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### Resource Law Notes Newsletter, no. 4, Jan. 1985

University of Colorado Boulder. Natural Resources Law Center

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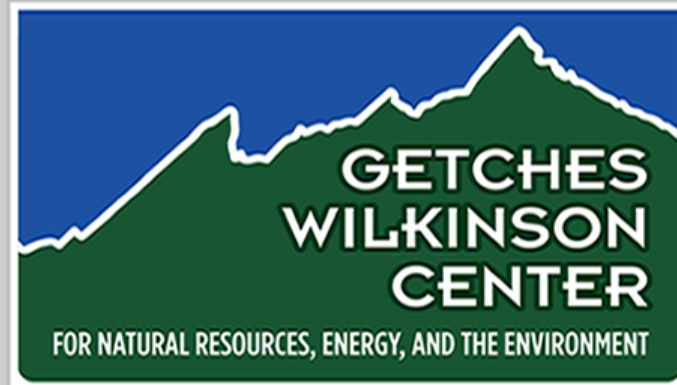
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RESOURCE LAW NOTES: THE NEWSLETTER OF THE NATURAL RESOURCES LAW CENTER, no. 4, Jan. 1985 (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law).

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# Resource Law Notes

The Newsletter of the Natural Resources Law Center  
University of Colorado, Boulder • School of Law

Number 4, January 1985

## Center Cosponsors Superfund Program

The Natural Resources Law Center joined with the Environment and Natural Resources Section of the Boulder Bar Association to put on a continuing legal education program on Superfund. The program was held December 1, 1984, at the University of Colorado School of Law.

Superfund is the popular designation that has been given to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This law addresses the management of hazardous and toxic wastes presenting a substantial danger to public health and the environment.

The program began with a presentation by **Sharon S. Metcalf**, Office of the Regional Counsel, Region 8, Environmental Protection Agency. Ms. Metcalf provided a general overview of the law and discussed some of the major interpretive issues litigated to date. Following this, **Marilyn G. Alkire**—an attorney with the Denver office of Holme Roberts & Owen—discussed the implications of CERCLA for the purchase and sale of real property. She emphasized the potential liability that now attaches to current and past owners of property and discussed some contractual considerations in property transactions.

**Richard L. Griffith**, First Assistant Attorney General for the State of Colorado, then discussed the state's role under Superfund. In connection with the state's role as public trustee for natural resources he briefly summarized the seven cases currently pending in U.S. District Court filed by the state of Colorado in December 1983.

**Louis J. Marucheu**, an attorney with AMAX Environmental Services, wrapped up the program with a discussion of the implications of Superfund to industry. He noted the broad reach that has been given by the courts to this law and discussed approaches to address its potential effects on business operations.



Marilyn Alkire talks with Rick Griffith and John Henderson at the Superfund program.



Sharon Metcalf addresses Superfund issues.

## Center Plans Programs for 1985

The Natural Resources Law Center is planning a number of continuing legal education programs during 1985. A one-day symposium on national forest management in the Rocky Mountain states is tentatively scheduled for the last week in March. Forest Service management plans for these forests will be discussed. Issues that will be addressed include proposed timber harvest levels and forest management for recreation, for water and for regeneration of aspen.

Once again this year there will be two conferences offered in June. The first, scheduled for June 3-5, will be a program on western water law which combines a thorough presentation of the important legal principles together with an examination of major emerging issues. The second program,

June 13-14, will focus on current issues in public lands mineral leasing. Special emphasis will be given to oil and gas and to coal.

In the fall, October 8-9, the Center is cosponsoring a program with the Colorado Water Resources Research Institute—"Colorado Water Issues and Options: the '90's and Beyond." The conference theme is "Toward Maximum Beneficial Use of Colorado's Water Resources." The purpose of the conference is to provide a forum for public discussion of Colorado's system of water law and administration and to make recommendations for future action.

Details regarding these programs will be forthcoming in mailings from the Center.

# Center Hosts Two Fellows

The Natural Resources Law Center will be host to two research fellows during the spring semester, 1985.



Barbara J. Lausche

**Barbara J. Lausche** comes to the Center with ten years of professional experience in international and national environmental and natural resources law and policy. Most recently she has been a legal consultant to the International Union for Conservation of Nature and Natural Resources (IUCN). Prior to that, Ms. Lausche was a senior analyst for four years with the Office of Technology Assessment (OTA), U.S. Congress. While with OTA she directed a major study, *Water-Related Technologies for Sustainable Agriculture in U.S. Arid/Semi-arid Lands*. Her international experience includes two years residence and work in The Gambia, West Africa and more than two years working on projects with the United Nations and other organizations in other developing countries.

