STATEMENT OF FRANK MILENSKI  
December 15, 1995  

TO WHOM IT MAY CONCERN:  

My name is Frank Milenski. I was born and raised on the Patterson Valley Road 3/4 miles west of city limits of Rocky Ford, Colorado. Born November 8, 1913 and started to Lincoln School in 1919 September. We walked to school, except in a storm. On Patterson Valley Road there was our house, Milenski, Ezra Moore, Frederick R. Merk, Bernard Al Vernon, Albert Geonger, Charlie Kouns, Frank Johns, Darby house, O'Neal-Badgers, Watters and one more house on the southwest corner. Most 40 acres, 20 acres and 10 acres.

When you turned south of Patterson Valley Road there were a few houses on the west side of the road, Bish, brick house, and another brick house, the Hayes house on the east side of the road was the Veatch property and Dr. Lovejoy house.

On our way to Lincoln School we cut across the Veatch property in the fall. He grew a lot of onions for sets in the spring (small onions). The land on both sides of the street clear up to Reservoir Hill was farmed.

Up on the Catlin Canal going east few houses, Mendenhall house on Main Street last of small irrigated lots in the area all with Catlin Canal shares. Main Street was not full of houses on either side of the street.

Washington Grade School was over where the Pioneer Memorial Hospital now stands. Most land around it was being farmed.

The City of Rocky Ford developed their water system, reservoirs and all around 1925 using Catlin water.

I went on the Board of Directors of the Catlin Canal Company in 1950. At that time Catlin Canal was serving 19,500 acres of land. The Rocky Ford High Line was up to around 26,000 acres of irrigated land. These were the accepted figures.

When the Kansas-Colorado suit was being prepared for, we at Catlin Canal Company went to the PMA Office to get total figures on the government measurements of land served by Catlin Water. The State Engineer has them there. Was 18,000 acres including the water pumped above the Catlin Canal.

Now I know there is bitching about water from the Catlin Canal to Otero land above the Catlin Canal. I will point out those shares of Catlin Canal were purchased for good money by those that use the water. The water is diverted into the Catlin Canal 3 miles east of Fowler, Colorado. The canal is 37 or 38 miles long. All this water flows through the rating flume below the headgate and is measured in cubic second feet of water. The Catlin Canal water is
diverted under 2 decrees, December 4, 1884, 248 CFS and November 14, 1887, 97 CFS.

This water is decreed for use of irrigation in Otero County, Colorado to be put to beneficial use. Catlin Canal as most others comes under the Mutual Canal companies as by Colorado Statutes. Catlin Canal Company does not have any wells "per say" only stockholders do have wells. The shareholders of the Catlin Canal Company are entitled to use decreed Catlin Canal shares.

I have in my possession Canal Diversion Data of Colorado. Harry Amsley Report, and AVDA Records Forum 1912 to 1938. These records were started 1900-1901 for the original Kansas-Colorado water suit. [These records show from ??? AF 1912 through 1938 from low 53870 AF 1924 to high of 109670 AF.]

Now I would point out there is no such thing as an average only looking backwards.

Water is diverted on a daily basis on what water is available and what canals are in priority and the water to be put to beneficial use. High precipitation years change demands on canal companies for Arkansas River Diversion to said canals.

Canal washouts and repairs are not shown. Only the water flowing through the Parshall Flumes is recorded.

Catlin Canal has automatic controls at the sluice above the rating flume. Best on the Arkansas River. The charts taken by District 17 Water Commissioner speak for themselves for the last 65 years.

Under the statutes of Colorado the priority system first in use first in time a Supreme Court Ruling says use of water.
STATEMENT

BY FRANK MILENSKI, PRESIDENT,

CATLIN CANAL COMPANY, ROCKY FORD, COLORADO

The Catlin Canal Company is a mutual ditch company located in Otero County, Colorado. The Company has 18,660 shares of stock owned by approximately 325 shareholders. The Catlin Canal has decreed rights consisting of a December 1, 1884, decree for 248 c.f.s. and a November 14, 1887, decree for 97 c.f.s. The Canal Company has an excellent water right and diverts an average of over 80,000 acre feet annually for the last 75 to 100 years. The land irrigated under the Catlin Canal is approximately 19,000 acres.

