

FEATURES

REMARKS OF JOHN STENCEL, PRESIDENT, ROCKY MOUNTAIN FARMERS UNION Institute for Advanced Legal Studies, University of Denver College of Law presented October 11, 1991 (reviewed for publication in *Colorado Water* March 1993)

"RURAL IMPACTS" -- WATER MARKETING IN COLORADO'S FUTURE: DEBATE AND ANALYSIS

Ladies and Gentlemen -- It is a pleasure to be a part of your program this afternoon. I'm not sure how I got to be a part of this program, but it is good that agriculture producer interests are represented. One thing has been bothering me though - How does a person as myself, not a water expert or a water lawyer, debate such a big issue as water marketing in Colorado's future? We'll give it a try -- but no promises.

Before I begin, let me take a few minutes and talk to you about Farmers Union -- something I know about. Rocky Mountain Farmers Union is a division of National Farmers Union, which has its headquarters in Denver as well. Nationally, we have about 240,000 members; and in Rocky Mountain, Colorado, New Mexico, and Wyoming we have close to 12,500 farm and ranch families as members. We are the second oldest of the farm organizations, after the National Grange, founded in 1902 in Point, Texas.

We build our program around an equilateral triangle, a symbol of the organization. One side of the triangle is legislation, and we lobby at the state houses in Cheyenne, Denver and Santa Fe. We also have a fine legislative staff in Washington, D.C. The second side of the triangle is cooperation. We work with other organizations to accomplish our goals and policies, but just as important, our members have organized more cooperatives in this country than any other organization. We therefore, support co-ops and cooperative principles. The base of our triangle is education. We spend a great deal of our time with informational and educational programs for the youth, young farmers, women and in general, the members of our organization.

Our policy is developed in a grass-roots fashion. Starting at the county level and working its way to the national level, we put together a policy program that speaks to farm income and many other issues, including water. Our policy program is somewhat different from the topics that I am supposed to address; therefore, I would like to talk instead of general ideas about water policy in Colorado as they affect agriculture.

Our RMFU policy speaks to the need for a state water policy. There is a common myth that Colorado has a water policy -- it really doesn't. Oh yes, we have the appropriation doctrine which is entrenched in Colorado. However, it is not enough to fit today's concerns. A statewide water court system cannot be construed as an adequate water policy or as a state water plan. Planning involves a determination about the values and demands of society when making decisions about the use of water. Planning necessarily requires that choices be made among competing interests for water.

The current situation, in which water rights are freely transferrable and are sold to the highest bidder is certainly not planning; it does not make value choices among societal goals. It does not protect

the less vigorous economic segments of society, and it does not address non-economic interests and considerations.

A state water plan crafted by a state agency or group of state agencies or branches of the government would permit the recognition of economic, social, and political needs within the state.

A state water plan would assist the state in dealing with issues involving interstate compacts and the use of the State's water resources among the various drainage basins.

It would provide guidance to water courts when faced with huge complicated water rights transfer cases.

It would guide other state agencies such as the state engineer's office, the Colorado Water Conservation Board, and the Division of Wildlife, when they are making policy decisions involving the state's water rights, and it is absurd to have a continuation of the current circumstance where the desires of businessmen, speculators, entrepreneurs and lawyers determine how scarce water resources in Colorado are used without a road map based in good planning, that highlights the needs and impacts of various social choices being made today without comprehensive public input. One example of these impacts is the effects of water transfers out of agriculture.

The time has come for the state to develop a state water plan that has the following characteristics:

Developed by an agency established for that purpose with representatives from the various regions of the state, having the support and backing of the State Legislature (such as the Colorado Water Conservation Board, or some other body, such as a special one-time commission established solely for the purpose of developing the plan.)

The plan must focus on the water resource issues in all of the river basins in the state.

The plan must consider those river basins where water resources are in short supply, as well as those where water is relatively abundant, in terms of both physical requirements and legal supply regulated by Compacts.

The plan must consider the environmental concerns of the general populace and the limitations which exist as the result of federal water quality regulation and other environmental regulations.

The plan must consider, among others, the following issues:

The appropriate role of water for environmental needs, including:

1. wilderness areas,

2. water quality purposes,
3. instream flow protection, and
4. wetlands and the water resource necessary to maintain them.

We need to consider water for agriculture. Because water is a property right, legislation which requires that the agricultural or any other water user community either hold, or dispose of, a property right seems to be fundamentally unfair.

