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## Conflicting Demands for Allocation of Water: A Roundtable - Municipal

### Keywords

Water Law

# CONFLICTING DEMANDS FOR ALLOCATION OF WATER: A ROUNDTABLE

## Municipal

JAMES L. OGILVIE\*

As suggested by the conference chairman, Professor Ved Nanda, I prepared a suggested reading list for inclusion in the preconference materials. The list includes studies that are several volumes in length and obviously could not be read in advance of the meeting by conference participants, nor could they be included in total in the preconference materials. But, in line with this conference theme, I highly recommend them to you for your water libraries as research documents and background material. My brief remarks will center around a few quotations from each of the recommended reading materials.

*Water Policies for the Future*,<sup>1</sup> the study by the National Water Commission, deals with municipal and industrial water supply programs. The section on municipal water supply programs starts out saying:

From the earliest days of the Nation, cities and industries have provided their own water supplies. In general, there is no reason why they should not continue to do so. For many years this was recognized by the Congress, and several laws contain statements to the effect that the Federal Government will confine itself to an ancillary role in this field. The Water Supply Act of 1958 made it possible to increase the capacity of major Federal reservoirs, constructed primarily for purposes other than the provision of water supply, in order to store water for municipal and industrial (M & I) purposes. This did not add to the Federal responsibility for M & I water as non-Federal interests were required to assume the full cost of the added capacity.<sup>2</sup>

I do not wish to denigrate the efforts of the federal government in financing flood control projects and wastewater control efforts throughout the United States, but it sometimes seems incongruous that the federal government and, for that matter,

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1. NATIONAL WATER COMMISSION, *WATER POLICIES FOR THE FUTURE* (1973) (final report to the President and to the Congress of the United States).

2. *Id.* at 161-62.

the state government have very little interest in financing potable water projects that are so vital to the health and welfare of our municipalities. In the case of municipal supplies, the federal and state governments seem to be saying:

We will tell you how pure the water must be, we will tell you the standards you must adhere to, and we will tell you how to build the plants and meet the environmental safeguards you must guarantee, but you will finance both the cost of the projects and the ancillary expense caused by the regulations we establish.

This study also points out that 75 percent of the nation's population now lives in metropolitan communities comprising less than two percent of the country's area. The chapter concludes by stating in part:

It seems certain that population growth, increasing per capita use, migration of people to urban areas, and expanding economic activity will strain many existing municipal and industrial water supply systems in the years to come. Effective planning followed by effective implementation measures will be required if serious shortages of water services for the nation's cities are to be avoided. In the more water-scarce and rapidly growing areas, competition for water supplies will mount and improved water husbandry will become increasingly necessary.<sup>3</sup>

Rivkin/Carson, Inc., a Washington consulting firm, did the study for the National Water Commission called *Population Growth in Communities in Relation to Water Resources Policy*.<sup>4</sup> On population in metropolitan areas, this consulting firm found that: "New communities and large developments have followed and are at present being planned to follow the general trend of growth in the outer areas of metropolitan concentrations."<sup>5</sup>

The study also reached the following basic conclusions:

Fundamental economic and location factors determine whether a community will grow or decline, and the availability of water related facilities and services plays a minor role. Since population growth will continue to be predominantly metropolitan, relationship to a metropolitan area is the principle factor influencing growth of small communities.<sup>6</sup>

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3. *Id.* at 169.

4. RIVKIN/CARSON, INC., *POPULATION GROWTH IN COMMUNITIES RELATIVE TO WATER RESOURCES* (1971) (prepared for the National Water Commission).

5. *Id.* at 121.

6. *Id.* at i.

When carefully applied to funding and regulatory matters within metropolitan areas, it [water resource policy] can have considerable influence in directing the form of metropolitan settlement. Water policy can help to achieve a more efficient, environmentally sound pattern of development than currently exists. Indeed, water policy can have more impact on directing the *form* of community growth than its *location*.<sup>7</sup>

This firm also asked whether investment in water resource development and water allied facilities stimulates population growth. The question was answered thusly:

The hypothesis that water investment affects the growth of population was tested in four representative states across the country. Expenditures made by Federal agencies were arrayed against population trends in each of the counties in the four states and regression analyses performed. Neither the metropolitan population nor the least populous counties appear to be influenced in their rates of growth by water resource investment. Indeed, across the board for all counties there was no correlation. The test confirmed earlier more limited studies that water resource projects in and of themselves seem ineffective tools for promoting economic development.<sup>8</sup>

The so-called "West Side Study," *Critical Water Problems Facing the Eleven Western States*, conducted by the Bureau of Reclamation,<sup>9</sup> found that the population of the West will increase at a rate more than twice that of the rest of the nation. Every year between now and the year 2000 the West will add a population increase equal to the 1970 population of Idaho or Montana. Stated another way, this means the addition of the equivalent of a city of 65,000 people every month throughout the eleven states between now and the year 2000. Colorado and the Denver metropolitan area will receive more than an average share of this growth.

The West Side report found what we all know: that while the Colorado River is a facile source of water for these states, the river is not going to be able to supply enough water to support the new influx of population, particularly to the desert metropolitan areas and southern California.

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7. *Id.* at ii.

8. *Id.* at viii.

