Guest Editorial

Two Forks & The EPA

W.H. Miller

EPA ghosts have come again to haunt a needed Denver area water project. In the late 1970's it was regional EPA Administrator Alan Merson who flatly declared the Foothills Project would never be built, needlessly delaying the project during a time of rapid inflation and escalating costs. In 1989 new EPA Administrator William Reilly in Washington, listened to representatives of environmental interests, has declared an intention to start a "veto" of Two Forks Dam and Reservoir — this from an administrator who had been out of an environmental interest group and into his federal job less than 45 days at the time of his decision.

Two Forks stands today about where the Foothills project stood 12 years ago when the EPA was buying spot announcements on Denver area radio stations urging the community to support EPA's hard-to-comprehend position against that needed project.

The names and the dates may change, but the circumstances seem to remain the same. A basic part of the problem lies in the peculiar arrangement between the Corps of Engineers and the EPA. While the Corps is empowered to issue or deny 404 Dredge and Fill permits under the Clean Water Act of 1972, the EPA was given "oversight" of the process. It could intervene if a proposed project would have an adverse impact on municipal water supplies, certain shellfish beds, fisheries, recreation or wildlife.

Many observers of the federal scene are asking if there is any sense in allowing EPA to exercise such broad authority. The Two forks project, when considered in the light of hard facts developed over a period of eight years and at a cost of Continued on page 3

Where is the "Public" in the Public Trust Doctrine?

By John U. Carlson

Y ears ago H.L. Mencken wrote a sardonic piece about a contest to identify the worst state in the Union. It boiled down to a fierce competition between Tennessee and California. It's easy for Coloradans to guess the winner, for we are plagued with all too many infections emanating from the promised land. The latest to reach us is a water-borne virus. (Our downstream friends may think it only a fair trade: we give them giardia, and they send us warped legal doctrines.) This unwanted gift is the public trust doctrine.

California's Supreme Court bit into the public trust doctrine in a big way: in 1983 that Court held that California water rights were to be revisited, and in this revisitation the rough question to be addressed was whether past awards of water rights were consistent with the public's present interests and values. The point of the revisitation was to assure that water rights, decreed or permitted in earlier (and under the Court's assumptions, less environmentally sensitive) times, reflected current environmental concerns.

Modern times being what they are, it was perhaps inevitable that California's mistakes should be offered up as salvation for Colorado. In 1988 a coalition of environmental groups entered the morass of litigation now underway in Continued on page 4

14th Annual CWC Summer Meeting

August 24-26, 1989 Steamboat Springs
COLORADO WATER CONGRESS
8TH ANNUAL WATER LAW SEMINAR

The eighth annual CWC Seminar on Colorado Water Law will be held September 28-29, 1989 at the Holiday Inn Northglenn, 1-25 & 120th Avenue, Northglenn. The class will be limited in size and will include members of the state legislature and congressional staff members. The registration fee will be $600 for Colorado Water Congress members and $600 for non-members of CWC. (The registration fee includes two lunches and one dinner.) The registration form — plus the preliminary program — is available upon request at the Colorado Water Congress, 1390 Logan Street, Suite 312, Denver, CO 80203 or phone (303) 837-0812. Motel room reservations should be secured from the Holiday Inn Northglenn, 10 East 120th Avenue, Northglenn, CO 80233 or phone (303) 452-4100.

Some observations about the Seminar from former class members are offered: A State Senator — "We would have to have spent years to gain the knowledge passed on in this seminar"; A Consulting Engineer — "This was one of the very best seminars that I have had the privilege to attend..."; and a City Official — "I thought the seminars were absolutely terrific...I learned a lot and feel like it was well worth the expense."
One of the most adamant opposition organizations, Colorado Trout Unlimited, claims a membership of 5,000 with less than 1% of its officers living in Colorado. According to a 1987 Colorado Division of Wildlife survey of sport anglers, 70% said they favored lake fishing compared to 30% who had a preference for stream fishing. There is a shortage of flat water recreational opportunities in the Denver area which Two Forks would help relieve. Not only boat and shore fishing, but sail and personal watercraft would be possible. The Denver Water Department and the metropolitan Water Providers, in their decision for permitting Two Forks on the data and facts that had been developed through years of study.

