[Section] 404 Panel Discussion

Gregory J. Hobbs, Jr.

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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
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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 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


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


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

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


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

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


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continued

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
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
885
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
Colorado River District (joinder of federal water rights in state
adjudication, McCarran Amendment) case 1976, 424 U.S. 800
Clean Water Act 1977, 33 U.S.C., 1251(g)
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

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Federal-State Water Interrelationships:
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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

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