However, a water resource plan which provides guidelines by which water rights may be acquired from agriculture or by which members of the agricultural community may dispose of water rights or a plan that sets goals and standards for the preservation of the agricultural economy in this state, that provides guidance to water courts and public officials concerning the matters that must be considered before transfers out of agriculture occur, would be entirely appropriate.

The responsibilities of development interests and municipal interests to plan for metropolitan municipal water supplies that are not duplicative and that make the best use of available resources.

A requirement for water conservation in agriculture, in the municipal sector, and, as important, in the recreation sector. This last point is very important because some of the groups which are currently advocating increased streamflows, based upon environmental concerns, are also advocating the increase in those streamflows for their own personal, economic benefit. I am referring to the recreation industries which rely on the rivers and streams of this state for rafting, kayaking, float fishing, and the like.

A state water plan must recognize that they are simply another competitive economic force in the marketplace and the plan should not be used to give one group the opportunity to deprive other economic groups of the right to use the state's water resources, nor can a plan operate effectively to transfer ownership of portions of the state's water resource from those currently holding the water rights to those seeking the use of the water without the benefit of a water right.

Most importantly, the plan, once completed, has to have some force of law. It needs to be recognized in water resource decisions and water transfer proceedings in the water courts of the state. It needs to be recognized by and bind the actions of the state engineer and other state agencies. Only if we can successfully accomplish these goals will we have a tool that looks after the interests of the agricultural economy in relation to the various other segments of the state's economy and provide some standards by which individuals who desire to continue the state's long-standing farming and ranching traditions can do so without undue burden, while protecting the rights of others to sell their water resource in order to change their lives, lifestyle, or their means of support.

What happens without a state water plan?

The burden on the water-using community continues to rise as extensive and complex litigation continue. The economic cost increases and the dislocations within the state grow.

The impacts of undirected water resource development affect us all. If you live in the South Platte Basin and have any interest in water resource issues, you are well aware of the current conflict among the water user interests in northern Colorado along the Cache La

Poudre and South Platte Rivers with the City of Thornton. If you are a resident of the San Luis Valley, you are certainly painfully aware of the efforts of American Water Development to secure a right to export 200,000 acre-feet of water per year from that valley. If you live in the Gunnison River drainage, you are familiar with the efforts of the City of Aurora and Arapahoe County to secure thousands of acre-feet of water per year for their use in the Denver metropolitan area.

All of these conflicts represent different facets of the same problem -- the desires of various communities within the metropolitan area to secure a long-term water supply for growth and development seeking that supply at the expense or the perceived expense of agricultural interests in other parts of the state.

What are the consequences of continuing the current process of water resource allocation? -- the free market/no plan process. One is economic consequences. The rural areas of Colorado are enormous. When water resources are purchased, the value of the farm property drops dramatically which has a direct impact on public services, schools and all other forms of tax-supported government activities.

The people of this state need to understand that while a substantial number of people, in fact the majority of people, living in the rural areas are involved in agriculture and derive their livelihoods from direct or indirect participation in the growth of food supplies, only a small percentage of them own water rights and obtain a benefit when they are sold.

When agriculture no longer has a water supply, the quantity of crops grown diminishes, the economic viability of the farm industry diminishes, the size of farms must increase, the amount of money coming into the economy from agriculture decreases substantially.

It is not the farmer who sells his water right, takes the profits, and moves to the city, who is most severely impacted. It is the individuals in the cities and towns and on the farms who do not own the water right but rely on the commerce generated by the use of the water who are impacted. It is the farm implement dealer, the supermarket owner, the pastor in the local church, the school teacher, the policeman, the fireman, the clothing store owner, the fertilizer distributor, the auto mechanic, the gas station owner, and almost anyone else you can think of. When the farmer no longer has the income to expend in these communities to buy goods and services, the source of commerce upon which all of these people rely for their livelihoods disappears and they are then forced to move to the cities for other work or to rely on the government to support them.

This is not a particularly pretty picture for our society. In fact, it is something of a spiral since the people forced to leave the rural areas typically move to the metropolitan area, thereby fueling increased water needs and the next round of battles. So, I hope you will join with me in favoring the development of a plan which does not prohibit the transfer of agricultural water rights to other purposes, but a plan that looks long and hard at the consequences of such transfers; that places policy limitations and restrictions on the transfer; that forces the metropolitan areas into a mode of cooperation to prevent excessive competition for the resource which creates inefficiency and results in more cropland going out of production than is warranted.