At the Center Ms. Lausche will concentrate on developing an international component. Although the Center has sponsored two international visitors—one from Sweden and one from Australia—no special effort has been made to address the international dimensions of resources development. Yet it is evident that such considerations are essential. With three quarters of the world's people in developing countries (and the percentage growing yearly), the third world will be a major factor in the success of any initiatives in natural resources problem-solving.



James L. Kennedy, Jr.

The second Center Fellow during the 1985 spring semester is **James L. Kennedy, Jr.** Mr. Kennedy is an attorney with the firm of Kennedy, Crabtree & Hansen in Ketchum, Idaho. He is a graduate of the University of Virginia School of Law (1966). He also received a Master of Laws degree from Yale University School of Law (1967). He taught at the University of Cincinnati College of Law between 1967 and 1971. He has been in private practice since 1971.

Mr. Kennedy's work at the Center will focus on the application of zoning authority to address the hazards associated with avalanches. He will explore the extensive work that has been done in the area of natural hazards analysis. He will review the zoning approaches that have been adopted with special emphasis on Alaska, Colorado, and Idaho.

## An Interview with Ray Moses



Raphael J. Moses

*Raphael J. Moses is now Of Counsel to the Boulder law firm of Moses, Wittemyer, Harrison, and Woodruff. A graduate of the University of Colorado School of Law (1937), he has had a long and distinguished career in the practice of water law. Mr. Moses is a member of the Advisory Board of the Natural Resources Law Center.*

*The interview was taped August 15, 1984.*

**Q: Ray, just to begin, a little history or background on you. You are a Colorado native, is that right?**

R.M.: No, I came to Colorado when I was one year old.

My parents died when I was a year old. There were four children and we went to different aunts and uncles. I drew an uncle who was a lawyer in Alamosa, Albert L. Moses. Because I was only one year old, I don't have much of an Alabama accent. My uncle was really the only father, of course, that I ever knew. I grew up in Alamosa, went to the University of Colorado and got both my undergraduate and law degrees here. I went back to Alamosa and practiced until August of 1942 when I went into the Navy.

**Q: In Alamosa, the practice that you had there, was that a sole practice?**

R.M.: I was in partnership with my uncle. A general practice. Like most country lawyers, he had a reasonable amount

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“I don't have much of an Alabama accent.”

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of water law work. He represented some irrigation districts and drainage districts and did water work for private individuals. But everybody in the San Luis Valley did that too. Some did more of it than others.

Then my uncle died while I was in the service and I came back to Alamosa in 1945 and opened the office, which had been closed about a year. I practiced alone until 1947 when I took in as an associate William O. deSouchet, Jr., who was the son of William O. deSouchet—a professor at the Law School. Bill and I practiced together in Alamosa until September of 1962, when I moved to Boulder.

**Q: What prompted the move from Alamosa to Boulder?**

R.M.: Well, I got to doing almost entirely water law and there wasn't that much in the San Luis Valley. Alamosa is one of those places you can't get to from most other places. I spent a lot of my time on the road, would get home every other weekend for clean laundry and my wife didn't think much of that arrangement. So we decided to move closer to the Denver airport. Because she was from Cheyenne and I was from Alamosa, we were both small town people. We never considered living in Denver. At that time, I had a fair amount of work in the Colorado Springs area and I was already doing water work for the City of Boulder.

We debated a long time as to whether we should be in Colorado Springs or Boulder. Ed King who was Dean of the Law School at that time offered me a key to the law school and full access to the library if I moved to Boulder. So when we finally decided to move to Boulder, he did give me a key.

I have always felt privileged to have that kind of consideration from Ed and from the University. I never regretted moving to Boulder instead of Colorado Springs. They have both grown, but Boulder hasn't grown as much. Besides, Boulder is about 45 minutes closer to the Denver airport than

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“There were 29 in my graduating class in 1937.”

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Colorado Springs. I have strong ties to the University, have always enjoyed being here, and Boulder is a nice place to live.

**Q: And the Law School has changed considerably, I**

**imagine, during those years since you first went there, hasn't it?**

R.M.: Yes, there were 29 in my graduating class in 1937. Of course, the new additions, both ends, have been added since. It is quite a different place.

