

**TRANSBASIN WATER TRANSFER
DOLORES RIVER
SOUTHWESTERN COLORADO**

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ABSTRACT

Transbasin diversions historically have facilitated settlement of the West, an inhospitable land without the development of water. Given that water is a finite resource, new competing environmental / recreational demands set the stage for increased motivation for efficient water management, controversy and finally litigation.

Regarding the Dolores River, two diversions, primarily for agriculture, began with private development in 1886. Within a short period of time, the River below the point of the two diversion was a dry - dead river during the annual irrigation season.

One of the components of the Bureau of Reclamation's Dolores Project, which was constructed, beginning in 1979 and completed in 1999, was to re-water the river during irrigation season. The second largest user of the new McPhee Reservoir, an on-stream impoundment facility, is the water (33,200 acre feet) released to resurrect the river below McPhee to create habitat for a quality fishery.

A controversy erupted during the five year drought of 1988-1992. It focused on the pattern of the release. It was determined that management of a "pool" of water, where less water would be released during the cold winter months and greater flows during the hot summer months would be advantageous. It took five years to agree, and implement that change. The controversy now focuses on the fact that the "pool" is not big enough.

Last fall the Dolores Water Conservancy District finished a feasibility study, with CWCB funding, of a project called WETPACK (Water for Everyone Tomorrow PACKage). WETPACK's purpose is two fold. First, it explored ways to obtain / develop more water for the fishery. Second, it moves water, that Montezuma Valley Irrigation Company is not presently using, to the Dove Creek area of the Dolores Project to develop 4,000 acres of added irrigation. The District recently obtained a loan from CWCB to begin the agriculture portion of WETPACK.

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INTRODUCTION

The Dolores River originates in the San Juan Mountains, fifty miles northeast of the Town of Dolores, in Southwestern Colorado.

For those who are not familiar with the Dolores River System, the head waters are above Dunton on the West Fork and Rico on the East Fork, south west of Telluride, south-east of Norwood, north-west of Durango and north-east of Cortez. From Lizard Head Pass, the river flows in a southwesterly direction to the Town of Dolores. There it does an about face, heads northwest, then joins the San Miguel just west of Naturita, then to the Colorado River half way between Grand Junction, Colorado and Moab, Utah.

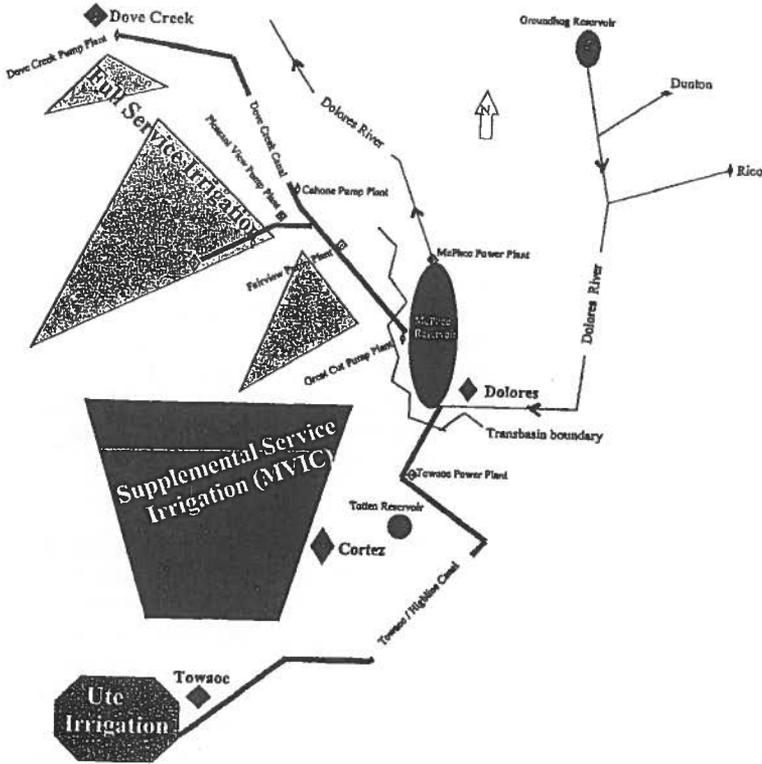
In 1776 the Fathers Dominguez and Escalante came through the area, looking for a shorter route to California. As they camped on a bluff overlooking the Dolores River to the east and the vast expanse of land in the San Juan drainage to the west, they observed that, "If the river's water supply could be brought to the land, it could sustain a culture." One hundred ten years later (1886) this came to pass, when a private ditch Company constructed two transbasin diversions, a tunnel and a canal from the Dolores River to the Montezuma Valley / San Juan Basin. From that point until 100 years later (in 1986) the first year water was used from McPhee Reservoir, the Dolores River was a dry / dead River, downstream of the two transbasin diversions during the irrigation season, from mid June to mid October.

