Report from the 13th Annual Membership Forum & Water Workshop

The Colorado Water Congress' 13th Annual Membership Forum and Water Workshop was held at the Keystone Resort in Keystone, Colorado on July 22 of this year. This issue of Colorado Water Rights provides detailed text on the body of that very productive meeting.

The Pros and Cons of a State Water Plan/Policy

"I would submit to you that "water" in Colorado is too complex to be construed through the narrowly focused "right to use" doctrine of prior appropriation, and that increasingly a planning mechanism is needed to address "water's" complexities.

"To me the idea of a 'state water plan' is a little bit like the idea of leasing water to California. It sounds simple, when you say just that; politically, it sounds good, but it ignores all the issues that we have to face and, in the end, if you really look at it, it's not a very good idea."

"I don't think we can agree in Colorado on a comprehensive framework for the social values of water. I suggest that it's more divisive to try to do that than to simply work within the existing framework and make the existing systems work."

The Pros and Cons of a Metropolitan Water Authority

"There were a number of comments to the effect that it (the Metropolitan Denver Water Authority) was going to be a monster running wild in the state condemning everyone's water rights only for the benefit of the metropolitan area. Neither the statutes nor the enabling contract of the Metropolitan Denver Water Authority provide for the condemnation of water rights."

"A Metro Water District is fine, but, it's gotta include us. I think that's the way all of us in the state feel...a large metro district has to demonstrate to those of us in the rural areas of the state that it isn't monopolistic."

"I am encouraged by the discussions. They go slowly. They are necessarily general, but the expectation is that between now and September a much more detailed draft of a structure for an organization will be prepared and will be available for the mayors and commissioners at the table to look at."

The Pros and Cons of Fine Tuning Colorado's Water Law

"Why are we having such problems attaining the objectives of our State water policy? Of getting water projects built? There are two reasons: 1) We've lost sight of our goals and 2) we've lost control of the process."

"No one wants to change Colorado water law unless they're going to personally gain by doing it. If you change Colorado water law, you change the value of the person's water right, you change the value of his water, you change the value of the land that the water's attached to and everything else that's connected with that water, whether it's farm land, a factory, a sub-division, or a city."

"Colorado water law is something that's dynamic, almost a living-body of policy, guidelines and regulations under which we operate to apportion this very valuable resource. If someone needs a modification to that law, it is generally because they are trying to gain something from it, or they are trying to take 'paper' water and make it into 'wet' water."

Legislative Observations

"I'm concerned that the average person is being cut out of the value system that we attach to the provision of water service. He's being taught night after night that the people that buy water and provide water utility service to meet his needs are villains."

"Now, the Ag people, the Western Slope people aren't as great in numbers in the Legislature, but that Ag Committee is where a bill is going to be sent with all probability, so it's going to have to appease people in both the House and the Senate Ag Committees."

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I know that this is not exactly a matter of the preacher talking to the choir when I stand before the Water Congress and advocate a State water policy. But as we address this question, let us look at a few parallels.

- We believe in Colorado that comprehensive planning for land use is far more important - county and city - than federal property and that the state should have comprehensive land use plans.
- If a person sells land divided into parcels under 35 acres he is also required by state law to have a plan for his roads, utilities, and conditions specific to his site.
- The State Highway Commission adopts and constantly updates a five-year highway plan in order to prioritize highway improvements. The plan makes it possible for the commission to meet the demands of the limited resources available.

How do successful businesses remain successful, be they large or small? They develop and follow business plans tailored to their individual needs.

Many have already argued and will argue today that Colorado's state water plan is the place to be embodied in the state constitution. Others have found this to be true and have either long-standing planning efforts or have recently embarked upon similar efforts. It should be regarded as a dream that can evolve over time to meet changing conditions. In Colorado, it should supply the validity of the doctrine of prior appropriation, but it should recognize that the old doctrine has its inefficiencies and may be too narrowly focused for existing or emerging societal expectations and conditions.

Rich Levengood
Pros and Cons of a State Water Plan/Policy

Our governor was "invited" to express his views on Two Forks in order to represent the official state position, which is supposed to reflect local or state aspects of the "public interest." That the Corps of Engineers under its rules is obligated to consider in its decision-making process.

I find our situation in this instance to be incredible and we should share Governor Romer's frustration about only being invited by a federal agency to "play an advisory role ... to a federal agency," which has the final say over whether Two Forks gets permits or not. We all had better read and reread this portion of Governor Romer's July 14 statement very carefully.

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COLORADO WATER RIGHTS
Published by:
Colorado Water Congress
1500 Logan Street, Suite 312
Denver, Colorado 80203
Phone: (303) 837-6822

Member of National Water Resources Association and Water Resources Congress
Dick MacRaeve, Publisher
Deaton & Associates
Editing/Production
Publication Printers

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Colorado Water Rights

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In Colorado water law that are being proposed. I do not think many of these are going to accomplish even what is intended. We can mandate water conservation fixtures in houses on a statewide basis. In the end, that is going to go nowhere close to teaching the overall water use efficiency in this state. Water conservation, at all levels, is needed in the Denver metropolitan area, because of the huge impact of Denver’s water system in this state. But in-house water use in Denver, or anywhere else, just is not that big a factor when we look at the overall water supply in the state and how we are going to best manage our water. Mandating in-house water conservation in most, but not all, areas of the Western Slope just does not make sense at this time. Proposals for broad laws regarding water conservation in agriculture, in a similar way, do not address the problem because they do not address the economics of agriculture. I do not think that these broad types of changes in Colorado water law are going to solve the more important individual and specific problems and issues that we face.

At the same time, we can take the specific laws. We can make small changes to address specific problems. I also do not think that is necessarily the answer. There are too many special interests and, if we modify a law to solve a specific problem, that is just going to create another problem that we have not anticipated. Moreover, every time we change the law, it gives lawyers a new chance to think about ways to get around them ways to manipulate them for their own clients’ interests. Frankly, I think we are better off working with what we’ve got.

What we do need, I think, is to establish a format for negotiation and a particular way to involve a broad spectrum of interests, that will allow us to manage and use our water in the most efficient way possible. I will use the Colorado River as an example, because the Colorado River faces a broad spectrum of interests at both ends of the River that a lot of times are conflicting. The River, I am sure you all well know, faces demands from the Front Range for trans-mountain diversions. It faces demands in the headwater counties from the skiing industry for snowmaking. It faces demands in the headwater counties for development associated with both recreation of the instream variety, and recreation associated with the skiing industry. The entire River faces issues related to the Endangered Species Act and the preservation of flows for the benefit of endangered species, that currently is a severe limiting factor, even on the use of existing facilities. The Colorado River faces severe challenges to the use of its water for agricultural purposes. If we can involve the various interests that are concerned about those particular issues to sit down and negotiate and, most importantly, be willing to give something up so that we can move forward, that really, to me, is the bottom line. We can set up a plan to say what we want, and we can enact laws to say this is what we want to do, but it really just comes down to negotiation. Whether it is in the legislature, whether it is sitting around a negotiating table, whether it is in a courtroom ... that will be the final result. Is there an interest by various parties in getting together and trying to determine what they are going to get and what they are going to give up to get what they want?

For example, I think we can, under the existing framework of Colorado law, come up with ways to reduce the demands on the River by the two major calls — the Shoshone Power Plant and the Cameo call — and provide greater yield for the Front Range, greater yield for recreation and instream flow and endangered species’ interests on the Colorado River and, at the same time, not short the agricultural interests in the Grand Valley or the Shoshone Power Plant the water they need. What we need to do is to negotiate a framework for providing the incentives necessary to accomplish that result.

