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FAX TRANSMISSION COVER SHEET

DATE:  *June 4, 2002*

TO: *Denver Post - editorial page*

FX: *(303) 820-1502*

RE: *Proposed guest editorial*

SENDER: *Pete Klingsmith*

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In response to last Sundays (June 2, 2002), guest editorial, please consider this response.

To the Editor:

Attached is my proposed guest editorial responsive to that written by Chris Paulson and published in the 6/2/02 issue of the Denver Post. Much more needs to be said, but this is our opening salvo.

Sincerely, Pete Klingsmith

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Proposed
GUEST EDITORIAL

Regarding the guest editorial entitled "We need to build dams in high mountain areas now," appearing in the "PERSPECTIVE" section of the June 2, 2002, issue of the Denver Post: a few comments and observations would be pertinent.

The editorial by Chris Paulson is replete with incorrect assertions of fact and wrong deductions. The author's recommendations would be disastrous for all the people of Colorado if they were acted upon.

First: The editorial begins by noting that Lake Dillon and Granby Reservoir are dry with the bottoms turning into huge dust bowls. If this is true, how could more dams correct these problems? It is the drought coupled with over demand for Dillon and Granby waters, not lack of storage dams, which have created this situation. More dams would only create more such problems; like T-Rex, more lanes on I-25 will worsen the problems the additional lanes are supposed to solve.

Second: The Paulson editorial states that the Lower Basin States have "stolen" a million acre feet of water belonging to Colorado. Nonsense! There are no competent figures to support this assertion. How could California or Arizona steal Colorado's water? They only receive water that is permitted by the Upper Basin States to flow down stream. That is not "stealing". The million acre feet claim is a fiction. The problem is facilities do not exist or are not used to measure the quantity of water the Colorado River and its tributaries deliver out of Colorado. Moreover, the author ignores the most vital requirements of the Colorado River Compact. That pact requires the Upper Basin States, of which Colorado is the principal water producer, to allow downstream flow to Lee Ferry, Arizona, in the amount of 7,500,000 to 8,500,000 acre feet of water per annum, **before** Colorado consumes any further Colorado River water. (See Article II (a) (b) and (d) of the Compact). Reputable water experts consistently assert that the Upper Basins' have just barely supplied the Lower Basins' requirements during the past few years.

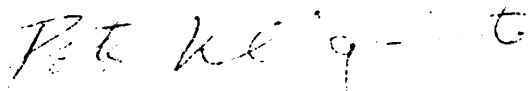
Colorado has been sued by each of its downstream neighbors who have claimed Colorado has unlawfully withheld water it was required to release down stream. In each case, Colorado has lost the law suit to its great detriment in losing water its citizens had come to rely on, as well as, suffering imposition of actual and punitive damages caused by Colorado's greedy and ill advised action.

Let us in Colorado find out first what the facts are, agreed to by all states involved, before we open that can of worms.