Except for relatively small amounts of consumptive use upstream of the Town of Dolores, all of the traditional use of the Dolores River is a transbasin diversion, into the San Juan River drainage. Fortunately there is very little development / use of the Dolores River downstream of the transbasin diversion – in fact only 3,900 AF ("AF") or 9.2 cubic feet per second ("cfs") to satisfy private senior water rights below McPhee Dam. Since the first diversion in 1886, an entire economy, supporting a population of 17,000, has built itself upon transbasin diversion of water from the Dolores River. That is until the "New West" came to pass, where instream flow, fish habitat and recreation also need water.

THE STORY

THIS STORY, THEN, IS, there is not enough water to go around; THE STORY IS, Old West meets New West; THE STORY IS, The Old Bureau gives way to New Bureau; THE STORY IS, will Irrigators and Fishermen compromise; OR will they continue to fight? THE STORY IS, the Dolores Project DOES satisfy both Old and New needs.

This story has most of the classic components of why water is so controversial. First and foremost, it is about a trans-basin diversion, in addition it is about senior private in-basin water rights, it is about endangered fish in one basin and



A graphic illustration of the Dolores Project
Southwest Colorado

depletion of traditional return flows, it is about Colorado's allocation to the Colorado River, per the 1922 Compact, it is about the Upper Colorado River Basin Salinity Control Program, specifically the McElmo Unit, it is about Colorado law as it applies to "saved water" vs. contractual provisions concerning that saved water, it is about a carriage contract with the federal government to transport non-project water through federal facilities, it is about the local community's desire to preserve agriculture vs. recreation's desire for more in-stream flow, it is about the recreational boaters perception that cloud seeding will not mitigate new storage depletion, it is about U S Forest Service Federal Reserved Rights for in-stream flow in the Dolores Basin below McPhee Dam, and finally it is about settlement of Winters Doctrine Indian water claims to the neighboring Mancos River.

Dolores Project Planning

During the 1970s planning for the water needs for the multi-purpose Dolores Project, the Bureau of Reclamation ("BOR"), not only planned for the traditional uses of a project, but had to plan for two unique / non-traditional needs. One, the Dolores Project could be the means for satisfying Ute Mountain Ute Indian Tribe's ("UMUT") winters doctrine claims to the Mancos River and Two, a bypass flow for a fishery below McPhee Dam, which required re-watering the river during irrigation season. Incidentally, the fishery release is the second largest user of McPhee Reservoir (33,200 AF). These two uses define the Dolores Project as a model for the "New West" era.

To get the water for these, up till then, non-traditional needs the BOR converted the design of non-Indian Full Service irrigation features of the Project from an "open ditch surface delivery" system to an "underground pressurized pipeline" system. Doing so saved enough water for those two unique purposes. One, it provided 23,200 AF of water for the UMUT to irrigate 7,500 acres of land, which was pure desert. Also the water became the basis for settlement of their claim to the Mancos River. It provided 25,400 AF (which has now been expanded) of water for a stocked, quality, year around fishery below McPhee Dam. Since there are no other users below that point the release amounts to a 100% consumptive use of water as far as users in the State of Colorado are concerned.