As another example, I believe the Metropolitan Water Authority is an idea whose time has come. However, I do not think that the idea, or what we are going to see in terms of an establishment of a Metropolitan Water Authority, is really related to the Two Forks question. The issue is not water in the Denver Metropolitan area, in my mind. It is related to the entire social fabric of the Denver Metropolitan area, and how that is going to come together. The lack of an authority, and existing institutional barriers to water use in the Denver area, are real impediments to the future wise use and allocation. I think that those kinds of issues need to be overcome. Again, the bottom line is negotiation. The legislature cannot set up a Metropolitan Water Authority and force everyone to the table. Denver and the suburbs have got to sit down and work on those tough issues, and they have started to do that.

By no means am I saying that any of these issues are easy, but there has to be a real give and take on all sides if we are going to move forward. There will have to be some changes in attitude. There are too many interests in the state, both on the “environmentalist” side and the “water development” side, who are not willing to accommodate, who are not willing to give up something in order to get what they want. There are too many interests in this state who are simply unwilling to give. They want absolute guarantees for what they want. We are all guilty of that, but we need that change of attitude, and we need some determination to sit down and do something, rather than wring our hands and worry about what the federal government might do, or worry about why we need a state water plan, or worry about what we need to do to force other people to do what we want.

James S. Lochhead is a Member of the Colorado Water Conservation Board.

Plan to attend...
31st Annual L.W.C convention
January 26-27, 1989
Holiday Inn, Northglenn

Colorado Water Rights
The topic of the day is: Should Colorado Have a State Water Plan or a State Water Policy? Before I can give you my answer, I need to ask a few questions of my own. My first question is: What is the difference between talk of a water plan and water policy, and people talk as if there’s agreement about what those words mean. I don’t think that much agreement really exists, and that there’s a lot of fuzzy thinking on the subject.

There are a lot of possible meanings for those two terms; let me take a couple of those with you. The first meaning of a state water plan is the specific plans to use all of our compacted scarce, in whatever river we’re talking about.

A fourth meaning of the state water plan is that it’s a means to stop the “abuses or excesses” of our current system, whatever they may be. I’m not quite sure what development of water policy is a series of laws—not speeches by the Governor, although it is not written down in one document, and nobody’s ever done an EIS on it. The point is that if you conserve a portion of your agricultural uses, you may not have anything to do with fish.

We move next to water policy. Having described for you eight different things that might be water policy, let me give you my definition of what water policy is. My view is that water policy is a series of laws—not speeches by the Governor, laws that determine how water will be allocated, reallocated, transferred and used. Do we have a water policy in Colorado transferred and used? Do we have a water policy in Colorado that meets that definition? Yes, we do have a policy in Colorado, although it is not written down in one document, and nobody’s even done an EIS on it. That policy has some basic principles to it. You all know these, so I’m preaching to the choir, but for the basic principles are:

The third major set of modifications to our policy have been made in the upper Gunnison area; the river districts’ desire to build Junior Cross Reservoir, which is a project that you can see might affect our policy, and all things might not be it. It depends on who’s talking. Again, I think that this is so difficult that 10 years ago, when I was on the Governor’s staff, I went halfway through it and dropped the word policy. It became a water study, not a water-policy study, because frankly, after it became a water study, we need to know more about what it is, and we need to be able to talk intelligently about a state water plan, we need to agree on a list of uses, but we cannot agree on whether agriculture should get more or less, or whether instream-flow should get more or less. The process of trying to reach agreement on the comparative social value of water uses, which would then lead to changes in how we allocate water, is extremely difficult and probably impossible. I suggest that the most we can hope to try to do is to try to supply work within the existing framework and make the existing systems work.

A third kind of change that we ought to consider, perhaps, is broadening the instream-flow statute so that we recognize the recreational uses of water that may not have anything to do with fish.

Thus, my response to the idea of a state water plan is that perhaps one could be written, but not implemented. I do not believe that it is possible to tell whether we already have a plan or a policy. If the answer is clearly “no.” Second question: Do we need a new state water plan? We need to agree first of all on what it is we’re talking about. And I felt that the word actually detracted from the meaning of the state water plan is that it’s a means of “no material injury to others.” The determination of material injury is made in the judicial system, not by administrators. It’s not done by government policy, it’s done on the basis of how the natural scene, by allowing them to make money out of what they save, but we do want to have a system that the federal government, it’s done on the basis of minimally transferring, subject only to the doctrine of “no material injury to others.” The determination of material injury is made in the judicial system, not by administrators. I don’t have a preconceived notion, but I know that basin-origin protection continues to be a source of considerable concern. We can move to an instream-flow debate without doing either a state water plan or a major modification to state water policy.

A second kind of change that we might want to talk about is giving people incentives to use less water, particularly on the agricultural scene; by allowing them to make money out of what they save, but we do want to have a system that the federal government, it’s done on the basis of minimally transferring, subject only to the doctrine of “no material injury to others.” The determination of material injury is made in the judicial system, not by administrators. I don’t have a preconceived notion, but I know that basin-origin protection continues to be a source of considerable concern. We can move to an instream-flow debate without doing either a state water plan or a major modification to state water policy.

A third kind of change that we ought to consider, perhaps, is broadening the instream-flow statute so that we recognize the recreational uses of water that may not have anything to do with fish. Maybe that’s necessary, or maybe that’s too difficult. And, maybe, if we recognized the people who use water for recreation wouldn’t be able to afford to pay for it. Maybe we’d have made a useless gesture. But that’s another area where I say this is the time the people have a reasonable need change mentioned by the Governor in his July speech is metropolitan water cooperation. That really isn’t water policy, it is a piece of it.

In conclusion, let me reiterate what I think about a state water plan and state water policy. First of all, there’s no agreement on what a state water plan is or what a water policy is. Second, before we can really have an intelligent debate, we need to agree on the basis of what is. Using my own definition of both terms, I say that we have no plan, and we probably could never have one, because there is no authority to implement such a plan, and because there’s probably a great inability to agree on who gets what in a number of the major elements of our water uses. The third plan, do we have a water policy in this state, and we should not discard it wholly, or change its basic outlines. We can move to an instream-flow debate without doing either a state water plan or a major modification to state water policy.
First of all, I have an announcement to make. There is a Metropolitan Denver Water Authority. It has existed since 1985. I have to admit that sometimes I feel like the invisible man when I come to these meetings because I always hear the new speaker say "What we need is a Metropolitan Denver Water Authority!" Let me take a few moments to describe the Metropolitan Denver Water Authority so you know what we’re talking about, or at least what some of us are talking about.

The Metropolitan Denver Water Authority was formed in 1985 under Colorado Statutes and is comprised of about thirty water users and distributors, ranging all around the South and Western perimeters of the City and County of Denver, stretching into Adams, Arapahoe, Jefferson and Douglas Counties, as far inland as Loveland and as far north as the Thornton-Northglenn area.

When we talk about a Water Authority, first we have to decide who we’re talking about because people have many different ideas about what a Water Authority is or could be.

For example, I got a kick out of a letter that I got from the Governor the other day. I’m sure many of you received similar letters. It was the form letter that went out to people that had feared it would be a "Monster Authority." Let me take a few moments to describe the Metropolitan Denver Water Authority, however. It was the first thing the letter said was "What we really need is a Metropolitan Water Authority!" We’ve obviously had a Metropolitan Denver Water Authority and you know what we’re talking about, or at least what some of us are talking about.

As I mentioned, the Water Authority was formed under Colorado Statutes by an intergovernmental agreement of large entities that were involved in the drafting of the establishment contract that set up the Water Authority. For example, Tom Griswold of the City of Aurora was involved along with a number of others. That agreement provided for protection of the interests of all parties, large or small. There’s no reason why counties couldn’t join or raw water providers. The opportunities are there.

Larry W. Berkowitz is President of the Metropolitan Denver Water Authority.

The Water Authority could serve in the role that the Governor envisions but in a way that would not be threatening to the metropolitan area or the rest of the State. I say non-threatening because we have to recognize what the Authority can and cannot do. What the Water Authority cannot do is condemn water rights. As I mentioned when the Water Authority was first formed, there were a number of comments to the effect that it was going to be a monster running wild in the State condemning everyone’s water rights only for the benefit of the metropolitan area. Neither the statutes nor the establishing contract of the Metropolitan Denver Water Authority provide for the condemnation of water rights. Rights-of-way can be condemned, but that’s all.