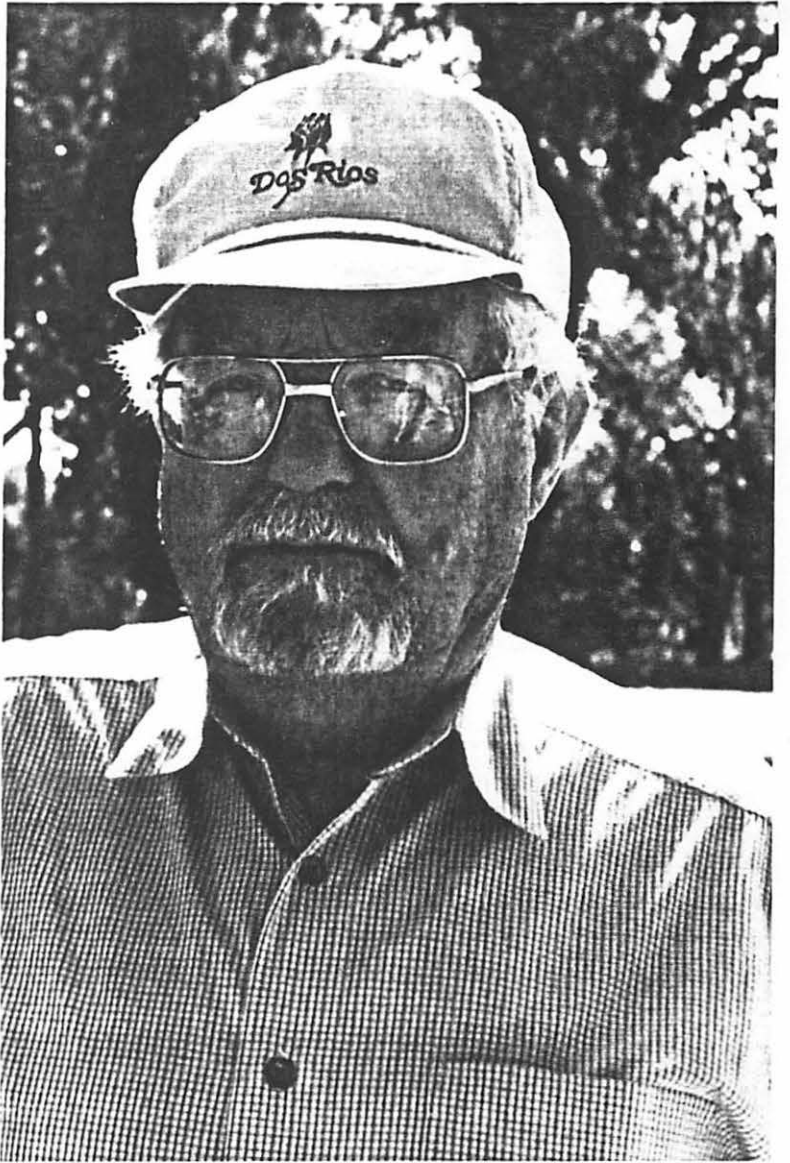
Third: The author looks at the water flowing downstream out of the Colorado and calls it water leaving the state "unused." It is unused in the sense that it exists, but it is not unused, in that it has been used under senior decrees to supply domestic, municipal, irrigation, industrial and recreational purposes a myriad number of times during its flow from the mountains to the state line.

Fourth: Does the front range, which the author refers to as "we" really need more water. How much is enough? When traveling to Denver from time to time, one must wonder how big, crowded, dirty and teeming with people and cars, the residents want their city to be. If the vast majority of front range people, whom Paulsen does not represent, think the proper limit of growth has been or is about to be reached, restricting or terminating the amount of available water may be the means to limit further growth. Growth can be controlled by controlling water use. If a newcomer wants to come here, he or she must buy an existing tap. The front range does not have to meet the demands of a million new people encouraged to come here by unnamed out-of-state real estate developers.

Fifth: Paulsen implies that the building of more dams and pipelines to carry the water available in wet years from one place to another is the answer to Colorado's water problems. More dams would exacerbate the problems. In place thereof, it should be determined and agreed upon how much water Colorado has, what it must release, and whether there is any left at the state line for further use and development in Colorado. Without such a determination, continued conflict will exist and possible disastrous financial and economic upsets will occur from Colorado's use of water which it does not own and has no right to use.

A handwritten signature in black ink that reads "Pete Klingsmith". The signature is written in a cursive, slightly slanted style.

Pete Klingsmith, Gunnison, Colorado, served as a water attorney for 50 years from 1949 to 1999. His address is 1050 Camino del Rio, Gunnison, Colorado, 81230; Phone (970) 641-1234; E-Mail: Klingsmith@pcrs.net



Dam bill not the solution to Colorado water woes

Imagine a screenplay where, amidst a drought, politicians cook up a scheme to dazzle the public: Build \$10 billion worth of dams. Most Hollywood producers would reject the hackneyed storyline. But, incredibly, some politicians are promoting that very script under Colorado's gold dome.

The special legislative session on capital punishment is also dealing with drought. But legislatures can only make laws, not water. Next best is borrowing money to build dams and hoping that God will fill them. So Rep. Diane Hoppe, R-Sterling, and Sen. Jim Dyer, R-Centennial, introduced legislation asking voters to authorize borrowing \$10 billion to build dams somewhere in Colorado.

Never mind that dams take seven to 15 years to build — too late to "fix" this drought.

Never mind that water managers still struggle with the problems caused by the 1900-1960 dam-building frenzy. Government dams destroyed fishing streams and wildlife habitat, imperiled species and encumbered rivers that once flowed freely. Most were also uneconomic. Experts declared the "big dam era" over years ago, and in 2000 the World Commission on Dams urged consideration of alternatives to dams as well as the consequences of any new dams.

The dam bill is a rerun of the outmoded response to water problems. Moreover, it ignores current realities:

■ *Colorado has no water plan.* Despite the recommendations of everyone from homebuilders to environmentalists, our growing state has never developed a comprehensive water plan. Approaches to water problems include conservation, landscaping (which uses 60 percent of municipal water), land-use planning, funding efficient irrigation systems, market transfers and, yes, dams. But decisions to build dams require knowledge of the alternatives and benefits and costs — economic, social and environmental. Successful water planning is not top-down, Soviet-style, but involves local governments, businesses, farmers and ranchers, environmentalists and recreationists.

