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George Sibley, Water Wranglers: The 75-year History of the Colorado River District: A Story About the Embattled Colorado River and the Growth of the West

the West at the time, reflecting the utilitarian ideal of “the greatest good for the greatest number.”

Schorr concludes by asserting the need for a paradigm shift whereby property regimes more fully consider distributive justice. *The Colorado Doctrine* advances a cogent argument based on interesting historical details of Western water law. Schorr does an excellent job of introducing the reader to his novel perspective on the legal theories surrounding Colorado water law. Schorr also develops a comprehensive theory on how the prior appropriation doctrine deliberately created an “anti-commons” assumption for the purposes of distributive justice. His perspective is highly important, not only to understand Colorado water law, but also as insight into critical implications for future policymaking. *The Colorado Doctrine* is an excellent contribution to both legal and economic history.

Heidi Ruckriegle

George Sibley, *Water Wranglers: The 75-Year History of the Colorado River District: A Story About the Embattled Colorado River and the Growth of the West*, Colorado River District (2012); 466 pp; ISBN 978-0520254770; paperback.

George Sibley is a freelance writer and former educator who has written several histories of Colorado’s Western Slope. *Water Wranglers* depicts a history of the Colorado River Water Conservation District (“CRWCD”). The book explores the CRWCD’s work protecting the Colorado River on behalf of West Slope interests, as well as helping ensure Colorado’s compliance with the Colorado River Compact. In providing the story of the CRWCD, Sibley explores much of the progression of Colorado’s water history and its related laws. The book’s several sections each discuss roughly a decade of the CRWCD’s existence.

PART I: THE AMERICAN PREHISTORY OF THE RIVER DISTRICT

In the first section of the book, Sibley explores conditions leading to the formation of the CRWCD. Arid conditions occurring in Colorado and other Western States in the early 1930s caused Western farmers to develop a strong desire to store and conserve water for future use. This movement, in part, helped spur creation of the Colorado River Compact. Soon thereafter, Colorado’s East Slope made its first attempts to divert water from the Colorado River Basin across the Continental Divide. Officials justified the diversions with the rationale that most of the state’s population lived on the East Slope and under Colorado water law there is no legal prohibition against transmountain diversions. In response to the transmountain efforts, the Western Colorado Protective Association (“WCPA”) formed and, partially due to its actions, these first attempts at transmountain diversions failed.

This section also introduces the formidable West Slope Congressman Edward Taylor. A powerful member of the House Appropriations Committee, Taylor ensured that any transmountain water project requesting federal support also provide compensatory storage for West Slope interests—one acre-

foot of storage for every one acre-foot diverted. The Congressman also strategically changed the name of the "Grand River" (the upper fork of the Colorado River until it meets with the Green River in Utah) to the "Colorado" as a way of dispelling notions that most of the lower river's water originated elsewhere.

Interests from both Colorado's East Slope Range and West Slope supported a Bureau of Reclamation study of future water needs. In these years, the WCPA found itself trying to work a middle ground between East Slope ambitions and an increasingly intransigent Congressman Taylor. To reach compromise, these parties agreed that if the East Slope were in a rush, the West Slope would insist on acre-foot for acre-foot compensation; however, if the East Slope conducted the process in a reasonable and studied manner, all sides could work together.

The federal government completed the Boulder (Hoover) Dam in 1935. However, President Roosevelt indicated that the Public Works Administration would not provide free money for reclamation projects—rather, individual states had to work through the Bureau, meaning Colorado would have to repay the federal government. Sibley concludes this section of the book with Congress passing the Grand Lake Project (now called the Colorado-Big Thompson Project). Colorado also passed several bills, including one creating the Colorado Water Conservation Board ("CWCB"). The CRWCD formed June 7, 1937, as a parent organization to valley-specific authorities. Additionally, voters elected Judge Clifford Stone to the Colorado General Assembly, who would later play an important role in the CRWCD's history.

PART II: A FAST BUT UNEVEN START ON MANY FRONTS (LATE 1930S- EARLY 1950S)

Sibley next charted the CRWCD's earliest years. Originally representing seven West Slope counties, the CRWCD aimed to use as much of the Colorado River's waters as possible within the state, preferably for mining and agriculture on the West Slope. Judge Stone, though not on the board, was a *de facto* member of the CRWCD staff. At this time, the WCPA turned over its work to the CRWCD and dissolved.