In closing I’d say the Water Authority would welcome any opportunity to assist the entire metro area in developing water supplies in the way that would be most efficient for the State. The Commissioner from Summit County, Mr. Levengood, said that the Western Slope Counties ought to be involved. Western Slope Counties could be involved in the Metropolitan Denver Water Authority. There’s no prohibition on that. The articles were amended last year to provide for participation by others, other than the direct users of the Two Forks project. So I think that involvement would be welcomed. With such involvement, the Authority can accomplish what the Governor and other parties may have called for.

Larry W. Berkowitz is President of the Metropolitan Denver Water Authority.
Dean Kittle
Pros and Cons of a Metropolitan Water Authority

I have been asked to address agricultural producers' feelings about a metropolitan water district. Now we're not talking about the existing one...we're talking about what we assume was the one the Governor called for in his speech, which I think has much greater legislative power envisioned in it, much more authority. But since you've asked me to talk on the subject of water, I thought I'd open my remarks today, since Greg Hobbs isn't here, with this splendid and much-needed clarification of the water picture in Colorado. I pass it on to you as a public service, in the hope that it will ease the worries of those of you who subsist in this water scarcity of economy, and see themselves concerned with the unfixed nature of the cost of water.

The Department of Interior reports there is a slow, but noticeable, uptrend in the cost of utilizing water and the continued slowdown of the eastern drawback. In order to clarify the terminology of the experts, it should be noted that a slowdown is not as good as an uptrend in the drawback. But it's a good deal better than either a speed-up of the slowdown or a deepening of the drawback, and it does suggest that the climate is about right for a major adjustment, or at least a rejustification, to the slowdown of the slowdown. Turning to irrigation water, we find a definite decrease in the rate of increased utilisation which clearly shows there is a slowdown of the loadshed. Of course, if the slowdown should speed-up, the decrease in the rate of the increase in the use of water, then a slowing down, then a slowdown is then slow and final a leveling off of the use. It's hard to tell before the slowdown is, whether a particular pickup is going to be fast. At any rate, this dry summer is just right for a pick-up, especially if you're about 17, unrained and driving a red convertible. Unfortunately, this is typical of the confusion that pervades the water rhetoric that we hear today. I truly do not want my remarks here today to add to that confusion, or to mislead those who are even harder to position on whether a Metropolitan Water District, as recently proposed by the Governor, along with others who should know better, is good for Colorado. The policy development process of our 15,000 member family organization begins meeting in Vail starting on Sunday of this week to discuss what agricultural producers see in the water picture that needs developing in their policies for next year, and they may suggest change in existing policy. But their policy as adopted last year is a rather lengthy one. It says, "We oppose a large Metropolitan Water District." Now what exactly they mean by that, I'm not sure, but I'm going to project what I think I've heard in the discussions. And I've heard some of it here today. Rich Levine said in his discussions he thought "a Metro Water District is fine, but it's gotta include us." I think that's what all the folks in the state feel. The folks out at Sterling tell me "Maybe it's not too bad if we're part of it." And the folks at Grand Junction, Cortez and Alamosa also say "There may be nothing wrong with a Metro Water District, but surely, if the larger counties feel they ought to be a part of it, the water is just as important to the downstream counties.

So, I don't know where it leads us, but let me give you what I think are the basic reasons: (1) To protect agriculture, one of Colorado's largest industries — agriculture has a $9 billion impact on our economy, with irrigated sales amounting to $3 billion. The 3% of the working population involved in the production of food products use 90% less of the water that's used in Colorado, so it's a real commodity for agricultural producers. Part of the problem is that water is distributed through an elaborate system of water companies and ditches, and if you start programs which change the whole pricing structure of water, a large Metro district, I think, has to demonstrate to those of us in the rural areas of the state, that it isn't monopolistic. There are various reasons that people sell their agricultural land, their agricultural water, but eventually price plays an increasing role in those decisions, and that leaves the guy farther down at the end of the ditch with an ever-increasing and perilous problem. I think one of the things our people are saying is that when enough water is diverted to other consumptive uses that do not return flow, then there isn't water for those rights at the end of the ditch, that somehow they've got to be a part of the negotiations earlier on than they are now. We're not sure what changing present methods will be as well as present ones.

While we, as agricultural producers, feel that the Colorado Legislature has treated rural Colorado very well, the Metropolitan Legislature has looked at Colorado as a whole unit. And it's dominated, if you look at maps and put pins in as to where Senators and Representatives come from in this state, you will recognize that the front range area already has the political power to do whatever they want to do. But luckily we've got an enlightened Legislature that has, to this point, said, "It's important to keep all of Colorado sound." Now we argue about that on various bills and are differences of opinion, but the truth of the matter is we've been treated well. But we're still very nervous about the one-man, one-vote decision in the rural areas of the state. We still wake up each morning wondering when the hammer might fall, and we think that moving toward this metropolitan water power would be a step toward creating a tighter political situation for us. Whether our members live in Montezuma, Routt or Sedgwick Counties, our farmer members know that the city folks have a good view of things and we want to appreciate the abundant supply of reasonably-priced high quality food and Fiber they send to town. But they aren't sure that means they understand their need as fast as we producers.

There's been a lot of talk here about the fact that we ought to change farming practices. We in Farm Bureau recognize that's a task that we need to look at, but look at it for many years. It's a little difficult to use deep irrigation on what we call fields. That works fine in orchards, it works fine in the vineyards of California, but it's a little tough on a field of barley malt. There are things that we need to be sure that we understand before we say we ought to change them. Our members have met the day-by-day problems of new crops. Our day-by-day problems as a reason to be in the political process, and it is not fraught with the dangers of its being put into the preview of legislative direction. Finally, some good things are happening in rural Colorado this year because we have an established working water storage and distribution system. Fragile as these laws occasionally appear, it's working. And, I think, our farmer rancher members feel if it's working — don't fix it.

Now, having said all these things against a huge monolithic, dictatorial powerful central metro water district, are we immi-

The sign upon the cafe wall said "Oysters. Fifty Cents." "Yes, quiet," the blue-eyed sweetheart said, with some bewilderment.

"I didn't know they served such fare out upon the plain." "We sure," her cowdy date replied. "We're really quite urban.

"I would guess they're Chesapeake or Baypoint, don't you think?"

"No Ma'am, they're mostly Hereford Cross, and usually, they're pink."

"I've been told, no small, what you say could be true."

"And if a man looked close enough, their pores sure could be blue."

"She said, "I gather them myself out on the bay alone."

"I pluck them from the murky depths and smash them with a stone."

This cowdy wrinkled, imagining the calf with her beneath.

"Me," I use my pocketknife, and unk'em out with my teeth."

"Oh, my," she said, "Bin animal, how crude and unfriendly."

"Your sister's acquaintance needs shivers up my spine. But, I prefer a butcher knife too dull to really cut."

"I wedge it in on either side and crack it like a nut."

"I gut them out, and if they resist, sometimes use piers."

"Or even Grandpa's pruning shears if that's what it requires." The head stood on the cowdy's neck; his stomach dill'd whirl.

"He'd be a man scared and they'd scare him, especially from a girl."

"I like them fresh," the sweethearth said, and laid her menu down.

Then ordered oysters for them both when the water came around.

The cowdy smiled generally, though her word stuck in his ears.

But he finally fainted dead away, when she said, "I'll have mine raw."

When we talk to each other about a Metropolitan Water District, we can say it's in folks in Colorado say hopefully before we move very far, we sit down together and define what we mean by plan. Define what we mean by a Metropolitan Water District, and enjoyed your remarks, and I was pleased to hear what's occurring in the present Metro Water District, the kind of bringing people together to accomplish goals, but that's not quite what I had in mind. I was very surprised our present Metropolitan Water District mean, and therefore we'd like it defined. — Dean Kittle is Administrative Officer and Executive Vice President of the Colorado Farm Bureau and Affiliated Companies.

