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Colorado Water Issues and Options: The 90's and Beyond: Toward Maximum Beneficial Use of Colorado's Water Resources (October 8)

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10-8-1985

AGENDA: Colorado Water Issues and Options: The 90's and Beyond: Toward Maximum Beneficial Use of Colorado's Water Resources

University of Colorado Boulder. Natural Resources Law Center

Colorado Water Resources Research Institute. Cooperative Extension Service

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AGENDA

Tuesday, October 8, 1985

- 8:45-9:00 **Welcome**
Lawrence J. MacDonnell, Natural Resources Law Center
William L. Raley, Colorado Water Resources Research Institute
- 9:00-10:00 **Meeting Colorado's Water Requirements: An Overview of the Issues**
David H. Getches, Executive Director, Colorado Department of Natural Resources
- Colorado has an abundance of water. The supply problem has always been how to meet water needs that are usually separated from supplies by time and space. Achieving maximum beneficial use of Colorado's water in the future demands ingenuity in searching for new legal and institutional arrangements and developing greater technical expertise. The paper will discuss anticipated water demands in the state in relation to available supplies. It will include an evaluation of Colorado's system of water law and administration as a means of assuring that the state's water requirements are met.
- 10:00-10:15 Break
- 10:15-11:00 **Administering Colorado's Water: A Critique of Alternatives**
Clyde O. Martz, Davis, Graham & Stubbs, Denver, Colorado
- The paper will examine the role of the state in water administration, evaluate the strengths and weaknesses of the Colorado system, compare practices in other Western states, and suggest changes that might make the Colorado system more effective, less costly to the water user, and more suited to the conservation and maximization of beneficial use of available water supplies.
- 11:00-11:45 **A Market-Based Approach to Water Rights: Evaluating Colorado's System**
Stephen F. Williams, University of Colorado School of Law
- This paper will focus on the necessary conditions for efficient use of water, particularly the requirement that property rights in water be clearly defined, permanent, fully transferable, and reasonably free from externalities. It will also examine the special cases of rights to instream flows and to nontributary groundwater, as well as the conditions under which public subsidies for water development might be appropriate.
- 11:45-1:15 **Luncheon Program: The Development of Colorado's Water Law**
Raphael Moses, Moses, Wittemyer, Harrison & Woodruff, Boulder, Colorado
- 1:15-2:00 **The Problems and Promise of Improving Efficiency Under Colorado Water Law**
Steven J. Shupe, Consultant and Water Attorney, Denver, Colorado
- The Colorado doctrine for allocating water in accordance with historical priorities is not always consistent with the recent move towards "maximum utilization" of this limited resource. The speaker will discuss the impediments to optimum use that exist within state water law, and present ideas for updating the legal framework to accommodate improved efficiency. Current developments within Colorado will also be discussed, including the move toward water salvage legislation, enforcement of abandonment lists, and recent court decisions that provide for greater administrative flexibility within the prior appropriation system.
- 2:00-2:45 **Nontributary Groundwater**
William A. Paddock, Mathis, Reed and Paddock, Montrose, Colorado
- This paper will discuss the evolution of groundwater law in Colorado and, in particular, trace the development of the current controversies with respect to nontributary groundwater. A brief summary will be given of the proceedings before the Governor's Groundwater Committee and the points of view expressed in that proceeding. New legislative developments will be discussed. Finally, the long-term impacts of the management of the resource under the present regimen will be considered.
- 2:45-3:00 Break
- 3:00-5:00 **Concurrent Workshops**
- Water Administration** (Martz Paper):
John Huyler—Discussion Leader
Fred Anderson
Judge Robert Behrman
Jeris Danielson
Hester McNulty
George Vranesh
Bart Woodward
- Efficiency Disincentives** (Shupe and Williams Papers):
George Pring—Discussion Leader
Tom Glass
Dan Luecke
Don Miles
Manuel Pineda
Michael Walker
- Nontributary Groundwater** (Paddock Paper):
Norman Evans—Discussion Leader
Mort Bittinger
David Getches
David Harrison
Chris Paulson
- 5:15-6:00 Reception

Wednesday, October 9, 1985

9:00-9:45 **Plans for Augmentation: Are They Really A License To Steal?**
Jeris A. Danielson, Colorado State Engineer

Since the adoption of the doctrine of prior appropriation by the framers of Colorado's constitution, water users in the state have been seeking ways to avoid the harsh realities imposed by such a doctrine. In recodifying Colorado's water laws in 1969, the General Assembly created the opportunity for development of *plans for augmentation*, which were intended to allow users of junior groundwater rights to continue their operation, but repair the injury to senior surface water users caused by the diversion of groundwater. Since passage of the 1969 act, the use of such plans has been extensive by all types of water users to justify the taking of water out-of-priority. This use is often decried by senior water rights holders as a *license to steal*. This paper will address the history of plans for augmentation, applications and administrative problems created by their use.

9:45-10:30 **Innovative Transfer and Exchange Plans**
Glenn E. Porzak, Holme Roberts & Owen, Boulder, Colorado

This paper will consider new approaches that are being taken to obtain water supplies through a series of complex transfers and exchanges. Examples of such approaches will be presented, including the recent Denver/Summit County agreement, the Exxon/Colony Project exchange plan, and municipal transfers on Clear Creek. Problems and opportunities raised by such schemes will also be discussed.

10:30-10:45 Break

10:45-11:30 **Voluntary Approaches to Basinwide Water Management**
Neil S. Grigg, Colorado State University

As competition for water increases, the level of conflict and litigation has also been increasing. One effect is to make water management more difficult and expensive, especially for the small water right owner. This problem can be somewhat alleviated through sharing of excess water and cooperation through voluntary exchanges. The use of computer-based hydrologic modeling, combined with modern information management technologies, offers the promise that new arrangements for cooperative basinwide water management can be successfully

introduced. This paper will discuss potential role of computer modeling and possible institutional arrangements for achieving voluntary basinwide water management. The case of the South Platte River Basin will be the focus of the discussion. Observations will be made about necessary actions to move ahead to implement the ideas discussed.

11:30-1:00 **Luncheon Program: The Judicial Role In Colorado Water Law**
Justice George E. Lohr, Colorado Supreme Court

1:00-1:45 **Factual Issues in Water Right Changes and Augmentation Plans**
Leonard Rice, Leonard Rice Consulting Water Engineers, Denver, Colorado

This paper will focus on the engineering issues raised by changes in water uses. Problems of proof in considering the matter of injury as well as other related issues are addressed.

1:45-2:30 **Interstate Transfers of Water**
Howard K. Holme, Fairfield & Woods, Denver, Colorado

Kenneth R. Wright, Wright Water Engineers, Inc., Denver, Colorado

This paper will address the rapidly evolving area of interstate transfer of water, both surface and subsurface. The range of issues from those raised by the *Sporhase* and *El Paso* cases to those raised by the proposed lease of water to San Diego are considered.

2:30-2:45 Break

2:45-4:45 **Concurrent Workshops**

Plans for Augmentation
(Danielson and Rice Papers):
Aaron Clay—Discussion Leader
Wayne Allard
Felicity Hannay
Jack Oder

Innovative Water Management
(Grigg, Porzak, and Rice Papers):
Robert Kerr—Discussion Leader
William Brown
Tom Cech
Gregory Hobbs
Jim Lochhead
Charles L. Thomson

Interstate Transfers (Holme/Wright Paper):
George Radosevich—Discussion Leader

Bill Hillhouse

Bill McDonald

John Musick

4:45-5:15 **Conference Summary**