EPA seems to basing its decision on "distortions and misstatements of facts" contained in a letter to Reilly from environmentalists' letter. It seems to me the prospects for any water projects in the Western United States have been dimmed considerably by the actions of the EPA in recent years. By this unprecedented display of federal preemption and intrusion into long-term local, state and regional planning, Reilly preempted local planning efforts designed to address local infrastructure needs with local dollars in full compliance with required federal permitting procedures.

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Carlson: The Public Trust Doctrine
A Judge-Made Creature

Continued from page 1

the Gunnison River Basin where Western Slope interests, the City of Aurora, and Arapahoe County (successor to an automobile salvage company) Financial Energy Resources Company) are duking it out for water rights for traditional purposes and needs.

The enviros seek to judge the claims for new water rights by the standards of the public trust doctrine: is it a good, right, and joyful thing that waters of the Gunnison should go to serve those nancy human wants of the miserable souls who inhabit those sticky-nicky bowers in the burnin wastes of the Front Range or elsewhere?

The local water conservancy district, the Colorado River Water Conservation District, and even the competing applicants have united to oppose the introduction of this public trust doctrine into Colorado law. The environmentalists countered with the claim that the fundamental precept underlying all Colorado law, controlling all appropriations of water rights. The Water Judge faced this issue on preliminary motions, and concluded, with some misgivings, that indeed new claims for water rights were not to be judged by the standard embraced by the enviros. At that point, the enviros appealed to the Court to take the case. The Court declined to entertain the interlocutory appeal, and sent the matter back to the trial court. A determination by the Supreme Court on the applicability of the public trust doctrine thus waits an appeal from a final decree in the Gunnison river water wars.

The prospect of sustained litigation about the incorporation of the notions of the public trust doctrine into Colorado water law seems remote; few practitioners, whether attorneys in the United States have a fair tale ring to them. At its most basic level, the doctrine rests on the proposition that all the resources of the community are held in trust for the felt needs, as they may exist from time to time, of the public. The argument proceeds to the proposition that since all property rights are created by the community (the state), all property created by the state is impressed with, and subject to a trust for the public good.

In making grants to private individuals to use this property, the state is imposing a fiduciary duty to the public; the public and all grants so made are subject to that trust obligation. Grants made, no matter how long ago, may be revoked by a judge at any time, reviewed by that judge, and if found lacking in the eyes of that judge, modified or set aside. In the context of water rights, the doctrine means that new decrees should only be entered when the cases are consistent with the judiciaries view of the public good. But this is no more important, the doctrine necessarily holds that all old decrees are subject to re-examination to assure that existing uses also comply with the same notions of the public good.

The public trust doctrine is a judge-created doctrine, a legal fiction to undo without payment of compensation those things which happen in the past and which are not liked today by some effective special interest group. Originally, American judges used the public trust doctrine to set aside land grants and franchises made by state legislatures to private individuals in the underlying navigable waters. In 1983 the California Supreme Court, in a case called National Audubon Society v. Superior Court of Alameda County, extended its reach to water rights.

A brief history of that litigation is instructive. In 1940 the City of Los Angeles obtained permits to divert water from four of the five streams which feed Mono Lake. Mono Lake was a closed basin lake, a saline lake because of the absence of a natural outlet. In 1970 Los Angeles completed a second diversion tunnel and extenders its diversions of water entering Mono Lake. Substantial decreases in the lakes level, and a series of attendant environmental changes followed. Environmental groups sued Los Angeles. They asserted that the permits received by Los Angeles were conditioned upon the states public trust, and were therefore subject to modification. They won.