Colorado Water Rights
Monte Pascoe

Pros and Cons of a Metropolitan Water Authority

I greatly appreciated Dean Kittel’s little dissertation on the up-take and the slow-down, it actually reminded me of the population projection section of the E.I.S. There are several documents I want to refer to during my remarks; included in some you may have heard about in Gannett a week ago. However, we tend to not understand what the current discussion grew out of, what it means, and where we are headed.

They have been many iterations of metropolitan cooperation. We have had votes on regional service authorities of various kinds, some successes, and some failures. Among them, may I give a speech the Denver Water Board was now serving almost as many people outside of the City and County of Denver as it serves within the City and County of Denver. They are very substantial part of its revenues now come from outside the City and County of Denver, and that was to time to talk very seriously about metropolitan areas, the suburbs, sharing governance of the Denver water system.

As you probably know, the Denver Water Board is now governing a very serious about metropolitan areas, the suburbs, sharing governance of the water system. It is a super system. It serves most of the metropolitan area very well. It does so mostly be some entities have a partial supply from Denver and some are participating in the Two Forks project, but do not get any water at the present time from Denver. It is far far and a half year ago, and in exchange for sharing governance of the water system, which ultimately would mean equalization of rates and some other things which are very significant for the Denver water system, the Board has expect reciprocal benefits. Those reciprocal benefits would include things such as sharing the cost of cultural and recreational facilities, sharing the cost of health care, airport construction, transportation system for the metropolitan area, and a number of other things. They were laid out in very general terms.

Two and one-half years ago, the Mayor of Denver issued a statement just prior to the Board’s decision to apply for the Two Forks permit. I now want to refer to these statements, so that we may have a better idea of what we are talking about. The Mayor said that the metropolitan area had to look differently at how it governs itself and announced he was calling together County Commissioners and Mayors in the Metropolitan area for the purpose of discussing how we could look differently at governance. The Mayor went on to say that there was a mismatch in many instances between financial support and the provision and use of regional facilities and services; and that inter-governmental conflict continued over such things as annexation, funding of infrastructure, and land use planning. The Mayor reminded us there is a growing concern in Colorado Water Rights but the expectation is that between now and September a much more detailed draft of a structure for an organization will be prepared and will be available for the mayors and commissioners at the table to look at. These discussions that have gone on are what I call the incremental side of trying to bring about more effective governance of the Denver metropolitan area.

The topic of this program was Pro’s and Con’s of a Metropolitan Water Authority. The reason I put a number of other things on the table for discussion, and the reason that I referred back to my remarks of four and one-half years ago about sharing governance of the water system in exchange for reciprocal benefits, is because a shared governance of water supplies in the metropolitan area is linked with sharing of responsibilities for the water system. At last the separate fiefdom of Boulder is not included. It does not, at present, include Douglas County. Douglas County is kind of in and out of the Denver metropolitan area. They have some decisions to make within that county before they know whether they want to be included or not included. The decision to not include Boulder and Douglas counties is a testament of the time was deliberate. They simply do not have the common expectations and tests that Denver, Adams, Arapahoe and Jefferson counties do.

The Mayor concluded by saying “The time has come to recognize interdependence in a way that we haven’t in the past.”

A few days later the Board of Water Commissioners issued a policy statement that it commonly refers to. If you want to know the road map, at least of the Board of Water Commissioners, for its role in taking the lead on Two Forks and new water supply for the Denver metropolitan area, its concern about changes in governance in the Denver metropolitan area, the policy statement issued by the Board on March 4, 1986 should be carefully read. It’s an exceptionally far-reaching document. It makes very clearly that the federal government, as a federal government, is far less federal money coming into the metropolitan area, which required much more efficiency and care in how we, in the metropolitan area, serve our water needs. Hence, the Board was making a decision concerning the Denver Water Board and the Two Forks application and said the Board will also indicate its belief that important resource issues are being addressed. The Board of Water Commissioners knows that Metropolitan area must be provided before undertaking the actual construction and operation of a south Platte storage facility, which will better serve the needs of the suburbs and the City of Denver. The Mayor concluded saying “The time has come to recognize interdependence in a way that we haven’t in the past.”

Throughout this last two and one-half years, a group of elected representatives of the municipalities in the Denver metropolitan area and three commissioners from each of the three counties, and of course including the Mayor of Denver, have listened to some questions of shared governance of the Denver metropolitan area. I use those words to separate it from Larry’s (Berowitz) group, which talks about a Metropolitan Water Authority outside of Denver which does not include some of the large municipalities in the Denver metropolitan area. The so-called Group of Ten also is discussing shared governance of the Denver metropolitan area, including sharing in necessary contributions toward the burdens of maintaining a strong metropolitan community. The group has met every two months. A staff group also meets every two months in support of the Group of Ten. I believe the kind of Metropolitan Water Authority being discussed by the Group of Ten is the one which the Governor has been referring to in his most recent statements. It calls for a shared governance of the Denver system and of other water suppliers in the Denver metropolitan area and it would have substantially greater powers than Larry’s group. It would be a very significant organization because it would be implemented simultaneously with other changes in the governance of services, and even human governance beyond services in the Denver metropolitan area.

The Group of Ten has now agreed on a set of general principles. Those general principles will be outlined to the press in a few days. Some of them, of interest to you, include, and this goes directly to the point that Larry was speaking about, that it is not good enough just to say they may stay in the same old mind, wholesale authority. That is, it would acquire water supplies and sell them to the retail distributors. It also would include, I will say, some other municipalities. Sprawl is included, and districts would not be included. Probably, the counties would participate but not directly in the acquisition and delivery of water. This is the Board speaking. "Our project shows functions, not to take away authority from the municipalities or counties, but to try to deal with multi-jurisdictional questions that arise in a community such as the Denver metropolitan area where we need to share responsibility for barriers and benefits and to present a unified public face. The Group of Ten will go forward simultaneously with what is hoped will come out of the recently convened Governor’s Metropolitan Transportation Planning Agency. It is not expected to do anything that would directly affect the metropolitan area is one of the key elements for a viable, workable metropolitan area. We hope the Group of Ten will go forward, simultaneously, with shared responsibility, and enhanced authority, for a metropolitan air quality council, and I think that must of that, excepted before or after the vote on the cultural facilities tax this fall, it will go forward, simultaneously, with sharing of responsibilities for cultural facilities, and perhaps recreational facilities. Chips Barry has a study of metropolitan and Front Range recreational facilities underway now, including those of Denver, Jefferson County, the Forest Service and other entities responsible for delivering recreational services.

At least the items just listed are on the table and an intimate part of the discussions at a shared governance of water supplies in the Denver metropolitan area. It has been suggested that the Group of Ten often should be talking about a Front Range entity, at least for water. It has been suggested headwaters counties be included. Dean Kittel just suggested that it should include the entire state. We have a lot to chew on to just get our feet under the chair in this area. The decision to not include Boulder and Douglas counties is a testament of the time was deliberate. They simply do not have the common expectations and needs that Denver, Adams, Arapahoe and Jefferson counties.

I am encouraged by the discussions. They go slowly. They are necessarily general, but the expectation is that between now and September a much more detailed draft of a structure for an organization will be prepared and will be available for the mayors and commissioners at the table to look at. These discussions that have gone on are what I call the incremental side of trying to bring about more effective governance of the Denver metropolitan area. The topic of this program was Pro’s and Con’s of a Metropolitan Water Authority. The reason I put a number of other things on the table for discussion, and the reason that I referred back to my remarks of four and one-half years ago about sharing governance of the water system in exchange for reciprocal benefits, is because a shared governance of water supplies in the metropolitan area is linked with sharing of responsibilities for the water system. At least the items just listed are on the table and an intimate part of the discussions at a shared governance of water supplies in the Denver metropolitan area. It has been suggested that the Group of Ten often should be talking about a Front Range entity, at least for water. It has been suggested headwaters counties be included. Dean Kittel just suggested that it should include the entire state. We have a lot to chew on to just get our feet under the chair in this area. The decision to not include Boulder and Douglas counties is a testament of the time was deliberate. They simply do not have the common expectations and needs that Denver, Adams, Arapahoe and Jefferson counties.