■ *We need to address water demand.* Someone said the solution to water problems is simple: Just add water. Another approach is curbing demand.

In 1990, the Denver Water Department launched successful water conservation efforts to compensate for cancellation of Two Forks, a 98,000-acre-foot project. It installed meters, promoted xeriscaping and low-flow plumbing and engaged in public education. Los Angeles responded similarly when a court curtailed water use from Mono Lake. L.A. bridged a drought and conserved enough water for several years' population growth.

The most effective conservation measure is pricing. As rates escalate with usage, demand drops. Yet some Colorado towns still subsidize water with tax revenues or have flat rates regardless of use.

Better agricultural water management can free up water while keeping farms alive. Progressive legislation could allow cities needing water to finance irrigation improvements for farmers in exchange for water saved. This happened in California's Imperial Valley. And Casper, Wyo.,



Guest
Commentary

DAVID
GETCHES

Boulder

is meeting its present shortfall with irrigation district water by paying farmers who can go back to farming when the drought ends.

■ *It is fiscally irresponsible.* The \$10 billion proposal would finesse Colorado's constitutional prohibition against incurring "debt by loan in any form" by permitting a state agency to issue "revenue bonds."

But debt by any other name is still debt. Lately, when citizens complain that schools, universities and public facilities need repairs or expansion, politicians say, "We can't afford it." Can we afford to saddle the state with enormous debts for dams across unnamed rivers?

■ *Rural Colorado is in the crosshairs.* The dam bill will hurt, not help agriculture and rural residents.

Losses suffered by farmers and ranchers are part of the tragedy of drought, but the dam bill will not help them. Revenue anticipation notes must be repaid by water sales and only municipal and industrial users can pay the high price. But cities already have bonding authority and industry has access to private financial markets.

Yet water for the dams will necessarily come from rural areas. Elsewhere water rights are spoken for or too expensive. That leaves the Western Slope and the Arkansas and San Luis valleys, where communities lack legal protection against being de-watered by those with enough money to transport water hundreds of miles and across the Continental Divide. Depleted streams will be inadequate to support agriculture or tourism.

What can the legislature do? Here are some suggestions:

■ Initiate a comprehensive water planning process, basin by basin, with full public participation.

■ Require cities to charge rates that recover all costs instead of letting them subsidize water use, and require developers to pay for acquiring new water supplies.

■ Promote dry-year leases (as in Casper) and transactions that reward efficient use, salvage and re-use of water.

■ Ensure that the effects of water exports from rural areas are considered and mitigated or that local interests are compensated.

Instead of hastily incurring huge debts for dam-building, the state should develop effective long-term solutions to our water problems. This is an old movie that should not be staged in Colorado.

David Getches is Raphael J. Moses Professor of Natural Resources Law at the University of Colorado School of Law. He served as executive director of the Colorado Department of Natural Resources under Gov. Richard Lamm.

WED 7/12/02

We need a 'public trust doctrine' to ensure rights

By Phillip T. Doe

Get ready for a "Chicken Little" summer. The state's water-development industry is gearing up to tell us that once again the sky is falling.

The source of manufactured dread and public hand-wringing is, in fact, commonplace in the arid West. We are in another dry cycle. The industry's time-worn solution will be the construction of more dams at tremendous public expense so that "cheap" water can continue to be diverted from our rivers to lubricate the machinery of sprawl and irrigated agriculture.

Don't fall for the sales pitch. Colorado is already pestered with hundreds of reservoirs, costing billions of taxpayer dollars, and they are essentially useless in extended dry cycles since they can't store spring runoff that isn't there. More of them will only magnify this hard truth while simultaneously bleeding dry our rivers and streams.

What we really need is an open and thorough public review of how we use the very limited water resources of this state, and whether those uses are sustainable and in the public good.

One instrument that would help in this regard and, in fact, may be essential to the enterprise, is the addition of a public trust doctrine to the Colorado Constitution.

The Citizens' Progressive Alliance has drafted such an initiative. It reaffirms what the Colorado Constitution already declares: that water in the rivers of this

public for 14 uninterrupted miles downstream of the reservoir, the Dolores used to be the state's best trout fishery. It is the public's river in the purest sense. But increased water diversions and the extended dry cycle have caused even officialdom to admit that we will probably destroy the river this summer.