During these years, the CRWCD and Stone attempted to demonstrate to the West Slope that, although they could not be legally halted, compensatory storage for transmountain diversions could still benefit West Slope interests. Work began on the Colorado-Big Thompson Project and, when finished in 1957, the Project diverted on average 232,000 acre-feet annually to the East Slope. Following its completion, stakeholders in the Gunnison Valley and Congressman Taylor opposed a request to study a potential Gunnison-Arkansas transmountain project. Taylor's death in 1941, however, enabled federal funding for the study to come through. Completed in 1948, the study charted a project that exceeded the Colorado-Big Thompson in size and complexity, allowing for 655,000 acre-feet to cross the mountains each year. The CRWCD supported the Gunnison-Arkansas diversion, much to the displeasure of the Gunnison Valley stakeholders. In this dispute, the Gunnison Valley users portrayed the CRWCD in an almost traitorous light. However, in mid-

1949, the CWCB approved a smaller diversion plan called the Fryingpan-Arkansas Project.

In the 1928 Boulder Canyon Act, Congress allocated the Lower Basin States' respective water usages under the Colorado River Compact. To determine Mexico's share, the seven Colorado Basin states formed a "Committee of Fourteen" with Stone as its chair. In 1944, the Bureau published its long-awaited study of the entire Colorado Basin, along with a plan to develop the River "to the very last drop." In 1946, Stone then represented the State of Colorado at the Upper Basin States' Compact Commission. The resulting Upper Colorado River Compact allotted Colorado 51.75 percent of the Upper Basin's share of the River's waters, though the state produced seventy-three percent of its total flow.

This section also provides a brief history of the Denver Board of Water Commissioners ("DWB"). Always highly autonomous from the rest of the City's municipal government, the DWB saw itself as providing for the future of a large metropolis with a "thousand-year" water supply system. Represented by attorney Glenn Saunders, the DWB pursued an aggressive policy of acquisition of West Slope water rights. Following the Colorado Supreme Court's holding that municipal plans for future growth are not considered improperly speculative, the DWB began planning for the large Blue River Project. This led to years of litigation between the DWB and the CRWCD. During this time, Denver grew a great deal, and the DWB saw its water supply was running short. It confined its water service to within a certain defined area in 1950, forcing some suburbs to develop their own water systems. Judge Stone died in 1952, and with him, so too ended the CRWCD's formative era.

PART III: CULMINATION OF THE RECLAMATION ERA I (THE 1950S)

West Slope Congressman Wayne Aspinall had a significant impact on the CRWCD's next decades. After running for Congress in 1948 as a "second Edward Taylor," Aspinall became Chair of the House Committee on Interior and Insular Affairs, which allowed him to exert substantial influence over federal reclamation projects. Aspinall exemplified the thinking of historical Western water management, aiming to harness and reserve as much water as possible for reclamation and mining development. However, the period also saw a burgeoning environmental movement, which believed conservation should keep the West in as natural a state as possible.

The 1950s and 1960s proved to be the era of the big, multi-purpose dams in the United States. The Bureau composed a list of its most promising storage projects and dubbed it the Colorado River Storage Project ("CRSP"). The Bureau envisioned transforming the Upper Basin into a new industrial and irrigation center for the US. The CRSP planned storage of forty-eight million acre-feet—three times the Colorado River's annual flow.

The environmental movement defeated the planned Echo Park Dam (located where the Yampa River meets the Green River) despite support from Aspinall and the CRWCD. As a compromise, Aspinall offered an amended CRSP bill that did away with Echo Park but included the Navajo (New Mexico), Glen Canyon (Utah), Flaming Gorge (Utah), and Curecanti (Colorado)

Dams. Construction of Glen Canyon Dam began in 1957, eventually allowing storage of twenty-seven million acre-feet (twice the annual flow of the River, and three-quarters of the total storage for the CRSP). Construction on Flaming Gorge and Navajo Dams then began in 1958. With much of the CRSP under construction, the CRWCD ended the decade on a high note.