I cannot yet predict the success, but I know people of enormous good will, and good sense and intelligence are working on these negotiations.

Monte Pascoe is President of the Denver Board of Water Commissioners.

Colorado Water Rights
NWRA Summer Meeting
Keystone

Who says NWRA staff doesn't know how to relax? Tom Brennan, NWRA Executive Vice President, and Elizabeth Singleton, NWRA Administrative Assistant.

If you don't believe some people are absorbed, then take a look at (l. to r.) Alan Hensel and Rod O'Hare of Peabody.

Reservoir Rights are the subject of this conversation (l. to r.): Jerome C. Mevis, Will & Mayes, P.C., Washington, D.C.; Harold Mielke, City of Colorado Springs; and Ed Polkney, Denver Water Department.

Two CAB members (l. to r.) Ed Donn, Southwestern Water Conservation District, Pagosa Springs, and Ralph Curtis, Rio Grande Water Conservation District Alamosa, are giving their full and undivided attention to the speaker on reserved rights.

CWC President Tom Griswold at the Monday NWRA Opening Session.

NWRA Board of Directors in action.
When I was asked to speak about the fine-tuning of Colorado’s water law, I’ll have to admit I had mixed emotions. I wasn’t sure exactly what I was going to say.

When we really think about it, we are always fine-tuning things. We always have to fine-tune automobiles; we are always fine-tuning those. But we also fine-tune processes—processes that typically prescribe methods for achieving certain goals. And, we fine-tune policy, whether we like it or not.

Now, just why do we tinker with things like this, that constitute our society, and our environment and the lives around us? It’s usually because we believe that they are not working properly, that they’re out of date, that they’re not responsive, that they don’t serve or suit our needs anymore.

But sometimes we tinker just because we can’t leave well-enough-alone processes as they are prescribed by the status quo. (Status quo, incidentally, is Latin for “the more we’re in.”) And these people believe that we must have a constant state of change, that if we don’t have a flowing state of change, we’re really not progressing. They believe that several persons must be involved in the decision-making process. And, I cited Murphy’s Law when his advice on change. Bill said, “If you have nothing to lose by change, relax; if you have everything to gain by change, relax.” I think most changes are advocated by relaxed persons—those who really don’t have anything at risk.

Our State water policy is not antiquated. It is not out of touch with the needs of the citizens! Most of the proposed changes over the past eight years were initiated by special interests. Locally, personally, it’s not a surprise, and it’s certainly not a surprise.

What exactly do we mean when we say “fine-tuning”? I asked several persons what popped into their minds when they were asked to answer my questions. I asked them, “How long do you think it will be until we have an equal right to the water?”

Most of the responses that I got were something like this: “trouble,” “risk,” “confusion,” “not necessary, or necessary maybe in limited areas, but with caution.”

Now, why do you suppose I got this one-sided response? I must admit that if I put on a suit and tie, or furnished an argument. It was not statistically based on a serious of very objective questions asked to a minimum number of the population to ensure a 95 percent confidence level in the answer. I merely posed the question to a few of my friends with whom I regularly associate. That probably explains why I didn’t get any responses that advocate massive reform in the State water law on behalf of environmental preservation and the public interest. So, the lesson, I guess, to be learned here is that if you want the right answer, ask the right persons the right question.

Seriously, the people with whom I dealt I think are forthright and intelligent. They don’t advocate massive reform or who gave my question some thought and then gave me an honest response. Let me point out that the majority of those persons with whom I talked, but not all of them, generally defined Colorado water law and Colorado water policy as pretty much the same. They believe that the State water policy is embodied in our Constitution and the statutes of water law.

So, back to the question that I asked in the first place. Why do you suppose I got this one-sided response? There are two major reasons, one of which is a major reason for the lack of law or policy when it already works well? (2) When you begin to tinker, you introduce an element of risk. The risk is that the process will not be exactly what you wanted it to be. Sometimes the fallacy that’s there is not immediately apparent. The error may not manifest itself for many years to come, and nothing is done about it except for a mistake at the time.

So, there’s always a certain degree of uncertainty involved with change. I believe that the element of risk that’s involved here is inherent in the process that we use to make changes in our law, or to fine-tune our law. The process about which I am talking has a lot in common with those which are listed as the basic tenets of Murphy’s Law.

Some were considered to be a little bit more than fine-tuning—more in the category of reform. I am sure you will recall the proposed Colorado Water Plan that was decried as being a scheme to regulate the water quality that bills on which we’ve argued over the years. These are examples of those that are more in the category of reform.

Now, there’s一直 a tendency to try to ensure that bag is not carried with it before it was finally voted on! Remember the Durham Amendment? Remember the Ament Amendment? And all the others? How about House Bill 1158 in the 1987-88 Session that dealt with wildlife resources as they relate to water resource development? It was later expanded to support the development of irrigation water rights and to make an allocation of water to Indian water development. That’s an example of fine-tuning.

Now don’t misunderstand me. Not all bag is bad. On the contrary, a bag is a feature of our judicial system. It provides the greatest good for the greatest number for the longest time. And it should recognize and affirm individual rights, but the bag created for the purpose of our needs. And if we are to maintain a democratic society approach, we probably don’t have a better way to do it than the way we’re doing it now with our State legislature. If anything, the process is probably just a little over used.

Representative Chris Paulson, at the Legislative Forum that he sponsored, along with Representative McElhain and Senator Bishop, at the State Capitol last week, described our State water policy as having an inherent time limit. He says that we are out of date, that they are not responsive, that they don’t serve or suit our needs anymore.

So, is fine-tuning the law or policy really needed? Sure, I think it is. It’s needed, but with a little less zeal and a little more thought. We need to find the proper change in our response, and I interpret these objectives to be as follows:

1. Provide adequate water supplies to support healthy economic development for people, agriculture, industry— for jobs.
2. Protect individual rights to property and freedom.
3. Protect and enhance environmental values by prohibiting or inhibiting individual rights, or a healthy economic growth.
4. Allocate costs on the basis of benefits received.
5. We have to avoid the trap of the political process. We have to avoid the trap of the political process by avoiding policies that are advocated by relaxed persons—those who really don’t have anything at risk.

I think most changes are advocated by relaxed persons—those who really don’t have anything at risk!

Within Colorado, we have our own Water Quality Control Commission, which assesses water quality impacts related to removal of water from a stream and attempts to balance water quality and water rights. We also have the Division of Wildlife, which is responsible for the protection of fish and wildlife. We also have the Department of Agriculture, which is charged with the protection of water resources.

In addition to all of this State and Federal regulatory jurisdiction, there are also local governmental bodies that are empowered to address the manner and location of diverting water to a beneficial use. To further complicate matters, some of these local governmental bodies empower their agencies to establish procedures, the jurisdiction to include a variety of environmental, water quality and socio-economic standards which go far beyond their jurisdiction. Each of these Federal, State and local processes are public actions, and offer easy access for an interested or even a disinterested party, for that matter, to cause disruption and delay.

In the past, when most of our State’s water projects were built, the jurisdictional authority was very, very concentrated, a little bit more than fine-tuning. But the Federal Government looks to the State and Federal jurisdictional jurisdiction. We really think about it, we are always fine-tuning. We really think about it, we are always fine-tuning, and we really think about it. We really think about it, we are always fine-tuning.
Barry Nelson
Pros and Cons
of Fine Tuning Colorado’s Water Law

As a supplier of water, like many of you, I have a great number of persons relying on me to do the best job I can to provide water supplies whenever they want and whenever they need.