According to the California Court, because the public trusts use of the water entering Mono Lake were not considered at the time the permits were issued to Los Angeles in 1940, the wisdom of those uses must now be examined, and previously issued permits for use of the water are to be revised and reduced as necessary in the eyes of the judiciaries. Because the permits would be reversed to reflect the trust theoretically present from the outset, the permit holder suffers no compensable loss. The water right owner just has to take his lump, for he was foolish enough to rely on what the state had promised.

At its root, the public trust doctrine advances as a positive good for society a continuing litigation of the measure of water rights, and an evaluation of uncertainty as a constant risk to do differently today what our predecessors created yesterday. Contrast this philosophy with the water law system Colorado has adopted, which places a premium on the establishment of fixed priorities, in defined amounts, for specific uses.

What are the practical consequences of adopting the public trust doctrine? First and foremost, it is a choice for economic and social insecurity and uncertainty. The public trust doctrine relegates social, economic, and political choices to the world of perpetual litigation. You may ask, what is so new and different about that? And the answer is simply that it is litigation in which the society has set no rules or standards to guide the decision. People don't care what big, complicated economic investments in the face of these uncertainties. For those who continually bemoan a lack of central planning for all facets of Colorado water usage, the embracing of the public trust doctrine serves at best an incoherent inconsistency. How do you plan in the face of such a doctrine?

What are the consequences one can fairly anticipate from imposition of a public trust doctrine? Even its most dedicated admirers must admit that it uncertainty breeds expense, and that this uncertain ambit of the doctrine assures college educations for even my grandchildren yet to be. And those same admirers must admit that the risks of any one judge, or series of judges, defining the public trust in the same way is remote. Today's public interest in Colorado may greatly depart from that perceived in Denver or Alamosa or Durango.

Besides waste and uncertainty, the consequence of the doctrine dissipates the will and even the power of the people, acting through the legislature, to make choices about the allocation of resources. The most Alice-in-Wonderland feature of the doctrine is its penchant that there exist, no constitutional amendments, nor powers, nor principalities in any way inhibit or control its operation. In short, according to its proponents, the doctrine is a supreme body of law ordained by natural law. Appeals to mystical bodies of superior law, irrepealable by any act of the people, are strange notions for these most secular of times.

Where does all this leave us? First, it is clear that the applicability of public trust notions to Colorado water law will be litigated. If for some reason the pending Gunnison river litigation peters out without a definitive appellate court ruling, then one can be assured that the issue will be litigated anew elsewhere. Second, it is clear that there are those in the judiciary, and elsewhere to whom the public trust doctrine will appeal, for it glorifies the impulse of many to redo and reorder all that exists. Third, it is clear that the integrity of existing water rights are at stake. The enviros have persistently asserted that they only seek in the Gunnison litigation to attach the doctrine to future adjudications of new rights; but the consequences of the doctrine is not so easily contained. The very origin of the public trust doctrine lies in judicial attempts to set aside what has already been accomplished. There simply is no basis to contain the doctrine prospectively only; moreover, such logic as exists in the hothouse of the doctrine impels its application toward the existing decrees of water users.

What can be done? I make this modest suggestion: the Colorado Water Congress should organize a comprehensive effort on behalf of the water users of Colorado in the Gunnison River litigation. Such an effort can only succeed if it is welcomed by the parties already collaborating in opposition to the doctrine. If the effort would be welcomed by those parties, there should be a well-thought out and thoroughly organized evidentiary presentation which seeks to prove the unsuitability of the fancy of public trust notions to the real world in Colorado. In short, the water users need to offer the judiciary a record that will inoculate from the California virus.

John Andrew Carlson is an attorney with the Denver law firm Carlson, Hammond & Paldock.
1. John Sayre received a bound volume of his major "cases" from his long-time colleague Clyde O. Marz at the 31st Annual CWC Convention.

2. John Sayre was honored with the 9th Annual "Wayne N. Aspinall Water Leader of the Year" Award.

3. ASPINALL AWARD
The nomination form for the 1990 "Wayne N. Aspinall Water Leader of the Year Award" is available upon request at the offices of the Colorado Water Congress, 1390 Logan Street, Suite 312, Denver, CO 80203 or phone (303) 837-0812. Nominations, incidentally, must be received by December 1, 1989.
Colorado Water Congress

31st Annual Convention

1. Attorney General Dan Wadsworth spoke on the legal issues facing Colorado water interests.

2. Bill Hendryx, senior editor of the Denver Post, provided some insightful observations on past, present, and future water development in Colorado.