Project's EIS Planned A 20-50-78 Cfs "Flow"

Specifically, for the creation of what is now called the "downstream fishery, or just Fishery" the BOR realized that without being able to develop all of the flow of the Dolores River (to do so meant flooding the town of Dolores) the Fishery would have to share shortages commensurate with other users, specifically irrigators. The method the BOR chose to administer such a shortage was to incorporate into the final Environmental Impact Statement ("EIS") a mechanism whereby the release below McPhee would be either 20 cfs, 50 cfs, or 78 cfs, depending on whether it was a dry, normal or wet year. The type of year was to

be determined on March 1st of each year based on the content of the reservoir and the relative amount of snow pack. If those two criteria established a "dry" year then 20 cfs would be released for the next 365 days. If the formula determined a "normal" year then 50 cfs would be the next years release and if it was a "wet" year, then 78 cfs was the annual release.

Construction of McPhee Dam was completed in the fall of 1983. Filling began in the spring of 1984. Filling of the reservoir was completed in 1987. Very few irrigation users were on line, so there was plenty of water for the Fishery during filling. The release was set at 150 cfs until the drought of 1988 THROUGH 1992. The Colorado Division of Wildlife ("DOW") began a fish-stocking program below the dam in the fall 1983 and continued throughout the filling of the reservoir and beyond. A grand fishery was established.

Test Of Environmental Impact Statement

THEN the drought of 1988 through 1992 hit! In accordance with the Project's EIS, the March 1, 1990 content of the reservoir and the snow pack dictated a "dry" year - 20 cfs release to the Fishery. The release was decreased from 78 cfs to 20 cfs. Contrary to the Environmental Impact Statement ("EIS") guidelines, the Dolores Water Conservancy District ("District" or "DWCD") & BOR agreed to re-evaluate the criteria on May 1st. As a result of April precipitation, the calculation was much nearer being a "normal" year with a 50 cfs release. In fact had the calculation been redone on May 5th it would have clearly been a normal year. The District and the BOR abided by the EIS guidelines. "We were obeying the environmental edict to the letter of the law". Recreationalists expect administrators to follow an EIS when it was in their favor, so we gleefully followed it when we perceived it to be in traditional users favor.

In March, the Five Rivers Chapter of Trout Unlimited ("TU"), wrote "arbitrary selection of water use and management by DWCD is offensive and wrong". Naturally, the District responded with a defensive retort as follows: "More water for the Fishery hurts all the other users. NO WAY". By June 10th the 20 cfs was clearly having a negative effect on the Fishery. I don't know that anyone ever saw a dead fish floating along the bank but the word on the street and in the State's newspapers was, "Dolores means river of sorrow" - "The river will die" - "lawsuit in works". On June 12th I got a call from the BOR in Washington - ordering that the gates below McPhee be opened - that the flow be increased back to 78 cfs. Obviously the District's response was, "We are abiding by the EIS, so by what authority do you make such a request?" I gather, somewhat uniquely, DWCD owns the projects water rights, rather than the Federal Government.

Classic "water war"

SOOO! The stage was set for a classic "water war", wouldn't you agree? In many cases the better way to manage water is obvious. It is the "misses" that get in the

way – the mis-understandings, the mis-trust, the mis-communications, the mis-conceptions, the mis-directions, and of course the other influences – the institutions, the people, the traditions, the politics, and finally the well-intentioned (or in some cases the not so well intentioned) self interests. In this case it was clear that if a way could be found to manage the Fishery release in such a manner that water could be saved during the winter season for higher flows during the summer (a “pool” concept) the Fishery would greatly benefit. However, the irrigators would suffer greater shortages during consecutive drought years.