Some people rely on me to do their work better, when they are deciding how, when, where, and for what purpose Colorado’s water resources will be used.

It is an ancient and true law — the public trust doctrine. This is something that a judge just pulled out of the air. I’d like to read a couple of comments on that. This comes from an article written by Ken Wetter, John Carlson. It says, “the public trust doctrine is a doctrine with no defined parameters, no known criteria for its application, and no standards to guide the public policy in the public interest.” The public policy must subordinate authority to plan and define the course of our society in the hands of judges and gives them no guidance. How will it aid our society to undermine its base of social and economic security? Fine tuning.

I knew a man. He wasn’t my friend, but I did know him. This was a hang-glider. He also understood aeronodynamics quite well, so he kept modifying his hang-glider, fine tuning it. He could do more maneuvers, fly faster, do a lot more things that the rest of the guys that he went hang-gliding with could do with their kites. But he continued to fine-tune his kite and you guessed it, the kite and he fell out of the air and it killed him.

So one wants to change Colorado water law unless they’re going to personally gain by doing it. Don’t kid yourself. Who If they want to go fly fishing, there are areas where the streams are about the right water level and the water is clear, and they can fish in them. If they want to go rafting there are some rivers that do have enough water in them to raft. But you can’t find a place where you can do both. If you keep changing Colorado water law, you change the value of the person’s water right, you change the value of the land, you change the value of the land that’s connected with that water, whether it’s a farm land, a factory, a subdivision, or a city. What will happen is that the market place will always determine the value of the person’s water right.

The value of our water can’t become an unknown, or lose its stability if you expect people to invest in Colorado’s future. Colorado can’t afford to lose its agricultural economy, and Coloradans can’t afford to put in water on the political auction block.

There have been some attempts at fine tuning. Harold pointed out a few cute ones.

There’s some more, too. One of them is like to call the horse-watering bill. Out of the fringes of some of the cities, you have the horse-watering bill. Every day the horse is used by someone, whether it’s a man with a well permit that lets him use that horse. Some of them are helping the horse with an additional horse. Here, the people move to this place, they have to fence off their property so nobody can trespass on it, and then they figure that they have to get a horse in the barn and there’s no point in horses running around the area. They buy another horse because either the kid can go together or the wife and husband can go together. The next thing you know they’ve got the fenced-off place and they’ve got horses out there, and so and so forth. Their well permit was for in-house use only. It was issued that way because pumping water in that area would be injurious to another existing water right somewhere. But they were entitled to in-house use only. Well, it’s kind of hard to invade the horse in to drink, so they started taking their horses’ water outside, and you had to spill enough while you were doing it so you could have a little grass for them to eat, too. And then, evidently, somebody complained and said, “all right, you people, you have to keep this in-house only.”

So they went to the Legislature and darned if the bill didn’t go through. Now they have their water and they can also use it to water domestic animals. Now that could be a herd of 130 head of livestock, or 2 horses, however you want to interpret it. It could considerably increase their property values, too. Down where I live, my home was one of the first homes in that area, and my well permit was for domestic use, including lawn, garden, watering domestic animals. Several other people got wells with the same type of permit. Then about six years ago, everybody in the area wound up with a dry well. We all had to do it. So after that the State started issuing in-house use only permits for that area because the underground water table was too fragile. My property is worth more now because I have a well permit that lets me use my water for something besides just in-house use only. People who have built theirs since can only use their well water in the house. If you changed the law down there you’ve increased their property rights and you’ve devalued mine.

There isn’t enough water everywhere for every kind of use. We want to put it to the best use, however, for people to do things in areas that are ready for that type of thing. If you want to go fly fishing, there are areas where the streams are about the right water level and the water is clear, and they can fish in them. If they want to go rafting there are some rivers that do have enough water in them to raft. But you can’t find a place where you can do both. If you keep changing Colorado water law, you want to do. We don’t need to fine tune Colorado water law. We need to change the laws that are being imposed to stop projects, water development projects, for the future of the state. An example. $40 million. I.E.S. hasn’t accomplished much of anything. I think fine tuning Colorado’s water law is a fine tool to use with his hang glider, if we keep doing it, we’re going to have a ball of a week.

Barry Nelson is Superintendent of both the Rio Grande Canal Water Users Association and the Santa Maria Reservoir Com­pan­y.
Larry Simpson
Pros and Cons of Fine Tuning Colorado’s Water Law

It’s awfully hard to add to what Harold Miskel and Barry Nelson have said on this subject, as far as what the problems are. It kind of reminds me a little of a statement that was made by General Montgomery to Patton when he was criticizing him berated by General Montgomery about what a s.o.b. Patton was. He commented, “Yeah, but you’ve got to remember, he’s a s.o.b.”

I think that we have the same situation here. We have a lot of people that say that Colorado’s water law is basically a s.o.b. But I say, referring to our predecessors and ancestors; it’s something that’s been developed over many, many years.

I had an interesting opportunity fifteen years ago to spend some time with a couple of gentlemen—one from Pennsylvania, and one from Mississippi. They were charged with rewriting the water laws in their respective states. The reason they were doing that is because both states were operating under the riparian water rights system. The shortage of water in their states had reached a point where they were running out of water in some other fashion to maximize beneficial use.

They came to Colorado. They looked at Colorado’s water law system, and they patterned their laws after that. Those modified laws are now in existence in Pennsylvania and Mississippi. Florida has since followed suit.

I think after this year’s drought in the midwest, you are going to see many changes in the riparian water law systems that many of these states use. Interestingly enough, the biggest problems they had in trying to address a new appropriation doctrine, similar to Colorado’s law, was to try and protect those beneficial uses that had been established under the riparian system. That’s something Colorado has never had to deal with. California had to deal with that. They have three different forms of water law in the State of California, and some of them exist within the same county. Los Angeles County, for example, has appropriative water, riparian water, and Spanish Land Grant water.

Actually, Colorado’s water law is very simple compared to many other states. This water law has not only been modified and adjusted over many, many years by the legislative process, but it’s also a body of law developed through the courts. It’s a dynamic thing. It is being fine tuned by the courts through interpretations almost on a case by case basis.

I think that there are a number of people that have been in this business long enough to remember 1969. That was when the State Legislature decided to rewrite Colorado’s water law. It’s taken until now, close to twenty years later, to even figure out what they said, and to develop a body of law within the judicial system so that the judges understand what they are dealing with. We are just now beginning to stabilize again. Colorado’s law though many years of turmoil after the 1969 Water Rights Determination Act. The process is one that should not be taken lightly.

The Legislature, over the last few years, has been faced with a great number of water bills. I think we have a system whereby if a change is proposed, then all the interests must be given a chance to present their point of view. Every once in a while a “Christmas tree bill” comes along. HB 1269 was a beautiful example. This broadly-titled bill came bouncing in, well-intentioned and well-meaning. It was modified and aged so broadly that there could have been thirty or forty more amendments to it, relative to almost anything. Colorado water law is something that’s dynamic, almost a living body of law, guidelines and regulations under which we operate to apportion this very valuable resource. If someone needs a modification to their law, it is generally because they are trying to do something different, to try and get more water or make it into “wet” water.

What constitutes beneficial use has been challenged many times as well. Here too, minor necessary changes can be made. For example, there was a modification made to the law sponsored in part by the water users themselves through the Colorado Water Congress, in close association with the Legislature, to provide for minimum stream flow rights under a very close, close watch. Through a simple example of a train that’s taking missiles down the pipe, because they’re people that generally have to have a chance. They don’t particularly care what the cause is, whether it’s laying down in front of a train that’s taking missiles to the submarines in Seattle, whether it’s driving spikes in tees or chopping up chainsaws. These are laws that live for a cause. Give them a sign and a place to march, and they don’t care what the sign says. All they’re interested in is a cause. If you listen to the wind, most of the people that are saying we’ve got to change the water law are those who want to stop development in Colorado. They figure that economic growth and increased population can be stopped if they can only stop water development.