**Q: How did you end up specializing in the practice of water law?**

R.M.: I consider myself a water lawyer just as a matter of geographical accident, really. As I said, I was practicing in the San Luis Valley with my uncle. My uncle had been self-educated and had a rough time of it in the early days and never felt that he could devote as much time to Bar Association matters when he was young as he would have liked to. So when I came down there to practice he offered to pay my way to go to the state bar meeting, which was at the Broadmoor even in those days. Obviously I couldn't go on the hundred dollars a month I was getting from him, but he had to support me anyway and this was a nice way of supporting me. Besides I was making more than anybody else in my class—this was the tail end of the Depression. So I started going to the state bar meetings and practically no

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“I consider myself a water lawyer just as a matter of geographical accident, really.”

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one else from the San Luis Valley went. They decided to form a water law section with members selected on a river basin basis. Because I was the only one there from the Rio Grande, I became the representative of the Rio Grande. I enjoyed that. I was a member of the Board of Governors of the bar at that time and I went regularly. There was a good deal of activity in the water law section.

In those days, the president of the state bar appointed the chairman—nowadays they are elected, but in those days they were appointed—and when a man named Charles Kelly, who was the chief counsel for the Public Service Company, became president, he called me one day and said, “I have a real problem. We are right at the height of the antagonism between east slope and west slope over the Frying Pan-Arkansas Project. If I appoint a chairman from either slope, the other side is going to be unhappy. You come from a neutral corner in the San Luis Valley. Would you be chairman? I said, “Sure.” And I got some publicity from that and began to get a little more work outside of the San Luis Valley.

Then Hatfield Chilson, now a retired federal judge, was appointed Assistant Secretary of the Interior under Eisenhower. He called me and wanted to know if I would take over a number of his clients. I did and things kind of went on from there. So, by the early 60's, I was doing almost nothing but water law. There wasn't that much reason to stay in Alamosa, so I moved and have never been sorry.

**Q: Your name is virtually synonymous with the practice of water law in the State of Colorado. During those many years of practice, I imagine you have seen some remarkable changes in the law, in the kind of practice. Can you talk a little bit about those changes?**

R.M.: Well, it has changed a lot. We operated on what had been called the 1943 water law statutes as far as the adjudication of water rights was concerned. There was a lot of dissatisfaction about it. Then Governor Thornton ap-

pointed what he called a Committee of 100 to study revisions in water laws. It had farmers and irrigators and ditch company superintendents and lawyers and engineers on the committee. I was one of them and we worked pretty hard for a long time. We came up with what we thought was a reasonable revision of the water law, about 1956, and we sent copies of it out to several hundred interested parties: ditch companies, lawyers, engineers. We got about as many objections to it as we sent out copies. So we went back to the drawing boards and later on we came up with what is now Senate Bill 81—the 1969 revision. It had, I think, some very good features in it.

One of the problems at that time was that inauguration of a water adjudication was an enormously complex and expensive thing to do. Under the old statutes, in order to initiate an adjudication, anybody who wanted to obtain a decree had to serve every holder of a water right on that stream in his water district, and he also had to serve everybody who was taking water from the stream whether he had a decree or not. This was a real burden because you not only had to go to the State Engineer's office and get a list of people who had decrees, but you had to have somebody investigate the stream to see if there were some people taking out of it who didn't have a decree. It resulted in adjudications being brought only when somebody with a pretty deep pocket wanted to do it: Public Service Company, Colorado Fuel and Iron Company, or some city like Denver, Colorado Springs, Pueblo, or a major irrigation district. So it might be 20 to 30 years between adjudications. Once it would start, then the second man, all he had to do was to intervene in that proceeding. He just came in and filed. The court set a deadline and hundreds of people would come in. There wasn't any way for the first person to recoup his expense. So we needed, we thought, to simplify it.

The administration of water rights was divided into some 70 water districts, some of them on very small streams. Each

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“The administration of water rights was divided into some 70 water districts . . . ”

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water district had a water commissioner and in most cases there was not enough work to justify paying him very much per month or paying him for very many months of the year. So, in many instances we had somebody making \$25 or \$30 a month as water commissioner. The only person they could get to do it would be somebody who also had a water right on the stream himself. That caused all kinds of problems—when one of the water right owners is attempting to administer all of the water rights. And you couldn't get qualified people because you couldn't pay them enough and you couldn't pay them enough because there wasn't enough work to justify it. So part of the 1969 Act resulted in eliminating the 70 water districts, having the seven water divisions we have now, and authorizing the division engineer to employ as many full or part-time water commissioners as he needs. The result has been to employ full-time people and better qualified people. The regulation of water rights has become much more sophisticated and much more precise.