3. Senator Tom Neeves of Greeley delivered some observations on legislative developments.

4. House Minority Leader Beth Weldy of Boulder spoke on water issues of concern to her.

5. "Will Colorado Bide on the Public Trust Doctrine?" was the subject of John C. Carson’s address.


7. House Majority Leader Chris Poston of Englewood shared his thoughts on the progress of the session.

8. "Water Development Issues Facing the New Administration" was the speech title of Jim Zajac, former Assistant Secretary for Water and Science.

9. Governor Roy Romer delivered the "Royce D. Argauer Memorial Luncheon" address.
Dr. John Firor of NCAR addressed the subject of "The State of Scientific Knowledge About the Greenhouse Effect."

Participants in the "Carl New" workshop did participate—and how!

Left: The note takers were busy.
Below left: Some smiled and some were serious.
Above: As usual, there were many unofficial meetings at the Convention (L to R—John Porter, Uli Kappes, Sam Maynes and John Murphy).
Below: All eyes were to the front.
DOUGLAS C. LOCKHART

Doug Lockhart, Manager, Public Service Company of Colorado Western Division in Grand Junction, was elected CWC President at the Annual Business Meeting in January.

Although Doug was born in Steamboat Springs, Colorado, at an early age he moved with his family to Wyoming, where he graduated from the Cheyenne High School, and later attended the University of Wyoming. He was first employed as a marketing representative by the Light, Fuel and Power Company, a subsidiary company of Public Service Company of Colorado.

In 1970, he moved to Colorado as a member of the Public Service Company management team and has since held such positions with that company as District Manager, Estes Park; Marketing Manager, Platte Valley Division in Brighton; Manager, High Plains Division in Sterling; and Manager, Mountain Division.

Mr. Lockhart joined the Board of CWC in 1986 as the Industrial Users representative for the Western Slope. He is also currently on the Board of Directors of the Mesa County United Way, the Mesa County Economic Development Corporation, and the Hilltop Rehabilitation Hospital. In addition, he is a member of the Grand Junction Rotary Club and a director of the Colorado National Bank of Grand Junction. Doug is married, and he and his wife, Naomi, have two children, Jeff and Jandi.

BARTON E. WOODWARD

Bart Woodward, Superintendent of Riverside Irrigation District, was elected CWC Vice President at the 31st Annual Convention.

In addition to his responsibilities with Riverside, Bart operates a small computer and consulting firm. He is also involved in farming and ranching.

Woodward’s other water activities presently include: President of Groundwater Appraisers of the South Platte River (G.A.S.P.); President of Pioneer Water and Irrigation; Vice President of Irrigationists Association; Board member of Water for Metro Denver; and member of the South Platte Study Technical Support Committee.

Woodward has a B.S. degree in Broadcast Engineering. Bart is married, and he and his wife Roxanne have three daughters (Lori, Amanda and Jo Jos) — all three are chemical engineers.

LARRY D. SIMPSON

Larry D. Simpson of Loveland, Secretary-Manager of the Northern Colorado Water Conservancy District and Municipal Subdistrict, was elected CWC Treasurer at the January annual convention of the Congress. For a four-year period (1972-76), Simpson was a member of the Larimer-Weld Regional Planning Commission and then the Larimer Weld Land Use and Transportation Committee of the Larimer-Weld COG.

Simpson has a civil engineering degree from the Colorado School of Mines. In addition, he has a Master’s degree in Business Administration from California State University at Los Angeles. He has also done graduate work in engineering at the University of Southern California. Simpson is a licensed civil engineer in both California and Colorado.

