it last summer when she was teaching a class on water harvesting. She called the state water department, which told her it was technically illegal, though it was unlikely that she would be cited.

Holstrom is known in southwestern Colorado for a lifestyle and causes that many deem quixotic. The land she and her husband own holds a yurt and tepees to house "interns" who help on their organic farm in the summers. It boasts a greenhouse, which even on a recent snowy day held an oasis of rosemary, artichokes, salad greens and a fig tree.

She plucked a bit of greens from one plant and munched on it as goldfish swam in a small, algae-filled pond that helps heat the enclosure. "This has been my passion for a long time -- trying to live the best way I know how," she said.

nicholas.riccardi@latimes.com

<http://www.latimes.com/news/nationworld/nation/la-na-contested-rainwater18-2009mar18,0,5585599.story>

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