As all mutual ditches, the Catlin bylaws provide that each stockholder is entitled to get his pro rata share of any water available and diverted by the Canal Company through its headgate. The Catlin does not have any storage rights in the lower Arkansas Valley and, therefore, relies heavily on the storage contracted from the Fry-Ark Project on an "if and when" basis and the storage associated with the winter water program. Hence, the Catlin is known as a direct-flow ditch. There are only four direct-flow ditches in the Valley and those consist of the Bessemer Irrigating Canal Company, the High Line Canal Company, and the Oxford Ditch Company along with the Catlin.

The Catlin Canal Company, along with other ditch companies in the Arkansas Valley, voted to join in the voluntary winter storage program, which has operated since 1975, and has now been decreed for a program commencing November 15th of each year and extending through March 15th of each year. Experience with the voluntary program demonstrated that storing the water in the winter was beneficial in that it allowed the irrigating companies to apply their stored water in the growing season, which has proven very beneficial.

The Catlin Canal Company, as does other ditch companies, assesses its stockholders annually for not only the operation and maintenance of the Company's ditch and facilities, but also for the purchase of water from the Fry-Ark Project. This year, the Catlin assessment voted at the annual meeting was $12.00 per share with the privilege of calling another $2.00 per share to pay for project or reservoir water, if needed, making the total assessment $14.00 per share.

Under the winter water program, the Catlin gives up its direct-flow decreed water rights between November 15th and March 15th, and the water is then stored in whatever space is and has
been available for winter water storage. The past few years, the storage space has been pretty lean. The reason for that is because we have had some wet water years lately and the storage space has been full. The Catlin, along with the other direct-flow entities, has discussed with the Southeastern Colorado Water Conservancy District and the Bureau of Reclamation the problems generated with having some guaranteed space for the winter water program. Our shareholders, of course, voted to be included in the winter program and we think it is an excellent idea except that the limitations on the space have resulted in the Canal Company, along with other companies, paying for storage only to have the water released because of the lack of capacity in the storage facilities. The Catlin alone has paid in excess of $100,000.00 for water that was never delivered or capable of being used. That is a luxury that the Catlin shareholders simply cannot afford.

We have approached the District and the Bureau for a guaranteed storage space in the project of 70,000 acre feet. In normal times, that would be adequate. In good water years, as we have had in the last three of four years, it is my opinion, we could manage with a space of not less than 40,000 acre feet. The District and the Bureau have agreed to at least take a look at this problem and see if something can be worked out for the agricultural entities similar to programs in effect for municipalities. Under the present conditions, the agriculture must use its water stored in the winter time by May 1st of each year; otherwise, it is lost, even though it was paid for. The municipalities, on the other hand, can store their water continuously once they have paid for it and are not subject to release of their water unless they call for it.

In 1988, up until approximately the 15th of September, the Catlin has diverted 71,780 acre feet of River water. Nineteen Hundred Eighty-eight is considered as being a water short year as far as the Arkansas River is concerned. In addition, the Catlin has purchased and diverted 7,080 acre feet of project water and also diverted 6,600 acre feet of winter water stored in project facilities at Pueblo Reservoir. Eighty-four percent (84%) of the water then diverted by the Catlin came from the Arkansas River and sixteen percent (16%) of the water diverted was made up from project water purchased and winter storage water.

That sixteen percent (16%) of the water diverted by the Catlin amounts to about .73 of an acre foot of water or 8.76 inches out of the 4.6 (plus or minus) acre foot applied to Catlin land.

Now we are faced with another problem, which has been created primarily by the Bureau, regarding the acreage limitation
of 160 acres for a single person or 320 acres for husband and wife and 960 acres under the change in the policy in 1985.