Simpson is a member of the American Society of Civil Engineers, the Four States Irrigation Council, Water Resources Congress and the National Water Resources Association. Larry is married and he and his wife, Ruby, have two children (Ty and Bernice Jane). Larry also does some farming in both the Loveland and Lucerne areas.

TOM GRISWOLD

CWC Immediate Past President Tom Griswold is Director of Utilities for the City of Aurora. In his current position, Tom is responsible for executive management, direction and control of the City’s water, wastewater, and storm drainage systems.

Griswold holds a Bachelor of Science degree in Civil & Environmental Engineering from the University of Colorado. In addition, he holds a Bachelor of Science degree in Business from C.U.

Besides being a Registered Professional Engineer in Colorado, Tom Griswold is a member of the Metropolitan Water Providers Executive Committee and the South Platte Participation Project Steering Committee. Tom has also served as Chairman of Metro Water Conservation, Inc. Tom is also a member of AWWA, APWA, and WPCF.

RICHARD D. “DICK” MacRAVEY

Richard D. "Dick" MacRavey is in his tenth year as Secretary and Executive Director of the Colorado Water Congress. MacRavey is no stranger to Colorado. He served three years as Executive Director to the Larimer-Weld COG and seven years as Executive Director of the Colorado Municipal League. During his tenure with the Larimer-Weld COG, he was responsible for developing and guiding the early stages of the Larimer-Weld '200' Water Quality Management Plan effort.

In 1970, MacRavey served as Chairman of the Colorado Good Government Committee for the promotion of the State Constitutional Amendments One, Two and Three. All three amendments were approved overwhelmingly by the people of Colorado. During 1988, MacRavey was appointed by the Legislative Leadership and served as one of the the 48 members of COLORADO VISION 2000.

MacRavey is a member of the American Society of Association Executives, Colorado Society of Association Executives, Colorado Water Congress, American Water Works Association, and International City Management Association (cooperating member). MacRavey is the father of three adult children (Pam, Mike, and Mark). MacRavey has a bachelor of science degree from the University of Wisconsin and a master of science degree (in public administration) from the University of Colorado.
Many ranchers, farmers, and other water users who have been receiving letters this winter concerning their rights-of-way. The U.S. Forest Service has been making an inventory of National Forest System occupancies. It is writing to persons it believes own ditches or other water facilities on some part of a National Forest. If you have received such a letter, you should carefully consider all your options before responding.

Some of the letters refer to Public Law 99-545 (Forest Service officials often call it the "Ditch Bill") which was enacted by the U.S. Congress and signed into law on October 27, 1986. That law established a new type of easement available only to agricultural water users on the various National Forests. Some of these rights-of-way had been administered by the Bureau of Land Management. For the first time in its history, the Forest Service is responsible for administering water uses that have statutory rights to occupy the land in the national forests. For about 90 years, Forest Service officials had had only a discretionary use authority. They could deny or terminate "special use permits" for water facilities which had not been authorized by grants from Congress or approved by the Department of the Interior.

In some forms of these letters, the Forest Supervisor of District Ranger has indicated that the ditch owner or "right-of-way" may be eligible for a "permanent conditional easement." Some letter writers state that there is a "dilemma" to be resolved, and that the ditch owner must respond by a specified date, typically within sixty days. The letters also discuss paying fees for the easement.

Letters were sent at different times to water users on the various National Forests in Colorado, and not all water users may have received one. In any case, if you are an irrigator or stockman, you have until January 20, 1997 to decide whether to apply for a new, permanent easement. If you are not an agricultural water user, now is a good time to verify your authority to occupy National Forest System land.

Many ditch and reservoir owners have questions concerning these letters. They seem to imply that a water user may have a right-of-way problem if he does not apply for a "permanent conditional easement" by the date stated in the letter. However, doing this could result in the ditch or reservoir owner giving up valuable property rights of long standing. It could also diminish the utility and value of water rights exercised by those facilities.

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Water Congress Annual Convention on January 26, Ms. Towns made it clear that the deadline for agricultural water users to submit applications is December 31, 1996. This should allow sufficient time to work out existing questions with District Rangers or other Forest Service officials.