So, what are we using the Dolores' water for? The river feeds the reservoir, the major feature of the recently constructed Dolores Project. It was built by the federal government for more than \$800 million to support irrigated agriculture. The water is used to irrigate 30 commercial operations and another 1,100 hobby farms that average about 20 acres in size.

These users have no way to repay the costs of the project. So, add the project's \$20 million to the subsidies that farmers already receive.

On top of this, the public, the people who have paid for the reservoir, has no say in how the Dolores' water should be used in difficult times. If a public trust doctrine were available, the water in the Dolores River, which the public owns, would not be sacrificed for uses that benefit a private few.

The Dolores River saga is not unusual in Colorado water politics. The people of Colorado paid a prominent Denver law firm about \$6 million to defend the rights of a few people on the lower Arkansas River to over-appropriate that river. The state of Kansas sued for damages and restitution of the water that had been stolen from Colorado, going all the



Phillip T. Doe of Littleton is chairman of the Citizens' Progressive Alliance.

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One instrument that would help in this regard and, in fact, may be essential to the enterprise, is the addition of a public trust doctrine to the Colorado Constitution.

The Citizens' Progressive Alliance has drafted such an initiative. It reaffirms what the Colorado Constitution already declares: that water in the rivers of this state belongs to the people. It also reaffirms the commonly held principle that public-ownership rights have primacy over private water-use rights and could result in limiting those uses, particularly if those private uses threaten destruction of a river or other publicly desired ends.

Unfortunately, the public's ownership has been sacrificed over the years to the gargantuan appetite of the state's water-development interests. Perhaps most telling is the language that has been devised to devalue our rivers. The developers' mantra is that we must "develop" our water or we will lose it to Nevada, California or Mexico. Implicit in this statement is a reckless denial of the obvious: first, that water runs downstream, usually to an ocean; and second, that rivers are themselves a development, albeit natural, that all our engineering science can only wonder at. We can destroy our rivers, but we cannot create them.

Some might be surprised to learn that almost 85 percent of Colorado's water use is dedicated to irrigated agriculture. Yet, in 2000, irrigated agriculture contributed less than 1 percent to the state's overall economy. Indeed, irrigated agriculture would have been a deficit contributor to our economy if the huge federal subsidy payments to individual farmers had not been added in to the calculation, masking their actual negative contribution.

Here are but a few ways "developed water" is ruining the rivers in this state:

The Dolores River in arid southwest Colorado is unique. Downstream of McPhee Reservoir, its banks are free of trophy homes and outsized stockyards. Open to the

not unusual in Colorado politics. The people of Colorado paid a prominent Denver law firm about \$6 million to defend the rights of a few people on the lower Arkansas River to over-appropriate that river. The state of Kansas sued for damages and restitution of the water that had been stolen in Colorado, going all the way to the U.S. Supreme Court. The court, which awarded \$40 million in punitive damages, said the state knew or should have known about the theft for more than 30 years.

If a public trust doctrine were part of the state's constitution, satisfaction of interstate water treaties would be honored. Certainly, we would not be spending untold millions of taxpayer dollars to circumvent these obligations for the private enrichment of a few.

A case similar to the Arkansas River embarrassment is brewing on the Republican River in eastern Colorado. Colorado citizens will be expected to pick up the tab, including legal fees, once again for water over-appropriated by a few Colorado farmers.

Similarly, the Closed Basin Project in Colorado's San Luis Valley was built to augment the flows of the Rio Grande River so that resident Colorado farmers and ranchers can continue to "steal" water belonging to downstream states and Mexico. This project cost almost \$100 million to build and has an annual operating budget of more than \$3 million. The taxpaying public has paid all construction costs and is paying all the annual operating costs.

Enough! Reasserting the public's ownership of the water in Colorado's rivers through a public trust initiative is needed. It is not a silver bullet, since many other battles still must be waged if we are to restore sanity and balance to the way the public's water resources are used. But one thing is for sure: The public trust initiative will ensure that our rivers carry water to the sea, and that they remain rivers. Wonder of wonders!

We need to build dams in high mountain areas, now

By Chris Paulson

While the dry bottoms of Lake Dillon and Grand Lake turn into huge dust clouds, our parks and golf courses turn brown and crunchy, our cities are patrolled by water police and third-generation farmers are going out of business, the people of southern California are watering their sidewalks with a million acre-feet of water that they have stolen from the upper Colorado River.

It didn't have to be this way. By building more lakes high in Colorado, we could have prevented gravity from taking our water to California.

Nature is always going to have wet and dry cycles. We learned long ago that to make the West prosper, we must store water during the wet years so that we have water during the inevitable dry years.

