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A Case Study of the Windy Gap Project [outline]

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A CASE STUDY OF THE WINDY GAP PROJECT

John M. Sayre
Davis, Graham & Stubbs, Denver

New Sources of Water for Energy
Development and Growth: Interbasin Transfers

a short course sponsored by the
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University of Colorado School of Law
June 7-10, 1982



OUTLINE OF CASE STUDY
ON THE
WINDY GAP PROJECT
June 9, 1982

- I. Description of Windy Gap Project
 - A. Location - Grand County, CO
 - B. Features - Reservoir, Pumping Plant and Pipeline
 - C. Relationship to Colorado-Big Thompson Project
 - D. Sponsor
 - 1. Municipal Subdistrict, Northern Colorado Water Conservancy District
 - 2. Northern Colorado Water Conservancy District (NCWCD)
- II. Purpose of Windy Gap Project
 - A. Participants in Project
 - B. Supplement municipal water supply
 - C. Protection of irrigated agriculture on Eastern Slope of Colorado
- III. Requirements for Project Construction
 - A. Carriage Contract with United States and NCWCD

- B. Obtain necessary water rights by adjudication
- C. Preparation and approval of Environmental Impact Statement
- D. Issuance of Section 404 Permit, BLM and Forest Service Rights-of-Way, and other permits
- E. Support and approval of Participants
- F. Provision for protection of Western Slope water interests
- G. Financing
- H. Construction of Project

IV. Judicial Adjudication of Water Rights

- A. Filed claims for features of Project in 1967 in name of Trustee for 6-Cities
- B. Assignment of claims to Municipal Subdistrict in 1970
- C. Enactment of Water Right Determination and Administration Act of 1969
- D. Joinder of United States in Water Division 5 and consolidation of proceedings

- E. Proceedings before the Master-Referee
- F. Proceedings before the Water Judge of Division 5
- G. Proceedings before the Supreme Court of Colorado and remand for failure to comply with 37-45-118(b)(IV) of the Water Conservancy Act (Basin of origin provision)

V. Litigation v. Negotiation

- A. Decision to negotiate
- B. Negotiation and parties thereto
- C. Settlement Agreement
- D. Settlement Agreement as an Intergovernmental Agreement
- E. Use of Settlement Agreement
 - 1. Satisfaction of local opposition
 - a. Grand County Land Use Regulations - H.B.1041
 - b. Ranchers
 - c. Governmental agencies
 - 1) Grand County
 - 2) Middle Park Water Conservancy District
 - 3) Hot Sulphur Springs

- 4) Northwest Colorado
Council of Govern-
ments
- d. Upper Fraser River
water users
- 2. Section 404 Permit
 - a. Federal Fish and Wild-
life Service-Endangered
Species
 - b. Environmental Protection
Agency - Wetlands
 - c. State Division of Wild-
life - Minimum Flow
Agreement
 - d. BLM, Forest Service
right-of-way permits,
archaeological con-
sultation
- 3. Compliance with 37-45-
118(b) (IV)
 - a. Compensatory storage
by construction of
Azure Reservoir or
alternative
 - b. Settlement of litiga-
tion in Supreme Court
and Water Court

- c. Satisfaction of NEPA requirements and final approval of Carriage Contract

VI. Long Range Considerations

- A. New cooperative relationship with Western Slope established
- B. Use of approach by other water development agencies indicated, even without State statutory compulsion—NEPA, 404, and federal rights-of-way consultation and mitigation
- C. Negotiation facilitated construction of Project

VII. Conclusion

- A. Basin of Origin protected—water supply and environmental considerations
- B. Negotiation superior to litigation
 - 1. Creation of better relationships and understanding
 - 2. Expedites permitting, financing and construction