

Colorado Water Workshop  
2000

A Success Story  
Water Rights Settlement in Division 3

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Hi! I'm from the San Luis Valley & I'm here to help you. Does that put you instantly on guard? It shouldn't. What you decide to do with the information shared in this presentation is entirely up to you.

Since water rights in Division 3 have been resolved via a little contested stipulated decree a new threshold has been established for negotiating federal reserved rights.

Are you thinking – Division 3 is so simple their approach will never apply to you?

That's a convenient alibi with little veracity.

Yes, water flows down hill in the Rio Grande drainage. Yes most water users are below the Forest boundary. & Yes water is a precious resource to all involved. It is simple, but not unlike any other water division in Colorado.

The differences start with the Rio Grande Compact, which requires a greater proportion of downstream delivery as the water supply in the headwaters increases.

Then there's the solidarity of the general populace of the San Luis Valley when it comes to water issues. When American Water Development Incorporated threatened to export large quantities of water to the Front Range, 96% of the SLV voters agreed to increase taxes to fight the proposal. Faced with a similar more recent threat to meddle with the same water, residents of the San Luis Valley managed to neutralize several very damaging referendum initiatives. No small feat considering the money invested to collect signatures and lubricate the referendum machine.

Does this sound like a simple place? – Not Exactly.

SLV water users are much more sophisticated than they may first appear.

- They actually petitioned the State Engineer to manage the aquifer in a sustainable manner. They rejected water mining so popular in other parts of the State. During most years recharge over the winter equals or exceeds use from the past summer.
- When the Rio Grande sucker was mentioned as a possible listing under the Threatened or Endangered Species Act, water users reacted much differently than most of their western counterparts. They actually helped

USDI easements for Dams, Reservoirs and Ditches that preexisted the establishment of the Rio Grande Forest were automatically accepted without debate.

Quantification points that could be moved a very short distance to accommodate a head-gate for a ditch were scrutinized on an individual basis.

About twenty meetings were hosted by the Rio Grande Water Conservation District to get public and individual water users involved in the negotiations. The meetings gave folks updates on progress and allowed time for people to get as involved as they wanted in the final outcome.

At one point the negotiations stalled and looked like they were doomed. The issue came to be called the "Reopener Clause". It called for the entire Decree to be reopened and negotiated if the Feds ever came back for more water. Ken Salazar eventually got the Justice Departments attention and helped them understand what was at risk if the clause was not accepted in some form or another.

Eventually brilliant minds prevailed and the decree was signed by Judge Ogburn on March 30<sup>th</sup>, 2000. He deserves a lot of the credit for allowing the negotiations to amble along at what might be thought a slow pace.

Streams on the Rio Grande National Forest now have dependable flushing flows each spring and defined quantities of minimum flows during the fall and winter.

The settlement provides previously unachieved protection of the watersheds which, in turn, helps preserve fish and wildlife, riparian ecosystems, scenic and aesthetic resources, soil conservation efforts, range uses and public outdoor recreation, as well as fire control activities, while also protecting existing water rights in the Valley from the uncertainty created by the Forest Service's claim for federal reserved water rights.

Significantly, the settlement requires the Forest Service to relinquish its earlier claims to water and accept a 1999 priority date. This protects current water users from future claims on their water by the agency. It also makes it difficult for the Forest Service to back out of the agreement.

In the event the Forest Service ever seeks to bypass flows to the detriment of existing water rights, the decree would be set aside and the USFS would have to adjudicate new water rights for the Forests

It took six years to negotiate Division 3. It is not an exercise for the uncommitted.

It was based on some long tenured relationships and much tedious, hard work.

It would have been much easier to fall back to litigation and confrontation But then the outcome would have been predictable. Public coffers diminished with little resolved, relationships damaged and heightened acrimony.