You don’t hear the people that are using the water, the people that own the water, saying let’s change the water laws. That water law is basically what protects their property rights, and I think Director Barry provided a beautiful example of what happens when people want to redistribute everything. It works well in the first instance until you find out that somebody got a little more than you did or that you frustrated yours away and now it’s time to go out and redistribute again. They have a name for that. I think there’s a country that encompasses a lot of Europe and Asia that’s right now trying to address major problems that resulted from adopting that same policy many years ago. They’re still trying to figure out how to make their system work. Maybe they need to come to Colorado and adopt a country law similar to our water law.

In fact, that Colorado Water Conservation Board provision for minimum stream flows was looked on skeptically by many people. And the jury’s still out, as to whether it will work, because it does not inhibit the changes and modifications of the water, if anybody wants to change use or the point of diversion. But to open that up, so that anyone who wanted to pursue a minimum stream flow for whatever reason, and many times these are filed in hopes of stopping water development projects, would be unwise.

This works against the intentions of the people that worked together to develop that change in the water rights law. As I say, the jury’s still out. It takes two to twenty years to determine what the effects in changes in water right laws are. I think that as far as fine tuning Colorado’s law, it’s going to continue. The courts will determine the degree of fine tuning as well as the Legislature when enough entities in this representative form of government feel that it’s needed badly enough. State water policy is, in fact, that body of law. That is the guideline under which water is put to use.

Lately we keep hearing that we need a new state water policy. While this is an appealing catch phrase, the question still remains, do we need a new one? We already have a good state water policy. We have a solid water planning process that evolves from the grass roots up. Do we really need some bureaucratic telling us what the state plan should be—what our state water law or policy for development should be? Frankly, I don’t think there is anybody that wise. I don’t think any one person has the wisdom to come up with a state plan or a state policy, or to write one all-encompassing state water law. It has to be done through the efforts and results of many, many people working together.

If there is an overriding need for some modification in the law, then it should be addressed and dealt with through the legislative process. To approach fine tuning as a goal will guarantee that we’ll end up with something like the Water Rights Determination Act. You may recall the fine tuning that Congress dumped on us just recently with the income tax legislation.

What’s your goal when you get your goal is simply to fine tune, because, believe me, if you put out a goal of fine tuning something, you’re going to find many people differing as to just what needs to be fine tuned. The one sure result will be they will find something to fine tune. If you give the Legislature the chance to fine tune our water law, they’ll fine tune, only you probably won’t like the results.

I don’t know whether anybody could sit down today looking back twenty-twenty hindsight over the last one hundred and fifty years and come up with a better system than we have right now. I think that is illustrated by the fact that other states are still copying Colorado. I think that’s the proof of the pudding. If ours is so bad, then why are other people copying us? I think, once again, about who wants to change water law. Listen to the wind, listen to who’s saying we’ve got to change our water law. It’s those who want to stop water development. They want to stop growth. They want to stop nearly everything coming down the pipe, because they’re people that generally have to have a chance. They don’t particularly care what the cause is, whether it’s laying down in front of a train that’s taking missiles to the submarines in Seattle, whether it’s driving spikes in tees or chopping up chainsaws. These are laws that live for a cause.

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Larry Simpson is Manager of the Northern Colorado Water Conservancy District in Loveland.
Let me explain it to you, and I'll do it in about 5 hours, and you'll understand it after I'm through. I know that all of you are going to have to be able to do it in about two minutes. Take it from one who knows. We're going to educate people to what it is that you do.

Does the City of Colorado Springs have a plan for water in the mountains or at the end of the day? Now, hold that thought for a minute, and this is the most difficult part of it. Harold Miskel has a plan somewhere. And he's doing it out of spite. If that isn't the case, Harold has a plan somewhere. He's getting it in order to provide for irrigation, to provide for gardens, to provide for beer in parks that didn't exist without that effort. Harold isn't undertaking that effort for spite. In his case, that might be true, but most people that are involved with the provision of water service are going to enhance the environment of a dry area. We all value the water that's flowing in these streams in the high mountain reaches of this state. We all come to visit them. The Membership Forum and Water Workshop was not held in Laramie. It was held in Keystone and there's a reason for that besides the heat and the air conditioning. Do not send me a note telling me that Laramie's next on the schedule.

There is a surprise, next week ... I want you to think for a second about what happens if you don't have any federal or state environmental laws. How many of you in the provision of water service would be anxious to go back to pre-65 and just have the ability to move into these mountain valleys, develop, and provide a product? I'll stand. Just don't tell your boss that you're raising your hand. Outside of that, I don't think there's anybody in this room that's charged with the responsibility of providing water service that wants to go back to those days. But you haven't made that known to your customers. Your customers still believe what the media is telling them, that you are interested in wiping out the environment of half of the state. Until you get them to believe differently, you're going to have problems doing your job.

And you're not going to have problems providing that service to let the state grow.

In addition to you individually as water providers, undertaking a big job, I think with the organization to be more aggressive. I understand that we are in the process, or the Congress is in the process, of forming a PAC. To me, I think that's very important. I think you've got to get educated members of the Legislature and elected officials about what it is that you're about. And PAC's are the way, unfortunately, that you get people's attention these days. You can't do it without that direct participation in the political process, so I want you to encourage you to do whatever is necessary to get that PAC started. I think it's very important. It's one of the most difficult, I think, for many of you, in this room to swallow, that you are going to have to be willing to accept some changes to the status quo and I think those changes have to be based in terms of changes to the law that reflect the values that are now in existence in this state.

And we've got to have this Constitution exactly reflected the values of its citizen. Exactly. They were out to conquer a new frontier. And, there was some talk of the ideal that you had to give immediate access to that water. And so the law was drafted that way. Now there are a hundred different constraints on that kind of unfettered quest for water. All of those constraints are embodied in the federal laws, the state laws, and the local rules and regulations. If you want to build something into the law now make sure that search for water will not destroy the other values, but that doesn't mean the system will stop.

I think there are several areas that need to be addressed. One of them is this preoccupation with the basin of origin. I can think of no more obscenity than a basin of origin concept. I want to get back to that and explain in about 5 seconds. But let's again talk about water as both an amenity and a commodity. And we're going to have the trouble that we're going to have the trouble that we're going to have when part of my job, when and if I'm ever out of the Legislature, is to help you provide that water service. Yet, most of you are villains. That's part of the reason why people aren't satisfied. You've lost them. You've lost the people. And you don't have the proper system. And you bring forth some ideas that you're about. And PAC's are the way, unfortunately, that you're going to have to get people's attention these days.
I'm fairly new to the Legislature, I'll be a Sophomore next year actually, so I really enjoy these kinds of forums because they bring me up to speed on water and I can ask a lot of questions, which really helps me. I didn't realize earlier what they bring me up to speed on water and I can ask a lot of questions about water. I thought it was just fun and simple and you understood everything but you found out later you really didn't. I wasn't aware of it. I didn't realize the complexity of some of these issues.

Dean Kittle said, "they were sent here to confuse," so I guess I listened to his address. I was in the room, he said we ought to have the Legislature decide this, and I just went, "oh boy." It reminds me of two gentlemen who were watching the proceedings one morning when we were opening up. As the Chaplain was saying the prayer, one gentlemen leaned over to the other and said, "Is he praying for the Representatives down there?" The answer was, "No, he sees the Representatives and he's praying for the State." That's basically the feeling I had, a lot of nervousness. The Legislative process down there is a fairly human exercise, it's people presenting constituencies that are from all walks of life, and represent all types of people. So it's going to be an interesting exercise.

