

16 May 2000

To: Editor, The Gunnison Country Times
218 N. Wisconsin Ave., Gunnison, CO 81230

Re: "In Colorado, water is a fiery topic". April 17, 2000. Another View

This letter is in response to Bob Ewegen's April 17th column, in the Denver Post, entitled, "In Colorado, water is a fiery topic" as well as having read the interminable letters by Dave Miller. The burden of their arguments is: (1) the Front Range must have more water for its future growth; (2) Colorado is allowing unused water to flow out of the state towards California; therefore, (3) the diverters must tap the source of supply of the Colorado River to buttress Front Range water sources. This argument omits several critical factors which, if addressed, as they surely must be, will persuade that no further transmountain diversion of the Colorado River can be made.

First: the proponents allege that there are 450,000 acre feet of water per year in the upper Colorado River system that Coloradans are entitled to appropriate. They claim that this water is not being used and therefore is available for diversion to the Front Range. This is not true. Much of the water which flows down-stream across the western Colorado border has been used again and again before being returned to the river. If this water is diverted at the headwaters of the river, the Western Slope water users, with senior priorities under Colorado water law, will be deprived of valuable and critical water which is theirs. They legally own it.

Second: the 450,000 acre feet that the proponents claim is suspect. Water does not flow down the Colorado River at an even and uniform rate year after year. The Colorado River Compact, an agreement nearly 80 years old which is binding on Colorado, provides that the Lower Basin states of California, Utah, Nevada, and part of Arizona shall be furnished with 7,500,000 acre feet (7.5 MAF) per annum, or 75,000,000 acre feet (75 MAF) over a 10 year period at Lee Ferry, Utah. The Upper Basin states of Colorado, New Mexico, Wyoming, and part of Arizona are entitled to retain, for their use, 7.5 MAF per annum just as the Lower Basin states are, provided, however, that amount of water is available after the Lower Basin allocation is satisfied.

Third: Colorado is entitled to use 51.75% of the 7.5 MAF per annum allotted to it under the Compact or 3.88 MAF (51.75% of 7.5 MAF) per annum. The diverters, and some of their proponents, claim that Colorado only uses about 3.43 MAF per annum, leaving 450,000 acre feet (3.88 MAF - 3.43 MAF = 0.45 MAF) per annum which can be diverted to the Front Range to supply the needs of about 1,350,000 new families and dwellings. As above noted, if the flow of the river was steady, this argument would hold water, but that is not the case. For example, in a drought period, if the river only produced 12 MAF per annum or 120 MAF acre feet over 10 years, the Lower Basin states still will get their full allotment of 7.5 MAF per annum, or 75 MAF over 10 years, whereas Colorado and its neighboring Upper Basin states get what is left which is 4.5 MAF per annum, or 45 MAF over the 10 year span. Of this, Colorado's share would be 2.33 MAF (51.75% of 4.5 MAF). But if Colorado uses 3.43 MAF per annum, this means that, in a drought year, Colorado would experience a deficit of 1.1 MAF (3.43 MAF - 2.33 MAF) of water without any further transmountain diversion.

If you are a developer, the diverters' argument sounds like a good deal; if you are a family who is being asked to invest its money and future based on this water, it certainly would be a bad deal. In case of a drought, which is surely something that will happen, your Colorado River water, with its late priority, would probably be shut off. This is not speculation - the Lower Basin

states will get their 7.5MAF per annum first (see Art. III(d) of the Compact). It is reckless, bordering on criminal, to claim water for housing developments which, at some point, will not be there for a family's use.

Fourth: the proponents of diversion claim that the Lower Basin is entitled to only 7.5 MAF per annum at Lee Ferry. The Colorado River Compact, however, states that, in addition to its 7.5 MAF, the Lower Basin has the right to increase its beneficial use of such water (Colorado River) by 1 MAF per annum (Art. III(b) of the Compact). The apportionment of the Colorado River water is to made at Lee Ferry, and the diverters' argument that the Lower Basin states should get their 1 MAF from downstream tributaries is self-deluding and terribly misleading. At the very least, before Colorado begins further depletion of the flow of the Colorado River, it should obtain the legal consent of all of the Lower Basin states to this action, in writing.

Fifth: there are other downstream calls on the water of the Colorado River further diminishing its flow. In case the river does not produce enough water at the Mexican/Arizona border with which to supply Mexico with 1.5 MAF per annum, the deficiency shall be borne equally by the Upper and Lower Basin states. This call would further impare the quantity of water available for trans-mountain diversion in the case of drought.

There are many Indian tribes which have the right to divert water from the Colorado River. These claims have not yet been completely adjudicated. One can be assured, however, that, when adjudicated, they will be assigned a high priority which will further diminish the diverters' planned flows to the Front Range.

Sixth: Colorado has been hammered by its downstream neighbors again and again, and always for hogging water - the latest case being brought by Kansas. This has resulted in the virtual drying up of the Arkansas River below Pueblo for Colorado's use, plus damages yet to be determined by the U.S. Supreme Court. If California is forced to go to Congress, or the courts, to force Colorado to release water illegally and improperly diverted by it, the results to all of Colorado would be horrific. In deciding on a course of action which, in all probability, would provoke California and its allies to sue Colorado for all the remedies to which they would be entitled, consider that California alone has ten and one-half times the number of Congressmen that Colorado has, and at this time at least, three Supreme Court justices, to our none. Does Colorado want to get into a battle it would most probably lose facing these odds? We hope not.

Seventh: there are other good and sufficient reasons why Colorado should not permit the proposed transmountain diversions from the Colorado River. Primarily, these involve instream flow rights for environmental and endangered species protection.

The furor which would be created by Colorado further decreasing the flow of the Colorado River is surely something the people of Colorado should avoid at all costs.

Sincerely,

POWER

by

P. C. Klingsmith, Chairman