The thing that startles people in other states, I think, more

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“Another big change has been the growth of tributary and non-tributary groundwater law.”

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than anything else about the 1969 law is the idea of having a water court with a water judge. Many of us who spent a lot of time in water law practice were dismayed to have a very important water case come before a judge who had never tried a water case. This was particularly true if the venue was in the City and County of Denver. Many times, when you were challenging acts of a state official or appealing acts of a state official, you had to bring the case in Denver. So one of the things we did was to establish the seven water courts—separate water courts, with separate sets of records. We didn't have a water judge who didn't do anything else, but it did provide that the water judge would be a district judge someplace in the water division. We felt that even if we got an initial appointee that didn't know much about water law, by the time he had had a year or two of experience of practically nothing but water law, he would become familiar with it. I think the initial water judges were all by and large experienced water lawyers, and I think the system has worked well.

**Q: Colorado is unique in its approach, isn't it?**

R.M.: Yes, it is the only state that takes this approach, except now Montana with its new constitution has adopted the same kind of system. The other states are all what we call permit states, where the initiation of water rights starts with the granting of a permit to an irrigator or water user. Then, later on, when friction arises over the administration of water rights, they will have an adjudication of a stream system. Here, we adjudicate everything.

A third, I think, significant change under the 1969 Act was the idea that every year there would be a separate water adjudication, and that if I filed an application for a water right in 1980, even though the decree might not be issued until 1983, I was senior to any application filed in 1981, even though it might be decreed in 1981. It also greatly simplified the service of process by providing for what we call the monthly resume from each water court which tells in some detail about each application that has been filed that month. Anybody who wishes to object to one of those applications has 30 days after the resume is published to file his statement of opposition. So we don't have this long lag between the actual physical diversion of water or the formation of an intent to acquire a water right and issuance of a decree. It may take a couple of years to work its way through the water court, but we know that a 1981 water right, filed in 1981, is senior to one filed in 1982. Then when the person first formed the intent to divert the water is only of significance when you have two applications that were filed in the same year. The one that is able to establish the earlier intent gets the senior right in that particular year. I think it has worked well and I think people are reasonably satisfied with it.

Another big change has been the growth of tributary and non-tributary groundwater law. The advent of electricity on farms in Colorado came about the time of World War II. Prior to that time, it had not been practical to have large irrigation wells. Only in a few instances had any been constructed. If they were, they had to be powered by a diesel engine or something of that kind and were expensive. With farmers getting electricity, wells started to appear and there were

thousands of them built. Nobody paid much attention to them at first, until some of the earlier water rights were getting called out that had never been called out before. What had happened was that all along the Platte River and the Arkansas, particularly, farmers had put down wells, shallow wells, tributary wells, and were taking water that had been decreed surface water, decreed to somebody years ago. On the eastern slope there aren't any good water rights, very few direct flow diversions after 1900 that have any security with them, because the water had all been decreed. I think the reason that so many wells were drilled before anything was done about it, is the fact that most of the people who constructed wells also had a surface water right. They constructed the wells because their ditches lost a lot of water or because the wells were available all through the irrigation season whereas the water rights might dry up in mid-July or August. There wasn't much incentive for them, as owners of direct flow rights, to sue the well owners because they might be the ones who got hurt in the long run. So it wasn't until the 1960's that the well litigation started and that has created a lot of work for the lawyers.

The legislature and the water users themselves have reached a reasonable accommodation between tributary wells and direct flow rights. But the whole question of non-tributary wells is now the hot issue in water law. We had the famous *Huston* decision last year which upset a great many people but at least it made us realize that we were operating in a little different area as far as non-tributary water was concerned. As you probably know, David Getches and his committee have been working almost ever since the *Huston* decision became final, to determine what changes, if any, are needed in the non-tributary groundwater laws. That is a matter that is being considered now by an interim committee of the legislature.

There have been a lot of changes, and there have been interesting ones. I think that, with one exception, they have all been good changes. I have a great deal of trouble with a couple of decisions of the Supreme Court which hold that if a person saves the water he doesn't get the benefit of it. I don't think that helps reduce waste. That is a problem that remains to be resolved.