I'd like to put up a couple of assumptions, and then put in a couple of variables and see where I see this thing going. I started thinking about how do you do something of this magnitude, what's going to happen in a bill like that? Is it going to happen? Who's going to have to agree on it to get a majority? The first assumption I make is it's going to be incremental. All this is not going to happen at once, it's not the way the legislative process works. It's not the way government works, and in some ways that's very good, because it's very stable, and things are hard to make changes. So let's take a look at this.

Government to me reminds me kind of an amoeba. If you guide it, if you know where you're going, you can make something happen. But if you don't, you have all sorts of problems stopping it. That's where I see our role as coming in. I think that's where it's going to be. What's the last bill that went through for a Denver area into conservation. I see how little dent I make in it if we do that, I think we're going to have good legislation. if we don't go through it, I think we're going to have good legislation.

Representative Matt Jones Legislative Observations

Senator Timman "Till" Bishop of Grand Junction addresses workshop participants on the 1988 Legislative Session.

CWC Leadership Workshop

No sleeping beauties allowed — audience was awake and listening.

Senator Timman "Till" Bishop of Grand Junction addresses workshop participants on the 1988 Legislative Session.

Veteran journalist and water man Bill Nelson of Grand Junction is still going strong.

Liv R — Frank Cooley, Secretary-Counsel, Yellow Jacket Water Conservancy District; and Andrew Tczap of R.D.R. Development Authority; and Andrew Tczap of R.D.R.

Director, Colorado Water Resources and Power Development Authority; and Andrew Tczap of H.D.R.
Levengood: State Water Plan/Policy continued

Continued from page 2 and on reflect on what exactly he is saying about how we as a state have opted him and everyone else in this state out of the final decision-making process. What is even more incredible is the fact that he wants the citizens of this state and its elected representatives to determine whether we are going to "save Cheesman Canyon?"

9. Comprehensive state policy should approach water resources development or water quantity in the broadest sense, balanced by water quality considerations. The latter is a federally mandated program, but must we in this state continue to ignore the nexus between water quality and quantity? Isn't this area an excellent example of what the governor spoke about on July 14 that he wants the citizens of this state and its elected representatives to determine whether we are going to "save Cheesman Canyon?"

10. The agencies dealing with the quantity-quality issues are not now even in the same state governmental department and I wonder whether they even talk to each other about quantity-quality interrelationships? Isn't this a role we as a state are not currently performing? Role we are related state functional organization and structural organizations need to be examined if we are to have a successful cooperative water policy.

11. Data sources relating to available water resources need to be developed or enhanced by state agencies. Is there any commonly known central information source on water resources in Colorado? We cannot plan without this knowledge.

12. Jefferson County Commissioner Rich Fentenlinden was a member of the CCI Water Policy Task Force. The Task Force's draft policy recognized that emerging water-related conflicts need intervention. Solutions, whether regional or local, are needed for our state's water development and management needs. It is the duty of the state and local governments to ensure that all water development is consistent with the state's water plan.

13. The governor called upon the legislature, as a question of equity, to establish a "basin of origin" protective doctrine, as was suggested, by funding consumptive storage or guaranteeing minimum stream flows. Summit County made out pretty well, we believe, in our 1985 agreement with Denver — we obtained snowmelt water for our major industry, skiing development water for our municipalities, a guaranteed lake level in Dillon once an East Slope storage reservoir is on line, Denver's participation in our non-point source water pollution programs, and storage for the towns of Silverthorne and Dillon. We also maintained the integrity of our "1041" permitting system. Denver, undoubtedly was practicing a bit of "basin of origin" mitigation in its agreement with Summit County.

14. There are two things that stick in the craw of many people in Summit County. First, Two Forks diversion will kill the rafting industry on the Blue River, and Silverthorne, as I mentioned before, is going to experience vastly reduced stream flow through town which could inhibit its river front zoning. I must add in fairness, though, that Denver is working with the town on a reclamation program of the Blue River. But in both cases, it boils down to a matter of lost opportunities, our economy, our ecology, our life-style, and our potential for future growth in that adversely affected by depleting the Blue River's flow and it may very well be the same for those in Grand County further downstream, who will not have the chance to use water for their own needs. How can I, as an elected official, turn my back on these people? I cannot and shouldn't be asked to in deference to the priority system.

Other basins in Colorado have been and will continue to be affected by out-of-basin diversions. In the future, they may not be as lucky as Summit County in that an enlightened diverter. State legislators in other states have modified their appropriation laws in order to address the basin of origin issue. Other basin states, such as Nebraska, Texas, and California. Surely, an innovative state like Colorado can address the issue as the only time we have faced the issue is on a selective basis, applying it to water resource districts' exportation projects, such as Northern Colorado's Colorado-Big Thompson project in Grand County. It applied at a time when the Bureau of Reclamation could not write the "compensatory" storage or guarantee minimum stream flows. However, as I mentioned, at the expense of another.

The governor suggested that a "basin of origin" doctrine be reconsidered by the legislature, as was the case in Grand, Summit, and other counties. It could certainly improve our learning curve. We are still today, we are still on the political line (if you only knew), we are still not dictating, and we still don't own any water. Some deal, wouldn't you say? The point is that elected representatives of general purpose government must lead, get involved, and stay involved. Willingness to do so on a general basis is another issue.

Fourth, the process as stated above has to be regionalized. Our established councils of government, which bring together state and local elected officials, could certainly play an important role in coordinating this effort, with invaluable expertise coming from our state and regional water agencies. As we said before, some basins will proceed faster than others. But at least traditional water interests, technocrats, and politicians will all be talking together at the same table.

Fifth, we proceed under the general policy guidance of the general assembly and the governor. We need deadlines and a strategic planning emphasis. Hopefully, the 14 points discussed above will be considered a valid part of the debate.

Rich Levengood is Chairman of the Board of County Commissioners in Summit County.

CWC 1988 WATER ALMANAC & DIRECTORY — 1988 EDITION

The Colorado Water Congress is in the process of printing the "Colorado Water Almanac & Directory — 1988 Edition." This 124-page publication includes directory of information, calendar of events, glossy list of terms, current water projects, summary of 1988 water legislation, and will be mailed to each CWC member. In the event that additional copies of this directory are desired, it is requested that the form below be used for such requests.

The process for developing comprehensive water policy.

In concluding my remarks, I would like to say something about the process for developing comprehensive water planning.

First, I think it needs to be an ongoing process rather than project and shelf oriented.

Second, we need to find free to borrow from the experience of other states, particularly those located west of the 100th meridian. It could certainly improve our learning curve.

Third, the key to the success of any state water policy is the leadership and continued involvement of elected officials both on the state and local levels. We feel we were successful in our three-year negotiations with Denver primarily because it was the county commissioners who took the lead and, today, continue to take the lead in our county's water planning effort. We also have a very able county manager to help us and, of course, we employ an expensive water attorney.

The very first step we took was to meet with all of the town councils and mayors and managers, the ski areas, and our water service districts to find out what they needed from a water supply standpoint. This was a period of consensus building and a time that the county commissioners were on the line to exercise political leadership. The county did not dictate terms to local entities. How could we? We didn't own a drop of water. We are still leading today, we are still on the political line (if you only knew), we are still not dictating, and we still don't own any water. Some deal, wouldn't you say? The point is that elected representatives of general purpose government must lead, get involved, and stay involved. Willingness to do so on a general basis is another issue.

I am enclosing $ for copy(ies) of the Colorado Water Almanac & Directory — 1988 Edition

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CWC Summer Meeting
Keystone

Paul Nelson (left) of Grand Junction, and Greg Trainer of Grand Junction, are relaxed and absorbed.

(Left.) Weld County Commissioner Bill Kirby, Greeley, and Vera Nelson of Nelson Engineers, Greeley, get a little animated in their conversation.

Eyes front!

John Porter (left) of the Dolores Water Conservancy District, Dolores, and Virgil Hill of the Consolidated Mutual Water Company, Lakewood, enjoy a “refreshment” break.

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