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WATER ORGANIZATIONS IN THE CHANGING WEST

STRATEGIES FOR ACQUIRING NEW URBAN WATER SUPPLIES

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Innovation in Western Water Law and Management

**Natural Resources Law Center
University of Colorado School of Law
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WATER ORGANIZATIONS IN THE CHANGING WEST

STRATEGIES FOR ACQUIRING NEW URBAN WATER SUPPLIES

I. INTRODUCTION

Strategies for obtaining additional water supplies for western cities can be grouped into four primary categories. The categories are described and defined below. Some of the strategies in each category will be discussed and their merits and disadvantages analyzed. Some strategies will be treated more seriously than others, and some will be ignored or dismissed out of hand. Some strategies appear in more than one category.

II. THE FOUR CATEGORIES:

A. "Time tested" strategies for acquiring water;

A time tested strategy is one that has worked in the past, and is believed by traditional water developers to be useful in the future. In many cases, stream conditions, existing uses, new federal or state laws, federal land ownership patterns, or changing public social values have greatly diminished the efficacy of these strategies.

1. Appropriate water under the prior appropriation system.
2. Steal the water from Mexico.
3. Steal the water from the Indians.
4. Condemn the water, storage space, or ditch capacity.

B. "Classic" strategies utilized by western interests;

"Classic" strategies are those that worked in the past, and hold some promise for use in the future. These strategies are able to overcome or partially accommodate changes in federal law, and they are flexible enough to deal with some environmental issues.

1. Over-file, or top-file on another party's filing for a water right. In most cases, the earlier filing is for a conditional water right. This

is the water equivalent in the minerals industry of claim jumping.

2. Buy the water, and transfer its use to your location.
3. Build a reservoir, and store junior flood flows for future use.
4. Buy out agricultural water, and dry-up irrigated land.
5. Renegotiate a compact or two (the California and Nevada approach).
6. Litigate compact entitlements (the Nebraska and Kansas approach).
7. File an augmentation plan under Colorado, or other appropriate state law.
8. Maximize opportunities for exchange, substitution, and replacement.

C. "New age" strategies for acquiring water;

New age strategies are those which are designed with new federal laws, and federal, state or local or environmental protection schemes in mind. New age strategies are designed to accommodate rather than avoid or ignore changes in public social values concerning water.

1. Get someone else to buy the water, and then give it to you.
2. Claim the water was always yours, by divine right, or by constitutional authority.
3. Claim that there is more water in the stream, aquifer, well, or river system, than anyone knew, and since you discovered it, it should be yours.
4. Renegotiate a compact or two (the California and Nevada approach)
5. Enact a mandatory, or voluntary water conservation program that will stretch existing supplies further.
6. Undertake sophisticated computer models of the hydrology in a given basin, and negotiate with similarly situated parties to

enhance the efficiency and productivity of the various water systems. In other words, integrate various water systems into a more cohesive hole.

7. Maximize opportunities for exchange, substitution, and replacement.

D. High technology futuristic strategies for acquiring water. Will we need water in the future?

High tech future strategies are those which may hold promise, but rely on data or technology that is not yet proven or available, and which have not yet been shown to work in a systematic fashion.

1. Lease agricultural water for dry-year use, but pay the farmer every year.
2. Put water in bottles and cans to avoid the Colorado anti-export statute (the Coor's and Budweiser solution).
3. Make it rain and snow more frequently than it would do otherwise. Be prepared to defend "snow rustling" claims from Kansas.
4. Undertake sophisticated computer models of the hydrology in a given basin, and negotiate with similarly situated parties to enhance the efficiency and productivity of the various water systems. In other words, integrate various water systems into a more cohesive hole.

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