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“I have a great deal of trouble with a couple of decisions of the Supreme Court which hold that if a person saves the water he doesn't get the benefit of it.”

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**Q: You mentioned that you have been involved in the continuing discussion that goes on between the east slope and the west slope about how to share Colorado's water. Have you seen developments, changes, in that area that you think are noticeable?**

R.M.: Yes, I have. For almost 20 years I represented the Colorado Water Conservation Board which had as its assignment the development of water projects in Colorado. Of course, it was concerned with the rivalry between east slope and west slope and was trying to get major projects such as the Frying Pan-Arkansas and other transmountain diver-

sion projects approved as well as to get projects built on both slopes. The antagonism between the two areas certainly was not conducive to getting strong support from Congress, because each area had its own congressional representatives. For many years the representative from the western slope, Wayne Aspinall, was chairman of the House Interior and Insular Affairs Committee and was able to pretty well control what kind of legislation Congress enacted. We would not have been nearly as far along if we hadn't had him in that important position and, in the process, I think the western slope has been pretty well protected.

I think we are seeing more accommodation. It is far from brotherly love at the moment. But even things like the recent discussions of a method for the City and County of Denver to build the Two Forks Reservoir show an improved climate. The Governor appointed his Governor's Round Table and had representation from both slopes. They were able to come up with a resolution of the problem which, at the moment at least, appears to satisfy most people on both sides. It involves construction of compensatory storage on the western slope for western slope use, if Two Forks or some version of it is constructed. Another example, I think,

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“I think we have been short-changed by the congress.”

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of improved relations, arises out of what is called the Six Cities Project, a project that six cities on the eastern slope developed to take additional water from the western slope through the Adams Tunnel which was constructed as part of a Northern Colorado Conservancy District project. The western slope interests were able to stop the six cities from going ahead by a victory in the state Supreme Court and it forced the six cities to sit down with the western slope people. They did negotiate a resolution of the problem by agreeing to pay the cost of a compensatory reservoir on the western slope. I think relations are better now than they have ever been before.

**Q: There is, of course, a long-time concern here in the State of Colorado that we haven't adequately prepared ourselves to store the water to which we are entitled under the settlement on the Colorado River. What is your feeling about that?**

R.M.: I think the importance of storage can't be overestimated. I am one of the few people who think we have plenty of water. But our water comes in such erratic quantities, unless we have containers to put our share in at the time of high flows, we can't use it. Construction of Hoover Dam and creation of Lake Mead was the first step to even out the flows. Construction of Glen Canyon Dam and creation of Lake Powell behind it was critical to the ability of the Upper Basin states to develop their apportionments. Unless you have a very large container that can even out the flow so that we can keep current on our delivery to the Lower Basin states, there is no way we can develop. Now the other Upper Basin states have done very well in constructing storage to utilize their share. The Central Utah Project is big enough together with the Indian projects on the White River to utilize Utah's share. New Mexico has constructed all the storage it needs to utilize its share. Wyoming has done reasonably well. It still has some distance to go. Colorado

is the one that is way behind. Although we have been able to build Curecanti with three reservoirs—Blue Mesa, Curecanti, and Crystal—and we get some use out of the Navajo reservoir, by and large we have not constructed our projects. I think we have been short-changed by the Congress. There was a provision in the law that funded the Central Arizona Project that the five western slope projects which we felt were needed to utilize our water would be built “concurrently.” One of them is being built. One has been built. The other three are still on the drawing boards. Now when the Central Arizona Project is completed, Arizona isn't going to have any interest anymore in helping us get our projects funded. We don't have the political clout that we used

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“I am one of the few people who think we have plenty of water.”

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to have and we don't seem to be able to get the job done. So we are in trouble in that respect. I don't go so far as some people who think that when and if we ever get around to putting our water to work, we will never be able to get it back from the Lower Basin states. I think we will. But the longer they use our water, the harder it is going to be to get it back.