PART IV: THE CULMINATION OF THE RECLAMATION ERA II (THE 1960S)

By the early 1960s, CRWCD grew to encompass the entire West Slope, with the exception of the San Juan Counties, which formed their own Southwestern District. The CRWCD engaged in further litigation with DWB, with the Colorado Supreme Court often ruling in favor of DWB. Though the parties occasionally reached settlement, an underlying distrust between the parties remained. Following completion of the three dams of the Curecanti Project, construction on the biggest units of the CRSP was complete.

During this period, the new conservation movement, supported by Congressman John Saylor of Pennsylvania, Aspinall's environment-friendly counterpart, slowed construction on several new dams. Environmentalists began to perceive Aspinall as a reactionary and a foe to the movement, though Sibley argues Aspinall merely supported an evolutionary approach to public land law. Aspinall won a major legislative victory in 1962 when Congress passed the Wilderness Bill and the Fryingpan-Arkansas Project. However, this would mark the apex of his career. Sibley notes that Aspinall and the CRWCD failed to realize that recreational interests were increasingly replacing the prior primary uses of water: developing agriculture and mining interests.

The 1960s also saw further developments in the Lower Basin States. In 1961, Mexico complained that its allocation of Colorado River water was too saline, due to runoff from a California canal. In response, the Western Governors' Association reconvened the Committee of Fourteen from the 1940s to coordinate the Basin States' interests in the salinity question. Additionally, Arizona Senator Carl Hayden dreamed of a vast Central Arizona project supported by Colorado River water. Despite opposition by environmentalists and Aspinall, Congress eventually approved the Central Valley Project.

PART V: THE ECOLOGICAL ERA BEGINS

The Colorado General Assembly passed the 1969 Colorado Water Rights Determination and Administration Act, which reorganized much of the state's water law procedures and marked the beginning of the ecological era. Shortly thereafter, on January 1, 1970, President Nixon signed the National Environmental Protection Act, creating the EPA. Finally, in 1972, Congress passed the Clean Water Act. At the same time, Aspinall's critics accused him of becoming too supportive of mining interests, particularly uranium mining. In 1970, for the first time, he faced a primary election challenge. Though Aspinall won that election, the 1970 census redistricting cut his West Slope district in two. Facing another primary challenge in 1972, he lost by sixteen hundred votes.

The 1970s saw further developments in the Colorado River salinity issue. Although studies found that the salinity in Mexico was largely natural, the new-

ly formed EPA involved itself by supporting a regulatory solution. President Nixon guaranteed low salinity to Mexico, which provided the EPA with an opportunity to intervene. This demonstrated that Aspinall's world of *quid pro quo* solutions was no more, replaced by a highly centralized enforcement scheme.

Congress passed the Endangered Species Act in 1973 and the Colorado General Assembly passed an instream flow law in 1973, despite CRWCD's opposition to the law. In February 1977, President Carter issued his "hit list" of nineteen water projects, asking Congress to cut funding for these projects. Carter's hit list gave certainty to suspicions that the era of big federal reclamation projects was coming to a close.

Lastly, the 1970s saw the arrival of the West Slope's long-awaited oil shale boom. Following the 1970s oil crisis, President Nixon gave several large companies leases on the West Slope for development. However, oil development was in direct opposition to the environmental movement gaining strength in the region. In any case, "Black Sunday" in 1982 effectively ended the boom before it ever began. Work on the Windy Gap Reservoir, the most recent transmountain diversion project, completed in June 1985. Congressman Aspinall died in October 1983, and his death marked the end of era in which he played a key role in water policy in the state.

PART VI: LIFE AFTER OIL SHALE—A DECADE OF TURBULENCE

The 1980s and 1990s saw another period of change for the CRWCD. The DWB sought to build the Two Forks Reservoir at the confluence of the North and South Forks of the South Platte River, despite strong opposition from environmentalists. Governor Lamm convened a roundtable for the Denver metro area but also included representatives from both the East and West Slopes. Lamm also included forward-thinking policy makers, and not just old-fashioned "water buffaloes" (referring to those who bellow, splash around, and muddy the waters). Though the roundtable limited discussion to water supply in the Denver Metro Area, the CRWCD thought it would be easier to deal with the DWB than with many individual suburbs.