Because of depressed economy in the Arkansas Valley and the rising costs in farm operations, the farmer has had hard times in trying to make the operation pay and service the indebtedness on the farm. There have been several foreclosures in the Arkansas Valley and the agricultural lenders have necessarily had to take over some of these farms and operate them. Their only alternative would be to place the lands up for sale at an auction, which would not near be adequate to pay off the indebtedness simply because the farm prices are depressed. A good example is several properties now being set for auction sales by the Federal Land Bank of Wichita on October 28, 1988.

As far as the Catlin is concerned, the Colorado Bank and Trust has had to foreclose on a property which exceeds the acreage limitation. As far as I know, the Colorado Bank and Trust is the only one that is under the 320-acre limitation that has enough shares in the Catlin Canal Company to more than cover 320 acres. Under the 960-acre limitation, Colorado Bank and Trust would never have a full supply of winter water and purchased project water. The problem is that the Colorado Bank and Trust must sell the land within five years or be ineligible to obtain any project water or winter storage water. That is by design of the Bureau policy. The water that the Catlin purchases is strictly supplemental water and a mutual ditch buys it and uses it for supplemental water.

Now the Bureau seems to have a two-layer formula which will, in effect, prohibit the Colorado Bank and Trust from purchasing, through the Canal Company, any supplemental water and after June, 1989, when their five-year period expires, they will be at the mercy of the auction sale procedure. It is hard to believe that the Bureau policy is creating a situation in which agricultural lenders are being penalized. The lenders are not going to lend to agriculture when, under circumstances where they must foreclose, they are then jeopardizing their financial condition simply because of the acreage limitation and the inability to obtain supplemental water on the farm lands which they took as security.

In addition, this has created a monumental problem for the mutual ditch companies. In the Catlin's case, the Catlin is assessing the shareholder, the Colorado Bank and Trust, who owns approximately five percent (5%) of the shares of the Company, and purchasing project water and paying winter storage water fees from those assessments and are then, because of the Bureau policy, unable to deliver the water to Colorado Bank and Trust, which was purchased with that shareholder's money. That policy
could well destroy the winter water program because it basically amounts to confiscation of a shareholder's water right.

In the example of the Colorado Bank and Trust, with five percent (5%) of the Catlin shares, the Colorado Bank and Trust would have been entitled to 684 acre feet of water out of the 13,680 acre feet from project and winter water diverted by the Catlin this year. The 684 acre feet of the supplemental water would not have been enough to water 320 acres of land.

In order for our Canal Company to explain to our shareholders the relation of project and winter water to our native water supply, it is at best difficult. It would seem that the Bureau should come out with a clear explanation of the acreage limitation that the farmer can understand.

Additionally, there should be some consideration by the Bureau on the acreage limitation and its applicability to an agricultural lender and some exception should be made to protect the agricultural lender.

Would it be possible for this one shareholder to make an irrevocable election to come under the 960-acre limitation such as others have done? A little leeway in transition between the old and new acts by allowing an involuntary acquirer an election may go a long way towards making farm lending acceptable to local lenders! Without such an option for new election, the Canal Company may be in a position of taking the shareholder's money for water and not be able to deliver on the service for which payment was received, thereby creating a legal question concerning each shareholder's right to a proportionate share of all water available to the Company.

Thank you!

CATLIN CANAL COMPANY

By

Frank Milenski
President
Duplicate pages
not scanned

See originals in folder

Water Resources Archive
Colorado State University Libraries
Statement of Frank Milenski

I received a call from Kevin Pratt at 6:30 a.m. the morning of November 16th advising that he thought Ray Nixon would bring up for a vote the Stipulation between Southeast District, Colorado Springs, Pueblo and AVDA concerning Project Return Flows. Pratt's advice to me was that, as president of Catlin Canal Company, I had a conflict of interest and should not vote when the matter is brought up. My views on this matter are expressed in the following remarks.

I have labored long and hard to try to make the only place of residence in my life a better place to live. My family and I have been interested in the Catlin Canal Company and irrigation for the past 76 years. As such interested parties we have a real interest in protecting the priority system in this State from all comers.

