A Case Study of the Windy Gap Project [outline]

John M. Sayre

Follow this and additional works at: https://scholar.law.colorado.edu/new-sources-of-water-for-energy-development-and-growth-interbasin-transfers

Part of the Agriculture Law Commons, Animal Law Commons, Aquaculture and Fisheries Commons, Biodiversity Commons, Contracts Commons, Energy and Utilities Law Commons, Environmental Law Commons, Hydrology Commons, Law and Economics Commons, Legal History Commons, Legislation Commons, Natural Resource Economics Commons, Natural Resources and Conservation Commons, Natural Resources Law Commons, Natural Resources Management and Policy Commons, Oil, Gas, and Mineral Law Commons, Property Law and Real Estate Commons, State and Local Government Law Commons, Transportation Law Commons, Water Law Commons, and the Water Resource Management Commons

Citation Information

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.
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
Natural Resources Law Center
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 Governments
   d. Upper Fraser River water users

2. Section 404 Permit
   a. Federal Fish and Wildlife Service - Endangered Species
   b. Environmental Protection Agency - Wetlands
   c. State Division of Wildlife - Minimum Flow Agreement
   d. BLM, Forest Service right-of-way permits, archaeological consultation

3. Compliance with 37-45-118(b)(IV)
   a. Compensatory storage by construction of Azure Reservoir or alternative
   b. Settlement of litigation 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