By this point, new players and strategies were beginning to change water policy in Colorado. A demonstration of this shift occurred when aggressive DWB counsel Glenn Saunders left the organization. DWB and the CRWCD then began attempts at cooperation rather than resolution via litigation. Further, the DWB regarded Two Forks as a way of building unity within the Denver Metro Region. Denver Metro communities signed a Memorandum of Agreement, with the idea of cooperating and preventing courtroom battles. The DWB, now headed by Hamlet "Chips" Barry, announced a new conciliatory direction and the organization changed its name to Denver Water.

At the same time, the CRWCD tried to take stock of changing situations on the West Slope. The CRWCD wanted to work on better terms with the environmentalist-friendly headwater communities. Differences proved to be mainly cultural: urban expatriates seeking a more rural lifestyle, but not reflecting the region's traditional culture, began replacing the remnant population from the mining era, which the CRWCD had originally served. Environmen-

talists then formed a separate organization, the Northwest Colorado Council of Governments ("NWCCOG").

The headwater communities, led by NWCCOG General Counsel Barbara Green (the state's first major female water figure), succeeded in using their land-use powers to delay diversions across the Divide for a large Colorado Springs and Aurora project. The CRWCD, however, did not take part in that litigation but did later join the NWCCOG in blocking another large planned diversion at Union Park.

The environmental movement took another step forward when the US Fish and Wildlife Service listed four fish in the Colorado Basin as endangered by 1991. The Upper Colorado River Basin Coordinating Committee conditioned further diversions and management on the fish populations. But the most significant evidence of the burgeoning environmental movement came when EPA vetoed Denver Water's Two Forks Project in November 1990. After an eight-year planning process and many millions spent, the federal government shut down the project solely because of the EPA director's judgment that it was incompatible with Section 404 of the Clean Water Act.

PART VII: THE RIVER DISTRICT HITS ITS STRIDE

In the final section of the book, Sibley describes the CRWCD's history up to the present day. Actions brought by environmentalists on the West Slope continued, particularly to protect endangered fish. Parties adopted a Programmatic Biological Opinion in 1999, which recommended administering all of the Upper Colorado River Basin as an integrated system to aid fish populations. It is unclear today if the numbers of the four listed fish are rebounding, but conservation efforts seem to open the door for future construction projects without further endangering the fish.

This section also describes how the National Park Service finally quantified its reserved water right for Black Canyon National Park. In 2001, the Park Service filed for a flow that mimics the canyon's natural flow to the greatest extent possible, with a 1933 priority date. There was much opposition, and Department of Interior director Gayle Norton reduced the application to a later and effectively meaningless priority date. A federal court, however, rejected this alteration as an abuse of discretion. The water court issued its final decree in 2007.

In this section, Sibley also provides a description of the severe drought that struck the state in the early 2000s. The Colorado General Assembly passed the Colorado Water for the Twenty-First Century Act in 2005, which called for Basin Roundtables in each of the state's eight water basins, plus another for the Denver metro area. The future is uncertain as to whether cooperation will continue and whether the Colorado River will contain enough water for all interests in the future.

Water Wranglers draws to a close by providing estimates for available unused water remaining in the Colorado River, running anywhere from zero to nine-hundred-thousand acre-feet per year. Faced with these possible shortfalls, communities on both sides of the Divide are exploring several proposals for planning for the future. The book concludes with this quote from Justice

Gregory J. Hobbs, Jr. of the Colorado Supreme Court: "We are no longer developing the water resource; we are learning to share a developed resource."

CONCLUSION

Water Wranglers, despite its length and in-depth discussion of a complicated historical subject, is an easy and enjoyable read for anyone interested in the history of water development in the Colorado River Basin and the state of Colorado. Well-researched and containing useful maps and photographs, *Water Wranglers* provides valuable, objective information for individuals—neophytes or experts—who are interested in Colorado's transmountain diversions. As seen through the lens of the CRWCD, the book describes a complex history a way that illustrates how a region's goals and priorities shift over time.

Anthony Perko