The valley was developed from a desert to a very productive agriculture economy under the priority appropriation doctrine. This doctrine guaranteed the use of water at specific locations for beneficial application would be based upon the ever changing supply but would remain relative to positions of seniority within the priority system. It recognized a need to maintain a right of diversion under conditions existing at the time of filing for such water. Paper changes which occur between existing diversions, such as was the case with the move of a right of the Las Animas Town Ditch to the headgate of the High Line canal, have pointed out the fact that the water was not in truth moved upstream and that return flows have continued to supply the same flows to the downstream location. Such changes thus divert more water upstream at the expense of priorities between the new and old points of diversion and change the regimen of the river, as well as, the priority system. Exchanges of return flows such as proposed by the District operate in a similar manner but do not have even the safeguard of measured historic operation or limitation of points of return and diversion.

The idea of a Fry-Ark Project originated with the AVDA and the valley Chambers of Commerce. The goal was to get a supplemental supply of water to add to the water which they had in 1926.

My interest in the Reclamation Project has been for the good of the entire Arkansas Valley and having started in the 1940's is of long standing. One of the reasons I have spent more than half of my life in the water business was to protect the lifetime labors of the people that have chosen irrigation farming as a way of life. I wanted a project that would help solve the water shortages.
While helping to secure a little more water over the years, I have repeatedly told the Bureau that they do not run the Arkansas River and neither does the Southeast District. The agriculture entities and irrigation systems were here long before the Bureau or the District. Also, the cities were developed only in the development of the West.

When the District comes up with an exchange use of water that conflicts with, or, changes flows to the detriment of existing decrees, I am of the opinion that I have not only a right, but a duty to oppose such change on behalf of all of the constituents of the district which I represent. We did not work to get a project to jeopardize our water rights. We worked to get a project to give the people of the valley more control and better use of the already short supply of water. The purpose of the project was for the good of the valley as a whole and not to see how much money it could make for the District.

The idea of re-diverting surface water return flows without first obtaining accurate information concerning originating points for such return flows, a multiplicity of (1) methods of application, (2) crops, (3) percentage of mixture of application of project and river waters, (4) travel times and (5) the introduction of averages to avoid facing constantly changing conditions flies in the face of reason and is a burden to all of those that the District attempts to serve.
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On December 6, 1971, the shareholders of Catlin Canal Company were presented with a booklet titled "Suggested Program For Winter Water Storage Fryingpan-Arkansas Project." Par. 13 of the booklet presented a Bureau estimate that there would be an average of 65,900 acre feet net yield of "Winter Storage" water annually delivered at the outlet of Pueblo Reservoir. This net yield was computed by deducting from the gross Winter Water storage an estimated annual evaporation charge of 5,600 a.f. and spills required to make room for Project Water of 8,800 a.f.

Actual operation of the Project during the past twelve years has produced averages, as follows:

a). Average annual gross winter water storage in Pueblo Res.: 
b). Average annual evaporation of winter water during storage period 
c). Average annual spill of winter water 
d). Average annual net yield of winter stored water available at the outlet of Pueblo Reservoir

Severly restricted space for storage of winter water caused four companies, participating in the Winter Water Program without benefit of privately owned off-stream storage, to write to the Eastern Colorado Projects Office of the Bureau of Reclamation and the Southeastern Colorado Water Conservancy District, calling attention to apparent inequities in the management and operation of storage space in Pueblo Reservoir. Over a year has passed since the inequities mentioned in the letter of August 11, 1988 were brought to the attention of proper authorities and, still, the management of storage remains relatively the same. Is it too much to ask for long term agreement for protection of storage of winter water? The payment of storage costs for such was originally deemed vital to successful operation of the Project? Present operation is more than willing to accept payment for the storage service and retains such funds even when service is curtailed and the water spilled!

Each of the 323 shareholders of Catlin Canal Company own a proportionate share of the water available to this company as each shareholder's shares relate to the total 18,660 shares outstanding. There are three shareholders who became such by exercise of right under security interest on loans made to local farmers. The three now own in excess of 18% of the shares of the company and are forced into resale during troubled economic conditions within five years of the date of foreclosure. Would it be possible to have such five year period start on some index indicating an upswing of economic