Changing from a “flow” to a “pool” release was a process that is worthy of a story all its own. Suffice it to say, after 210 meetings, 1346 telephone calls and 9286 pages of written text and documentation, finally, seven years later, an Environmental Assessment was issued, with a Finding of No Significant Impact (“FONSI”), which officially changed the release below McPhee Dam from an “annual flow” to a “managed pool”. In addition the parties agreed to work together to create a pool of 36,500 AF, instead of 29,300 AF of water for the Fishery.

In July of 1997, I reported this process to the Colorado Water Workshop in Gunnison. At that time, I was very optimistic about our efforts to collaborate.

Since 1997 – The Saga Continues.

More than two years were spent in the transition from the Bush Administration (BOR Commissioner, Dennis Underwood) to the Clinton Administration (with Commissioner Dan Beard). The focus went from one of “purchase water” to one of “take water”. The issue came to a head with a visit from Assistant Commissioner, Ed Osan. He was the catalyst that convinced the local diverse entities to cooperate and work with each other.

SOOO -- an adhoc organization called the Dolores River Instream-flow Partnership (“DRIP”) was formed. That Committee is composed of eight organizations - Dolores Water Conservancy District, Bureau of Reclamation, Trout Unlimited, Division Of Wildlife, U S Forest Service, Bureau of Land Management, Colorado River Outfitters, and an interested coalition called the Friends of the Dolores.

Early in 1997, the District began an exploratory Long Range Water Plan (“LRWP”) to study, all the sources and all of the demands of water in the area. This preliminary study was later dubbed WETPACK (Water for Everyone Tomorrow PACKage). The reason for the term “package” is because of the District’s effort to collaborate with instream flow advocates for more water below McPhee along with use of pre-developed Montezuma Valley Irrigation Company (“MVIC”) water for additional irrigated acres.

The reasons for the agriculture portion of WETPACK are: 1) to expand the Projects success, as evidenced by the fact that owners of 16,000 acres requested water, when only 4,000 acres are available; 2) to mitigate damage caused to irrigators by changing the Fishery release from the "flow" to the "pool" (it spreads the fixed costs of O&M to a broader base – 32,000 acres instead of 28,000); 3) efficiently use and provide that MVIC's developed water remain in the community; and 4) it adheres to the local land use committee's desire to preserve the community's agriculture base.

The reasons for the Fishery portion of WETPACK are: 1) to create an adequate "pool" of water in McPhee as result of changing from the "flow" to the "pool". The present pool is 33,200 AF. Its components are the original 25,400, 3,900 purchased from DWCD, and 3,900 AF of senior water; 2) according to local fishery biologists, a minimum "pool" of 36,500 AF is needed to protect the fish and wildlife habitat below McPhee Dam. This means that an additional 3,300 AF is needed; and 3) there are many benefits to the establishment of a quality sports fishery.

Recent Developments

To date the District has spent \$130,000 in completing a WETPACK feasibility study.

WETPACK identified sources of water for both the agriculture and the fishery parts of the "package". For the agricultural portion the source is "saved water" which heretofore has been diverted by MVIC, a private, non-profit irrigation company. The "saved water" is due to better water management, urbanization of area and implementation of the McElmo Salinity Control Unit. The salinity unit abandoned two old leaky canals and constructed one new Federal Canal to deliver irrigation water to both Non-Indian irrigators and the Ute Indian Tribe.

WETPACK identified new storage as the source of water for the Fishery. Trout Unlimited's independent study concluded that McPhee Reservoir has enough storage capacity, even though it is all allocated, to give the Fishery the additional water they want. DWCD's opinion, based on all the District's studies, show that the only way to get more water for the Fishery, without damage to present Project users, is to construct additional storage upstream of McPhee Reservoir. The other members of DRIP view new construction with skepticism. My perception is that those individuals think that McPhee, with its 381,000 AF of water, is so large it must have extra water for allocation.