9. BUREAU OF RECLAMATION, U.S. DEP'T OF THE INTERIOR, *CRITICAL WATER PROBLEMS FACING THE ELEVEN WESTERN STATES* (1975) (often referred to as the West Side Study Report).

Critical water problems facing the eleven Western states have been catalogued in the report. It recommends over 70 additional detailed investigations to be conducted by the federal government in cooperation with state governments. A total of 20 federal agencies were involved in the West Side Study, 10 from the Department of Interior. Future investigations are considered necessary to find solutions for water resource development to meet expected demands on the West's limited supplies through the year 2000.

It is interesting to note that projects requiring national planning, such as Columbia/Colorado Interbasin Transfers or the procurement of Canadian water, have not been considered in this particular study.

At the state level one of the most interesting recent reports was made to Governor John Love on Colorado water law problems in December of 1972.<sup>10</sup> Holland & Hart, a prominent Denver legal firm, reviewed the doctrine of prior appropriation and other existing water law in Colorado. While the authors of the report did not come to any firm conclusions or recommendations, they did offer a series of "observations," including the observation that our water law should be flexible enough to accommodate noneconomic values which the public may hold, such as social and environmental water values. In fact, the report notes, the failure of various western states to accommodate social and environmental values in water is one of the justifications offered by federal officials for the United States claims to reserved water rights.

The Colorado State Legislature studied metropolitan Denver water requirements and resources for a two-year period.<sup>11</sup> The study was under the direction of the Denver Regional Council of Governments and consists of three volumes: a text, a primary area appendix covering the urbanized areas around Denver, and a secondary area appendix covering the remainder of the nine-county study area. The report represents an update and an expansion of the earlier study, *Metropolitan Water Re-*

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10. Carlson, *Report to Governor John Love on Certain Colorado Water Law Problems*, 50 DEN. L.J. 293 (1973).

11. DENVER WATER DEPARTMENT, *METROPOLITAN WATER REQUIREMENTS AND RESOURCES, 1975-2010* (1975) (prepared for the Metropolitan Denver Water Study Committee of the Colorado State Legislature).

*quirements and Resources, 1968-2010*, commissioned by the Denver Regional Council of Governments and conducted by the Denver Water Department.<sup>12</sup> The 1975 report indicates that the metropolitan area will be short of both raw and potable water in the near future, that the importation of transmountain water appears to offer the best potential for the largest amount of additional supply, that development of water will continue to be controversial and more expensive than ever before, and that:

a new horizon is coming into focus for those who make water supply decisions. By 1980, most present water projects will be completed, and after that time the projects appear to be evermore controversial, costly, and complex. Because of these frustrating factors, an attempt is being made by most agencies to find some other agency to assume water supply responsibilities. While the desire for a metropolitan-wide water agency to solve the problems appears to be very clear to everyone, there is no consensus regarding details of the structure and responsibility of such an agency.<sup>13</sup>

The Denver Water Department does operate as a metropolitan water agency. It serves some 900,000 people in a relatively small geographical area. By City Charter<sup>14</sup> it must serve all the people in the City and County of Denver and by contract it serves another 400,000 people in a 200 square mile area surrounding the core city.

The Department's studies indicate a sufficient raw water supply to meet present needs. However, treatment capacity is strained to the limit, and we foresee a restricted use of water in the summer months ahead. These restrictions will continue until a new treatment plant, under planning for several years, is completed in Douglas County. The Foothills Treatment Plant, already delayed more than three years, is the subject of an environmental assessment study under review by the Bureau of Land Management.

The Board and the staff of the Water Department recognize the controversial aspect of many of its planned projects. It also recognizes the need for environmental concern,

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12. DENVER WATER DEPARTMENT, *METROPOLITAN WATER REQUIREMENTS AND RESOURCES, 1968-2010* (1969).

13. II DENVER WATER DEPARTMENT, *supra* note 11, at xxvii.

14. CHARTER OF THE CITY AND COUNTY OF DENVER, ch. c, § 4.14 (1904).

stream flows, minimum flows, fish life, and aesthetic and recreational aspects of water. But our critics should recognize that all municipalities in Colorado, including the metro Denver area, use less than three percent of the water diverted annually from our streams to meet the needs of millions of people.

The Water Department recognizes its primary responsibility to the people of the metropolitan area. That responsibility is to provide an adequate and safe supply of water for present customers, as well as those that all population projections tell us will be here in the years to come. These people also are entitled to a quality of living that a green environment assures, one that is possible only when there is sufficient water.

We shall continue to meet that responsibility until and unless some other agency created by the people and their elected representatives are willing and able to meet the needs of the people of this great and growing metropolitan Denver area.

## Agriculture

JOHN STENCEL\*

Since the early days of Colorado's history, agriculture has played a dominant role in its development. However, its population has grown and cities have expanded along the Front Range. The general consensus is that the importance of agriculture has declined. That is not true. In recent national ratings, development of new water supplies for irrigation was ranked well down on the list in terms of priority. This low priority may be due largely to the high productivity of American agriculture and our surpluses.

But recent world food shortages indicate a need for reconsideration of our priorities. Even today, agricultural production and related activity such as food, fiber, and livestock processing still constitutes a substantial share of our state's total economy. In 1970, for example, cash receipts from farm marketing totaled almost 1.2 billion dollars. And more recently until the

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