Most ditch and reservoir owners who have received these letters have been answering water users' questions or helping them find out how to "prove" their 1866 Act or 1891 Act rights-of-way. In a meeting with Forest Service Chief Dale Robertson, forest officials and representatives of the Colorado Water Congress, some of the answers were announced. For the past several years, the Colorado Water Congress has been working with the Forest Service and others to resolve water facility rights-of-way questions. Members of Congress, including Senator William Armstrong, have obtained the Forest Service the administration of all pre-FLPMA rights-of-way on National Forests, so careful checking is necessary. They seem to imply that a water user may have a right-of-way problem if he does not apply for a "permanent conditional easement." Ms. Eleanor S. Towns, U.S. Forest Service Director for Lands in the Regional Office in Denver has assured agricultural water users that they have a "ten-year window of time" (from the enactment of the "Ditch Bill") to decide whether to apply for a new easement at all. Speaking at a FLCPMA Issues Workshop at the Colorado Water Congress Annual Convention on January 26, Ms. Towns made it clear that the deadline for agricultural water users to submit applications is December 31, 1996. This should allow sufficient time to work out existing questions with District Rangers or other Forest Service officials.

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UPDATE: Rights of Way

Continued from page 10

Over a period of time, there may have been changes in the water facilities for a wide variety of reasons, including forces of nature, or other maintenance, repair, reconstruction or improvement. The Forest Service has assured water users that there would be no affect upon their rights due to the changes in administration from the BLM to the Forest Service. Minor changes or improvements in water facilities can be approved easily; the water user should make sure that they are communicated to the District Ranger in order to avoid future questions. Significant changes in location or type of facilities or areas of land occupied will require amendments to existing rights-of-way, but this will preserve, not diminish, the existing rights of the water user.

Forest Service officials have expressed a desire to resolve promptly any questions water users may have regarding amendments. No repermitting of water facilities was intended by the new law. The special Project has had broad participation by Colorado Water Congress members of all types. We would welcome new participants as well. During our recent meetings in Washington, the Forest Service suggested several ways in which they would be interested in obtaining or exchanging information with us so that questions regarding rights-of-way could be resolved promptly and fairly, and so that water users could understand how to prevent damage to National Forest resources. We intend to respond positively to that request in a number of ways. By working to keep the lines of communication open, and opening them even wider, concerns can be addressed before they become problems.

If you have questions about the new law or about Forest Service administration of your rights-of-way, or if you would like to participate in the Special Project, you may wish to contact me: Jim Engelking, 621 Seventeenth Street, #2300, Denver, Colorado 80206, (303) 292-5506 or (303) 292-9200.

The High Plains Study Council and The Ogallala Aquifer

Public Law 99-662 authorizes the expenditure of federal funds for research and demonstration programs associated with managing the Ogallala aquifer. The program was authorized in 1986 and provides for improved groundwater management through research in conservation and augmentation (Sections 303 and 304 at $6,300,000 annually) and farm level demonstration projects to encourage the rapid transfer of new technologies. It appears that most state plans are addressing the following conservation oriented issues:

- Programs to develop and implement new irrigation technology;
- Programs to develop drought tolerant crops;
- Institutional changes to facilitate the efficient use of water resources;
- Programs to augment existing water supplies with artificial recharge, secondary recovery, and other emerging technologies; and
- Programs to protect the high quality of Ogallala water.

Since Congress authorized expenditures for five years, but has failed to appropriate funds for FY '87 or FY '88, time is running out. The correct effort is aimed first at securing funds for the remainder of the five-year funding period, and then toward convincing Congress that an extension is necessary, thus allowing the entire five-year funding period to be utilized eventually.

How does this affect GMDA members? For those of us in government who are actually doing this management, the effort is basically a waste because all the funding for Sections 303 and 304 goes to institutions of higher learning, and the funding for Section 303 goes to farmers with specific demonstration programs. We can only hope that the information gathered by the researchers will eventually apply to our specific, governmental management programs, because too often these become pie-in-the-sky ideas with little practical application. From here, it sure appears to be taking the long way around.

