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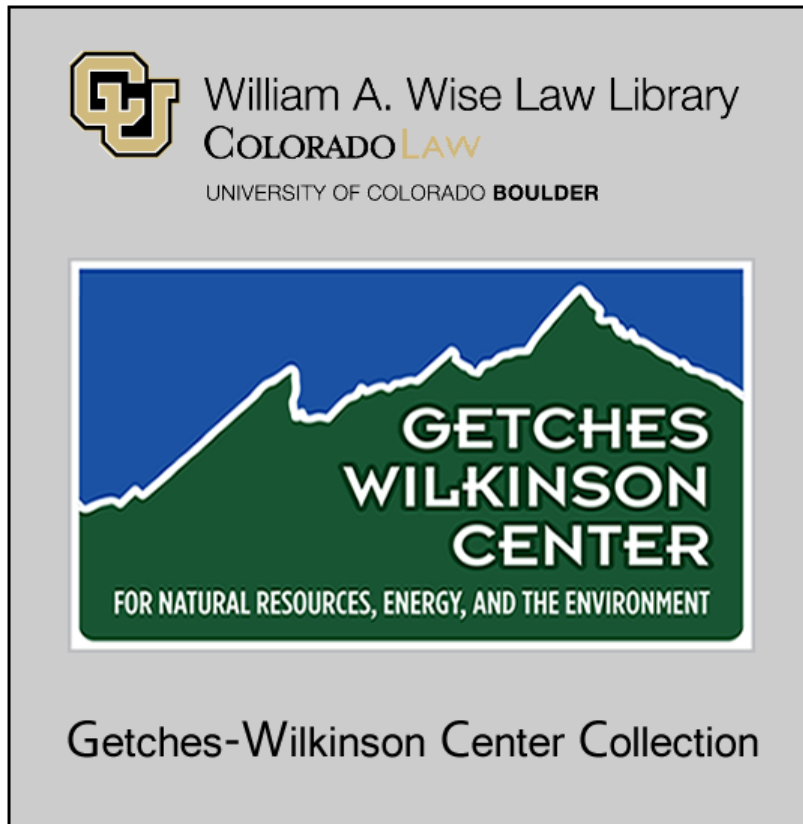
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**THE PLATTE RIVER COOPERATIVE AGREEMENT:
A HISTORICAL PERSPECTIVE**

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THE PLATTE RIVER COOPERATIVE AGREEMENT: A HISTORICAL PERSPECTIVE

By Ann Salomon Bleed

A study of the processes by which water is allocated in the Platte River system affords an excellent opportunity for studying decision-making processes. The case involves many parties, none with sufficient power to force a solution without a tremendous battle. Many at first did not believe there was much room for a compromise settlement, but some who were willing to try, embarked on a long and difficult journey. Along the way there have been numerous scientific studies, innovative attempts by expert negotiators, and costly lawsuits. The ultimate prize has still not been achieved, but, with the development of the Platte River Cooperative Agreement, there appears to be a chance for a negotiated compromise.

The Platte River system flows through the states of Colorado, Wyoming, and Nebraska. Along its route, the water from the Platte system is diverted for irrigation, industrial, hydropower, municipal and recreation uses. The river also provides water for wildlife habitat and the habitats of at least seven endangered and threatened species. New demands for both instream and out-of-stream uses have increased water allocation controversies.

The allocation problem is further exacerbated by the institutional structure of the governmental agencies involved. The laws allocating water within the states differ, as do the interstate agreements that govern the allocation of water among the states. Further, the federal environmental laws have increased the power of the federal government over water allocation issues.

Several federal agencies are involved in the Platte River case, notably the U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service. Each agency is somewhat independent and has a different set of goals and constituents. In spite of laws mandating federal coordination among the agencies, coordination is not always achieved.

Attempts to reach a compromise solution to Platte River problems have been many and varied. Just within the state of Nebraska, compromise attempts include litigation, negotiations in private retreat settings, adaptive environmental assessment processes, and the formation of a special water management board.

One of the first organized attempts to reach a compromise solution on the Platte River was an adaptive environmental assessment process, which became known as the Platte River Forum. The compromise process essentially amounted to river modeling by committee. A group of about 30 interested people, including both experts and interest group representatives, were appointed and charged with deciding what should be modeled, what data should be used, etc. The basic idea was that this process would facilitate compromise decisions by providing a forum for agreeing on the facts.

Although much was learned by the participants, the process failed to achieve a compromise. Adopting the assumption that agreement on the facts would lead to agreement on a management plan, the Platte River Forum focused on understanding the natural system. Little attention was given to trying to clarify and reach compromises on objectives. A limited number of project alternatives precluded a thorough analysis of alternatives. A lack of data prevented full understanding of the system. More importantly, the assumption that agreement on the facts would lead to agreement on a management plan proved to be invalid. Not only did participants fail to agree on all the facts, but, even when there was general agreement on how the natural system worked, differing value systems prevented agreement on how the water should be used.

