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The Federal Impact on State Water Rights
(Summer Conference, June 11-13)

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[Section] 404 Panel Discussion

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404 Panel Discussion
June 13th, 1984

Gregory J. Hobbs, Jr.
Davis, Graham & Stubbs
Denver.

Federal Impact on State Water Rights

Natural Resources Law Center
University of Colorado
School of Law
Boulder, Colorado
June 11-13, 1984

May 15, 1984

Additional appropriation and instructive language to be placed on the next bill providing appropriations for the Department of the Interior.

Under this heading, \$750,000 shall be appropriated to the Secretary of the Interior, in addition to other sums, under 16 U.S.C. 1535 (c), to be available until expended but no later than September 30, 1985, for carrying out the following provisions:

(a) The Secretary of the Interior, in conjunction with the Director of the United States Fish and Wildlife Service, the Commissioner of the Bureau of Reclamation, and the heads of agencies or departments responsible for fish and wildlife conservation and water resources in the states of Utah, Wyoming, Nebraska and Colorado, shall form separate working groups to undertake comprehensive studies of the cumulative effects of water dependent projects or actions on endangered or threatened species, in the Upper Colorado and Platte River Basins, and based upon such studies, to develop, to the extent possible, reasonable and prudent plans which, if implemented, would:

(1) assure that such projects or actions would not be likely to jeopardize the continued existence of such species or result in destruction or adverse modification of its critical habitat,

(2) allow for long-term conservation of the affected endangered or threatened species.

(3) to the extent compatible with (1) & (2) above:

(A) minimize reliance on quantities of water to protect such species.

(B) maximize, compatibility with interstate water compacts, Supreme Court Decrees, state water laws and water rights;

(4) identify how the costs associated with the implementation of such plan should be borne.

(b) If such plans are developed, the Secretary shall implement them if they meet the requirements of Subsection (a) and, if they are consistent with requirements of Federal law, provided that the plans shall not abrogate or supplant the requirements of the Endangered Species Act.

(c) The Secretary shall report to Congress on the progress of each study and development of plans, and difficulties, if any, in accommodating the policies and purposes of both the Endangered Species Act and interstate compacts, Supreme Court decrees, and state water laws, on or before September 30, 1985, with an interim report no later than June 1, 1985.

(d) The provisions of the Federal Advisory Committee Act shall not apply to any working groups involved in such studies, provided however, that all meetings of such working groups shall be open to members of the general public, and members of the general public shall be given the opportunity to participate in the development of such studies and plans..

(e) The development and transmittal to Congress of the plans and reports required by subsection (a) and (c) of this section shall not be considered major federal actions within the meaning of Section 102 of the National Environmental Policy Act (42 U.S.C. 4332).

Federal-State Water Interrelationships:
an outline of some key events and dates

Greg Hobbs
Davis, Graham & Stubbs

Mining Act 1866, 43 U.S.C. 661

Colorado Statehood Enabling Act and Colorado Constitution, Art. XVI,
Sections 5 and 6, 1876, C.R.S. 1973, Vol. 1A

Desert Land Act 1877, 43 U.S.C. 321

Coffin v. Left Hand Ditch (Colorado doctrine of prior appropriation)
case 1882, 6 Colo. 443

Carey Act 1894, 43 U.S.C. 641

National Forest Organic Act 1897, 16 U.S.C. 481

Reclamation Act 1902, 43 U.S.C. 372, 383

Kansas v. Colorado (equitable apportionment) case 1902, 185 U.S. 125

Kansas v. Colorado (equitable apportionment) case 1907, 206 U.S. 46

Winters (Indian reserved rights) case 1908, 207 U.S. 564

Federal Power Act 1920, 16 U.S.C. 802(b), 821

Colorado River Compact 1922, C.R.S. 1973, 37-61-101; 42 Stat. 171

La Plata River Compact 1922, C.R.S. 1973, 37-63-101; 43 Stat. 796

Wyoming v. Colorado (equitable apportionment) case 1922, 259 U.S. 419

South Platte River Compact 1924, C.R.S. 1973, 37-64-101; 44 Stat. 195

Boulder Canyon Project Act 1928, 43 U.S.C. 617q

Taylor Grazing Act 1934, 43 U.S.C. 315b

Water Conservancy Act 1937, C.R.S. 1973, 37-45-112

Rio Grande River Compact 1938, C.R.S. 1973, 37-66-101; 53 Stat. 785

Colorado-Big Thompson Project 1938, 43 U.S.C. 386

Boulder Canyon Adjustment Act 1940, 43 U.S.C. 618m

Republican River Compact, C.R.S. 1973, 37-67-101; 57 Stat. 861

Mexican Water Treaty 1944, Treaty Series 994, 59 Stat. 1219

Upper Colorado River Compact 1948, C.R.S. 1973, 37-62-101; 63 Stat. 31
Arkansas River Compact 1948, C.R.S. 1973, 37-69-101; 63 Stat 145
McCarran Amendment 1952, 43 U.S.C. 666
Colorado River Storage Project Act 1956, 43 U.S.C. 620f
Fryingpan-Arkansas Project 1962, 43 U.S.C. 616d
Amended Costilla Creek Compact 1963, C.R.S. 1973, 37-68-101;
77 Stat 350
Arizona v. California, (lower Colorado River Basin allocation) case,
373 U.S. 757 (1963)
Colorado River Basin Act 1968, 43 U.S.C. 1551
Animas-La Plata Project Compact 1968, C.R.S 1973, 37-64-101; 82 Stat.
885
Wild and Scenic River Act 1968, 16 U.S.C. 1271, 82 Stat. 906
Water Right Determination and Administration Act 1969, C.R.S. 1973,
37-92-101
National Environmental Policy Act 1969, 42 U.S.C. 4321
Federal Water Pollution Control Act Amendments 1972, 33 U.S.C. 1251
Endangered Species Act 1973, 16 U.S.C. 1531
Colorado River Basin Salinity Control Act 1974, 43 U.S.C. 1591
Colorado River District (joinder of federal water rights in state
adjudication, McCarran Amendment) case 1976, 424 U.S. 800
Federal Land Policy and Management Act 1976, 43 U.S.C. 1701
Clean Water Act 1977, 33 U.S.C., 1251(g)
Colorado Wilderness Act 1980, 16 U.S.C. 1132
EDF v. Costle (salinity) case 1981, 657 F.2d 275
Sporhase (water-commerce) case 1982, 102 S. Ct. 3456
NWF v. Gorsuch (dams pollution permit) case 1982, 693 F.2d 156

Federal-State Water Interrelationships:
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Greg Hobbs
(continued)

Colorado v. New Mexico, (equitable apportionment) case 103 S. Ct. 539
(1982)

United States v. City and County of Denver (federal reserved rights)
case 1983, 656 P.2d 1

Riverside v. Andrews (endangered species-404) case 1983, 568 F. Supp.
583

State of Colorado v. Southwestern Water Conservation District (non-
tributary groundwater) case 1983, 671 P.2d 1294