**Q: One of the obvious considerations in trying to build such storage projects is financing. Where will this financing come from?**

R.M.: I think that federal financing of major reclamation projects, 100% financing, is over. There are great cries of anguish from the people who don't have their projects built about the idea of cost-sharing, but I think that situation is here to stay. The share that the states are going to have to put up is going to increase and not decrease. A recent example is a bill on dam safety that passed the Congress only last week. It would not have passed at all had the sponsors not at the last minute agreed that the states would pay 15% of the cost of the dam safety. That, I think, is a modest amount. But with the deficits we face in the federal budget, the demands on the federal dollar, and the fact that you don't gain anything by sending your money to Washington and bringing it back, I just think we are going to have to rely on our own resources more and more to build our own projects. The day may not be far off when we will have to furnish all the money ourselves. And that will prevent some projects from being built that probably should never be built. I don't believe all the projects that are authorized ought to be built, certainly. However, it also is going to mean that some that ought to be built will not be built.

**Q: There has been a fair amount of attention in recent years given to federal and Indian water rights.**

R.M.: That is another development I should have mentioned because it has really been a traumatic one and a very interesting one. I think lawyers and clients have devoted more time and money to it probably than was necessary, although it may be heresy to say that. The results, I think, have been fairly realistic. There has always been a need to get the federal government to quantify what it felt its rights were. The federal reserved rights doctrine, as you know, is a judge-made doctrine. It is one that came out of the United States Supreme Court. It really started before the *Winters*

case, but most people call it the *Winters* doctrine. It held that when the United States set aside a reservation, it impliedly reserved enough water to accomplish the purposes of the reservation. This didn't really cause many people concern for a long time because in the *Winters* case there wasn't much land that was capable of being cultivated by the methods available to irrigate land in the days when the reservation was created. Also, all of the cases up until one called *Beaver Portland Cement* had applied to Indian reservations. *Beaver Portland Cement* involved a power site reservation

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“I think that federal financing of major reclamation projects, 100% financing, is over.”

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and held that the State of Oregon could not create a water right where part of the territory involved, one side of the river, was in a power site reservation created by the federal government.

Then *Arizona v. California* in 1963 really brought the issue to everybody's attention because there the United States Supreme Court not only approved federal reserved rights for Indians but for fish and wildlife purposes and many other claims such as national forests. Then everybody began to be concerned because most of the forest reservations, for example in Colorado, date back to about 1897. And, in most of the state, that date is earlier than there was much diversion for irrigation or municipal purposes. So if the United States was able to establish this priority date for any substantial amount of water, other people were in trouble.

In *United States v. Eagle County*, the U.S. Supreme Court held that the state court, under the McCarran amendment, was an appropriate place for the United States to adjudicate its reserved rights and that it had to quantify those rights. Eagle County was in Division 5, but similar cases were filed in Division 4 and Division 6 and they were all consolidated under one water judge who appointed a water master.

Out of that case came another United States Supreme Court decision called *United States v. Water Court for Water Division Five* which held that the kind of process that the 1969 Act provided—service of a copy of the resume on the attorney general—was adequate service under the McCarran Amendment. And that case went on for years. It wound up with a ruling by the Special Master and by the Special Water Judge giving the United States almost everything it asked for. But in the process it became apparent that the United States wasn't asking for a great deal. They had thousands of claims, but many of them on the Forest were for very small amounts—for example, to provide water for rangers' cabins. There were no very large claims.

There were two exceptions, neither of which have been finally litigated yet. The first involves the Dinosaur National Monument on the Yampa River where the United States claims a very large quantity of water for boating purposes on the Yampa and to preserve the fish culture. Dinosaur is at the lower end of the Yampa. Development of the Yampa has been relatively recent, so that if the 1915 priority date of the National Monument controls, it would really injure the upstream users on the Yampa.

The other situation involves the Naval oil shale reservation on the western slope made in 1920. The claim to water

associated with that reservation was set aside and held in abeyance while the other issues were being litigated. There is now one important decision out of the water judge in the Naval oil shale case—that such claims on the Colorado River do not relate back, but are new claims because the reservation was not adjacent to the River. All of the reserved rights granted so far have been out of streams that either flow through or adjoin the reservation. I think everyone involved is perfectly willing to let the United States have all the water that is *under* the Naval oil shale reservation because that doesn't amount to much and is not very good water anyway. There is nothing to prevent the United States from appropriating water from the Colorado River, but it has to be a current appropriation and the impact is not nearly so severe. The Dinosaur matter has not yet been determined. It has been briefed and the judge has not yet decided how much water is needed to save the fish and whether that is an appropriate use of water.