The Post on May 21 reminded us that storage of snowmelt is the reason a water year begins Oct. 1. The people who settled Colorado knew this lesson all too well, and started settlements by building reservoirs and canals. Somehow, of late, we have forgotten this fundamental law of the West.

In the last decade, we added a million new people to Colorado. The Colorado Legislative Council estimates the Northern Front Range will need 300,000 acre-feet of new supply by 2020. Yet, the federal government has delayed the construction of

Dillon is destined to be mud flats for greater and greater periods of time.

We will need water from all three of these sources to meet the 300,000 acre-feet demands of modest growth, not to mention drought insurance.

While the state of Colorado has for all practical purposes put a moratorium on building water storage and transmountain delivery systems, the federal government has provided funding for the Central Utah Project to move water in Utah, and for the Central Arizona Project to provide Colorado river water for Phoenix and Tucson. The state of California; meanwhile, built a major water-storage project in southern California to enable them to store and use more of our water.

How is it that Colorado has ignored its vulnerability to drought and wasted our precious years of above-average snow pack? As usual, the answer lies with a small group of politically motivated special-interest groups. Some no-growth fanatics see shutting off water as a way to stop growth. Some, for political gain, seek to split the state and demand that no water be moved from the Western Slope to the Eastern Slope even if it means watching the water heritage we all share go to California.

Finally, a third group chooses to ignore the lessons of history and somehow believes that storing water in dams is unnatural and that the streams would actually be better off in their natural state. The folks in Summit County



Chris Paulson, a former state representative, is a water lawyer. He lives in Morrison.

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Morrison.

demand that no water be moved from the Western Slope to the Eastern Slope even if it means watching the water heritage we all share go to California.

2 In the last decade, we added a million new people to Colorado. The Colorado Legislative Council estimates the Northern Front Range will need 300,000 acre-feet of new supply by 2020. Yet, the federal government blocked the construction of Two Forks Dam, and no new high-mountain reservoirs were built to take its place. Instead, we stuck our heads in the sand, literally, by drilling wells, counting on non-renewable water from those wells, and praying for rain.

7 Finally, a third group chooses to ignore the lessons of history and somehow believes that storing water in dams is unnatural and that the streams would actually be better off in their natural state. (Ask the folks in Summit County whether a full or empty Lake Dillon is better for the community).

Some propose that we change Colorado's priorities by changing the Constitution to have a public trust in water, reasoning that developing water is nasty. This goes against 150 years of wisdom. Our Constitution states, "the right to divert the unappropriated waters of all natural streams to beneficial uses shall never be denied. . . . When the water of any natural stream are not sufficient . . . those using the water for domestic purposes shall have the preference."

Anyone proposing to change the Constitution would be condemning all of us domestic users to permanent watering restrictions and fewer places for fish to survive in a drought.

It doesn't have to be this way. We don't have to let a small band of special interests dictate our water policy. Two of the three major water infrastructure projects — Blue Mesa Reservoir and the Windy Gap Project — are already constructed. The third project, modifications to Denver's system to better utilize Lake Dillon, is on the drawing boards. All we need is the political will and the leadership to build the pipelines and delivery systems necessary to better utilize the water that nature gives us — even in a dry year.

It's time to quit fighting among ourselves, time to quit fooling ourselves, and time to do what people for 3,000 years have known has to be done — build dams up high to catch snowmelt and convey it to the low dry lands.

Chris Paulson can be reached at crpaulson@5280law.com.

Now, Mother Nature is reminding us that it doesn't always rain, and declining well levels remind us that we are mining water from the ground. And we haven't heard one public leader promote one new high-mountain reservoir. If we had adequate water storage now, we could release some of it to keep fisheries alive; provide minimum flows to keep streams flowing and recreation thriving; distribute enough water to keep our cities green and sanitary; and provide crucial water to keep farms alive. Instead, because of lack of political will and foresight, approximately a million acre-feet of water leaves the state unused. To put that in perspective, that's about four Lake Dillons.

To make matters worse, we aren't even using the water currently in storage or already designated as available to help ease the drought. The Supreme Court has ruled that 300,000 acre-feet of water stored in Blue Mesa Reservoir in south-central Colorado is available for Colorado users right now, but the pipeline to bring it east is not built. In northern Colorado, the Windy Gap Project needs more storage to make already designated Colorado River water available for the northern Front Range. Yet, the Colorado River Water Conservation District has threatened to sue to keep it from using the very water it is already storing. In the central part of the state, without additional reservoirs and water-management facilities, Lake

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