In an effort to obtain funds to develop / acquire water for the Fishery, the Dolores River Instream flow Partnership submitted two successive applications to GOCO (which is Colorado's lottery fund) for purchase of 570 AF of the District's Municipal and Industrial water. Both applications were denied, primarily because

there was no organized collaborative support effort. In fact the rafting community openly opposed the second attempt.

It was determined that due to the failure of the two GOCO applications, the phasing of WETPACK study should be divided into Phases. Phase I should focus on the agricultural portion and move ahead as soon as possible. Phase II, should focus on the fishery portion, which would be delayed until a course of action can be collaboratively agreed to.

Regarding Phase I, the District formally requested a "carriage contract" from the BOR to carry the non-project water (the water purchased from MVIC) to new lands in the Dove Creek area through federal facilities. That contract will be signed within one month.

The District completed Phase I of the WETPACK feasibility study. It then applied to the Colorado Water Conservation Board ("CWCB") for a \$7,200,000 loan to construct the pump plants and pipelines needed to deliver water to the 4,000 acres of additional land.

The day the loan application was presented to CWCB, November 20, 2000, Trout Unlimited asked CWCB to delay approval of the WETPACK loan until the District included an additional allocation of water from McPhee for the Fishery. CWCB denied the request. Since then TU has focused its efforts on blocking the Bureau's issuance of a carriage contract to the District.

On the other side of the coin, DWCD has threatened that if TU is successful in delaying the issuance of the carriage contract, to the extent that if construction of WETPACK Phase I, is delayed, DWCD will discontinue adding the 3,900 AF of senior water rights to the Fishery "pool", as previously explained. DWCD's perspective is that TU has more to lose than it has to gain, if confrontation is pursued.

However, to keep the dialogue open and because DWCD has invested much time and resources toward solution of the fishery release, DWCD initiated meetings with fishery interests. At the time of the submittal of this presentation DWCD's perception is that a comprehensive collaborative feasibility study is needed to identify the solution for the Fishery's supply of water. DRIP has proposed that DWCD sell 800 AF of Municipal and Industrial water to the Fishery and give them eighteen months to find funds for such a purchase.

At this moment, there is strong potential that a solution will be found. However, realism, and history tempers ones optimism.

"Train Wreck" Or Collaboration

I think this story clearly illustrates the problems, trials, and tribulations that irrigators and water managers are faced with, especially in an environment of

transbasin diversion. It simply is "today's world", in the era of the "New West". The reality is that all parties with a vested interest in the a river system must realize that the only way the system can be optimally used is through an unqualified cooperative effort. Neither developing / acquiring water to increase the Fishery pool, nor water to preserve agriculture's base can ever be achieved without actions that are of mutual benefit or have appropriate "trade offs". Much has already been done to meet "Old needs and New needs". In fact that is what the Dolores Project is all about.

Looking back since 1990 "we have come a long way". Cooperative effort has begun: To manage the "pool" release and to manage reservoir spills to benefit the Fishery. There has to be a basis of common trust between the parties (that trust comes and goes – the problem is that many faces periodically change, especially within bureaucratic agencies). There is a willingness to negotiate - a willingness to work together. But even with an honest desire to negotiate there can be NO hidden agendas, there has to be an honest two-way communication. Hopefully the parties realize that any effort to out-maneuver / manipulate each others' interests would be counter productive and would eventually "back fire". The effort requires that priorities and bottom lines must be jointly established, demands have to be realistic, all cards have be on the table, and finally, there has to be unbiased assessment of others proposals.

While I offered this assessment in 1997, I believe the basic principles are still in place among most of the parties. They are just being tested. These issues may be never ending. "We have come a long way but we still have a long way to go".

Summary

Transbasin diversions historically have facilitated settlement of the West, which is an inhospitable land without the development of water. Given that water is a finite resource, new competing environmental / recreational demands set the stage for continued demand for more efficient water management, controversy and finally litigation.