GMDA would like to see NWRA continue to work on the concepts of more local management capability versus more top-down direction, and more direct federal support exclusively to the states. Public Law 99-692 could be a good place to start.


June 16

9th Annual Leadership Workshop

Red Lion Inn — Colorado Springs
Water Rights Team Addresses
Wilderness Water Rights

Water users recently announced support for a wilderness bill which recognizes wilderness water rights for headwaters wilderness areas. Approval of proposed wilderness legislation is part of a package which includes protection of existing water rights.

At a Capitol press conference on May 5th, a team of negotiators appointed by Senator William Armstrong and Senator Tim Wirth two years ago announced the proposed settlement. The water users proposed bill recognizes an express federal reserved water right for the newly designated Colorado wilderness areas but disclaims them for non-headwaters areas. The bill allows full use of legally established water rights and provides access for the operation, maintenance, repair and replacement of existing or congressionally or Presidentially authorized water facilities in wilderness.

"This settlement is vital to the future of Colorado's economy," Harold Miskel of Colorado Springs, spokesman for the group, said during the press conference.

The water users set forth seven principles of settlement in the proposed bill:

1. Approval of approximately 1,200 square miles of new wilderness with wilderness water rights to be decided in state court.
2. Continued wilderness access to build and maintain facilities for existing water rights.
3. No wilderness water rights in downstream wilderness areas.
4. Protection of older water projects already in wilderness areas.

5. No wilderness water rights that interfere with Colorado's future water needs and entitlements under interstate compacts.
6. The President of the United States can allow additional water diversions in wilderness if needed in the public interest.
7. Undesignated national forest wilderness study areas will be released from study status.

"This is a carefully developed package and cannot be separated and continue to have our support," Miskel emphasized in discussing the settlement principles.

There are existing and authorized high mountain diversions of water from wilderness areas which must be respected in accordance with prior acts of Congress, but most importantly, it is crucial to preserve the future of all Coloradans by protecting against the adverse effects of wilderness water rights in downstream areas," Miskel said.

"A good, clean and secure water supply for food production, drinking water, jobs and recreation is the key to Colorado's future," Miskel added. "The State would be crippled without protection for future storage and use of water.

Miskel, reminding all that the Water Rights Team had negotiated in good faith for two years, stressed that the water users insist upon the protection, now and in the future, of water rights established under State law.

Senators Armstrong and Wirth appointed two negotiating teams, each with eight members, to come up with a solution to the wilderness water rights problem. One team represents environmental groups and the other, the Water Rights Team, represents agriculture, cities, recreation, ranching, the Colorado Water Congress and water conservancy and conservation districts from all geographic areas of Colorado.

Principles of Wilderness Water Rights Settlement

1. Designation of approximately 750,000 acres of additional high-altitude, headwaters wilderness lands with federal water rights for headwaters stream segments being adjudicated in Colorado water courts following a Congressional determination that no Colorado water interest is injured, quantification of reserved rights to be in accordance with principles enunciated by United States Supreme Court and with a reservation date as of the enactment of the new wilderness designation.
2. Right of access for construction, completion, operation, repair, maintenance or replacement of water facilities needed to exercise existing water rights in wilderness areas.
3. No implied or express federal water rights for non-headwaters wilderness stream segments, such as the North Platte River within Colorado and future non-headwaters wilderness stream segments, such as the North Platte River within Colorado and future non-headwaters wilderness stream segments.
4. Protection for water rights, water facilities and projects in wilderness areas designated in Colorado under prior Acts and under the new legislation.
5. Wilderness water rights shall not be created if they would interfere with the State's present or future water needs or the development and use of water to which Colorado is entitled under interstate compacts or decrees.
6. Presidential authorization of water facilities to be built in the future would be allowed where federal reserved water rights have been created, if the President determines that additional water withdrawals from designated wilderness areas are needed in the public interest.
7. Release of remaining wilderness study areas from study status except for the Piedra.