An important issue not yet determined in Colorado relates to the Indian claims in Division 7. In *Arizona v. California*, the United States Supreme Court said that Indian claims come out of the state's apportionment, they don't come off the top. There was an argument by many people that it came off the top, and then the states could divide the rest. Well the Upper Basin states that didn't have much in the way of an Indian population didn't want that. It turned out that the Supreme Court really hammered Arizona on that because most of the Indian claims are in Arizona; there are some in California and a lot in New Mexico, but the claims are not very large.

On the San Juan in Colorado, we have two Indian reservations and unless we can work out some accommodation with the Indians, it is not impossible that the Indians will get a very substantial priority—senior to any non-Indian use on the San Juan. If we could get the Animas-La Plata Project built, I think the Indians have agreed, or are currently willing, at least, to take wet water stored in the reservoirs of the project in exchange for very early priorities on the streams

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“There has always been a need to get the federal government to quantify what it felt its rights were.”

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which sometimes dry up in the middle of summer. That is what the Navajos did in New Mexico, and I think they have been reasonably satisfied with this resolution. Up to this point, the two Colorado Indian tribes have been supportive of the Animas-La Plata, but they are getting impatient because nothing has happened for so long.

**Q: Ray, thank you for talking with us about your career and about developments in Colorado water law. What occupies your time these days?**

R.M.: I think the best of all possible worlds—I've reached the exotic, or august, or amorphous position of “of counsel” in my firm. I don't really know what it means except that I come to the office every day I'm in town. Sometimes I stay all day and sometimes I stay an hour, but I'm not in town a lot. My wife and I travel a great deal and we enjoy it.



## Natural Resources Law Center Advisory Board

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## Publications of the Natural Resources Law Center

- *Special Water Districts: Challenge for the Future*, James N. Corbridge, ed. Papers from the workshop on Special Water Districts, Sept. 11-13, 1983. \$15.
- "The Rights of Communities: A Blank Space in American Law," Joseph L. Sax, Professor of Law, University of Michigan. NRLC Occasional Papers Series. 16 pgs. \$2.50.
- *The Federal Impact on State Water Rights*, 365 page notebook of outlines and materials from 3 day, June 1984 conference. \$60.
- *The Federal Land Policy and Management Act*, 350 page notebook of outlines and materials from 3 day, June 1984 conference. \$60.
- *Nuisance and the Right of Solar Access*, Adrian Bradbrook, Reader in Law, University of Melbourne, Australia. NRLC Occasional Papers Series. 54 pps. \$5.
- "Tortious Liability for the Operation of Wind Generators," Adrian Bradbrook, Reader in Law, University of Melbourne, Australia. NRLC Occasional Papers Series. 74 pps. \$5.
- "The Access of Wind to Wind Generators," Adrian Bradbrook, Reader in Law, University of Melbourne, Australia. NRLC Occasional Papers Series. 77 pps. \$5.
- *Groundwater: Allocation, Development and Pollution* 450 page notebook of outlines and materials from 4-day, June 1983 water law short course. \$55.
- *New Sources of Water for Energy Development and Growth: Inter-basin Transfers*, 645 page notebook of outlines and materials from 4-day, June 1982 water law short course. \$55.
- *Contract Solutions for the Future Regulatory Environment*, 434 page notebook of outlines and materials from Natural Gas Symposium, March 1983. \$25.
- "Implied Covenants in Oil and Gas Leases" reprint of two articles by Stephen F. Williams, Professor of Law, University of Colorado. 40 pages. \$4.50.

### The Natural Resources Law Center

The Natural Resources Law Center was established at the University of Colorado School of Law in the fall of 1981. Building on the strong academic base in natural resources already existing in the Law School and the University, the Center's purpose is to facilitate research, publication, and education related to natural resources law.

The wise development and use of our scarce natural resources involves many difficult choices. Demands for energy and mineral resources, for water, for timber, for recreation and for a high-quality environment often involve conflicting and competing objectives. It is the function of the legal system to provide a framework in which these objectives may be reconciled.

In the past 15 years there has been an outpouring of new legislation and regulation in the natural resources area. Related litigation also has increased dramatically. As a result, there is a need for more focused attention on the many changes which are taking place in this field.

The Center seeks to improve the quality of our understanding of these issues through programs in three general areas: legal and interdisciplinary research and publication related to natural resources; educational programs on topics related to natural resources; and a distinguished visitor and visiting research fellows program.

For information about the Natural Resources Law Center and its programs, contact:

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