In 1984, in order to improve the decision-making process within the state of Nebraska, the Legislature established a Water Management Board. Comprised of five members, its charge is to “identify, propose, support, advocate, resolve conflicts regarding, and expedite water development projects in the state in the most efficient manner possible” (Neb. Rev. Stat. 2-15, 107) (Cum. Supp. 1986). Although the Water Management Board had the authority for effective and comprehensive planning decisions, it was ineffective and was finally dissolved.

The Platte River Management Joint Study was another effort at reaching a compromise. This effort involved the three states, Colorado, Wyoming, and Nebraska; several agencies of the federal government, notably the U.S. Fish and Wildlife Service and the U.S. Bureau of Reclamation; and several private environmental and water development groups. Initiated by the federal government in 1983, the purpose of the study was to seek ways to develop and implement plans that would enable federal agencies associated with water project development and depletion in the Platte basin to proceed in compliance with the Endangered Species Act and state water rights systems. Several studies were completed but no settlement was achieved.

Meanwhile numerous entities within the states of Nebraska, Wyoming, and Colorado have sought to attain permits to divert water for irrigation and or municipal uses. Since the early 1980's sponsors of several irrigation and groundwater recharge projects have sought permits from the Nebraska Department of Water Resources. Several long and highly judicial hearings were held, but none of the major projects was granted a permit. In Colorado, the Denver Water Board sought a federal permit for the Two Forks Dam on the South Platte River to provide water for the city and suburbs of Denver. This project was vetoed by the U.S. Environmental Protection Agency. In Wyoming, the Deer Creek project on a tributary to the North Platte River received a permit to build a dam to impound water for a multi-use reservoir from the U.S. Army Corp of Engineers. However, the project faces an uncertain future because of lawsuits brought by the state of Nebraska. One case, Nebraska v. Wyoming before the U.S. Supreme Court, asserts that Wyoming is violating the interstate decree handed down by the U.S. Supreme Court in 1945. Nebraska and Wyoming have been joined in this case by the U.S. Department of Interior, the State of Colorado, several power and irrigation districts, and several environmental groups. The parties have tried to achieve a negotiated settlement in the Nebraska v. Wyoming. Several important issues were settled, but much of the case is still being litigated.

Many of the same entities were also involved in the litigation surrounding attempts by two irrigation and hydropower districts, the Central Nebraska Public Power District and the Nebraska Public Power District, to renew their hydropower licenses with the Federal Energy Regulatory

Commission(FERC) by two irrigation and power districts. At the time that the original licenses were granted for Lake McConaughy, the largest and most downstream reservoir on the North Platte River, there were no concerns about maintaining instream flows for wildlife and endangered species. By the 1980's under the Endangered Species Act, several environmental groups and the U.S Fish and Wildlife Service asked FERC to require the districts to release flows to protect the habitat of several endangered species that inhabit the North Platte and Platte Rivers. Most participants agreed that some flows would have to be provided, but there was little agreement on how high these flows should be. Although the state of Wyoming intervened in the lawsuits that have grown out of this relicensing attempt, the state of Nebraska did not become involved in the litigation. Rather, Nebraska chose to try to get the participants to negotiate a local compromise that could be presented to FERC. This effort resulted in the Nebraska Plan, which Nebraska's Governor Nelson presented to FERC. The Nebraska Plan eventually became the cornerstone of a license agreement from FERC.

Another activity, also involving the same participants, is the U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service's initiation of Section 7 Consultation under the Endangered Species Act on several Bureau projects on the North Platte and South Platte Rivers in Wyoming and Colorado. In this process the Department of Interior sought to determine whether the current reservoir operations of the Bureau would jeopardize the downstream endangered species and, if so, how the Bureau could reoperate the reservoirs to avoid jeopardy. Meanwhile, the U.S. Department of Interior was also consulting under the Endangered Species Act on numerous small water rights in Colorado and Wyoming.

All these activities were tiresome and costly. Thus, people began to think seriously of trying to work together to develop a comprehensive solution that would protect endangered species and at the same time allow some water development to proceed without the costly, litigious and lengthy administrative procedures. The result was a Memorandum of Agreement signed in 1994 by the Governors of Colorado, Wyoming and Nebraska and by the Secretary of Interior. This memorandum resulted in the same parties signing a Cooperative Agreement for Platte River

Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska. Though negotiations to implement the agreement are still in process, I believe there is real hope that at last a compromise solution to the endangered species issues on the Platte River can finally be achieved.