Finally, there are two other issues I would like to discuss briefly.

As I understand it, the State of Colorado has obligations to its neighboring states on all of the rivers and streams which leave Colorado. These agreements or compacts require Colorado to share the water resources in those streams with our neighbors. Several major rivers within the state are, have been, or will be the subject of litigation over those compacts.

From 1968 to 1985, the State of Colorado was subject to a Supreme Court stipulation after it was sued by Texas and New Mexico over alleged violations of the Rio Grande Compact. Those states alleged that Colorado had become over 900,000 acre-feet in debt to them for failure to deliver waters required for delivery by the compact. Each and every year from 1968 to the present, the Colorado State Engineer has carefully regulated diversions within the Rio Grande drainage to insure that Colorado meets its compact obligations.

Water rights far senior to the compact, fully vested and authorized under Colorado law, are curtailed or shut off in order for that water to be delivered to the downstream states (Texas and New Mexico). That has been true in the past and will continue to be true in the future.

On the Arkansas River, the State of Colorado has been engaged in complicated, costly and extremely time-consuming litigation. Kansas has alleged that Colorado has failed to comply with the terms of the Arkansas River Compact and seeks to obtain tens of thousands of acre-feet of water and over \$100,000,000 in monetary compensation for Colorado's alleged wrongs.

On the South Platte River, there has certainly been discussion concerning the obligations and responsibilities of Colorado to Nebraska. At the present time, Nebraska is suing the state of Wyoming in the U.S. Supreme Court concerning the waters of the North Platte River and could well sue Colorado in the future.

Only in the Colorado River, does the state of Colorado each and every year deliver water to its downstream neighbors far in excess of Colorado's needs but within Colorado's Compact entitlements. Hundreds of thousands of acre-feet of water, to which Colorado is entitled to make consumptive, beneficial use, leave the state every year.

I would hope that a state water plan would take into consideration these issues. It makes no sense to me to have the cities and towns in our state constantly litigating with their neighbors in river basins

where the water resources are fully and completely used, like the Arkansas and Rio Grande, while ignoring the fact that there is water to which Colorado is legally entitled flowing out of the state each year on the Colorado system.

I hope we will take a close look at this issue because it seems to me to make ultimate sense that the state should be looking for ways to make better use of its rights and entitlements under the Colorado River Compact before we begin to talk about selling, leasing, bartering or trading that water resource to California, Arizona, and Nevada.

As a state, we have not fully explored the possibilities for the joint use of water resources by users. Most cities plan for water resource needs based on dry year scenarios. They spend millions of dollars to firm up those supplies against the call of senior downstream agricultural rights.

One way to firm up supplies in the face of senior demands is to build dams and store their dry year supplies.

Another way to arrive at the same point, a firm dry year supply, is to buy the right to use a senior decree during the dry years. To pay the farmer a profit for the year or years when the city needs the water and to assure the farmer his full supply in normal and wet years. Sure there are problems, but we don't solve all the problems when a water right is purchased outright and permanently withdrawn from agriculture. Why can't the same engineers and lawyers accomplish the same goal when the water is used in the city only once or twice in ten years?

We need to do the following: 1) insure adequate compensation, 2) maintain river conditions to protect other water users not participating, and 3) provide for soil protection on the lands withdrawn. But, this approach has great benefits: such as - 1) it leaves water in agriculture most of the time, 2) keeps local agricultural economies active and healthy, and 3) gives cities dry year protection.

Some detriments are: 1) It can't be used for wild, unfettered growth, 2) it deprives the speculator of the profit because money only passes to the farmer when water is needed. To many, this is not a detriment.

In conclusion, as a state, we need a plan. Water resources planning should not be the province of the speculator; it should be the province of the state and local governments.

MEETING CALIFORNIA'S WATER NEEDS

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(Summary of a presentation at the Colorado Water Convention, January 1993)

Southern California's urban water needs have historically been met by local groundwater and surface water supplies, reuse of wastewater, and supplemented by bringing imported water into the region first from the Owens Valley and then later from the Mono Basin, Colorado River, and Northern California through the State Water Project. The Metropolitan Water District of Southern California was formed by 13 cities in 1928 to supplement the water

supplies available to those cities. Metropolitan constructed the Colorado River Aqueduct and later contracted with the State of California for a water supply from the State Water Project.

Presently, Metropolitan supplies water to most of the 15 million people who live in Southern California, roughly half the State's population. Many issues have arisen which have made