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IV. CONCLUDING REMARKS

Water for the Future: Concluding Remarks

GLENN G. SAUNDERS*

Contrasting viewpoints are what make workshops valuable. These should be the best workshops ever because we have viewpoints covering the entire spectrum of opinions on water law issues.

One of the themes of this conference seemed to be that everything that was done in the past was all wrong—that we had a very poor legal system to start with, and that the development was very poorly done. I am going to present a viewpoint contrary to that.

The water law system in the State of Colorado is among the finest in the world. Devised originally by the early miners of California, the appropriation doctrine was brought to the Rocky Mountains during the search for gold and silver. Only in Colorado has this system reached its fruition.

Zebulon Pike reported to the United States Congress that the west was an uninhabitable desert, unfit for human habitation. The legal system had to be strong and certain in order to provide a structure for the determination of water rights under the climatic and social conditions of the west. Not from the time of Pike's report until the recent onslaught of ecological concerns has our water law truly been challenged.

Since the signing of the Magna Carta, our legal system has been based on the rule of law, rather than a rule of men. Law is a rule of conduct, enforceable by an authority having power to see that it is followed, which is known in advance so that those who choose to can obey the law and those who choose to disobey can be readily recognized as lawbreakers. Several proposals made at this conference would take the determination of water rights from the rules of law and place them under the whimsical interpretation of "public good" made by a temporary occupant of a public office.

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What is this "public good" that requires the major overhaul of our water law discussed at this conference? Methods for insuring public input constitute the basis of our governmental system. Standards of the public good are fixed by the legislature. These standards are then applied to individual cases in conformity with the process and purposes of the law. Finally, we have created an independent judiciary; a judiciary so independent they even write laws nowadays. This judiciary checks for adherence to the law by the administrator. Public input and the rule of law are protected against encroachment by man at all stages by our established rules and procedures.

The very things envisioned in the 1920s are happening today. Growth, water demand, and the locations in which they are occurring have come about much as planned and specified. Upper basin states managed to prevent appropriations until the completion of the Colorado River Basin Compact on the basis of the foresight of some planners.

Certainty, as pointed out by Secretary Horton, is one of the most necessary aspects of our water system. Two elements are presently creating uncertainty under our laws: reserve rights and unsettled Indian claims. Reserve rights create uncertainty because of the number of appropriators involved. On its face these so-called reserve rights do not create uncertainty, but recent environmental concerns may obfuscate the present understanding of these rights.

Similarly, the problem of Indian claims remains unresolved. Either Indian rights are governed by treaty of the United States, or they are determined under the appropriate state system. If the rights are governed by treaty, claims for water should be satisfied by the United States as a whole. Claims resolved this way contribute to the certainty of our water law system. Uncertainty is created when Indian claims must be entirely satisfied by the State of Colorado alone.

Uncertainty also exists in the construction of our water compacts. A good example is the Colorado River Compact. When the Colorado River Compact was written, the drafters thought that there was a yield of 17 to 18 million acre-feet available per year. Accordingly, in order to apportion the water to the upper and lower basins equally, the compact provides that the upper basin shall not withhold 75 million acre-feet

every 10 years from the lower basin. It turns out, though, that the estimated yield was wrong, and that there is less water available than originally appropriated. The lower basin states insist on their 75 million acre-feet, but the upper basin states assert that this would create an unequal apportionment, contrary to the purpose of the Compact. Ambiguities like this must be resolved if we are going to be able to adequately plan our resources.

But the greatest uncertainties arise from the increasing demands being placed on our limited water resources. One source of increasing demand in Colorado is the growth in population. Much has been written about the necessity for zero population growth, and I do not intend to repeat it all here. Nature has created all creatures so that they can overproduce. We talk about regulating our water supply; we need to regulate our own lives as well.

Demand is also increasing for the use of water for mineral processing. We need to determine our priorities and allocate the necessary water to allow for the mineral production necessary to maintain our civilization.

We have several methods and practices available by which we can conserve and manage our water resources. These methods include transmountain diversions, water reuse, and cloud seeding, among others.

Transmountain diversions were the subject of some discussion during this conference. Though no new transmountain diversions are now under construction, more will have to be built in the future, as mandated by our need to conserve our water resources. The potential for reuse of water is much greater on the Eastern Slope than the Western, where the terrain, location of arable land, and severe limitations on the availability of arable land restrict water reuse. On the Eastern Slope the potential for reuse is very good. In 1912, the Army Corps of Engineers reported that the Platte River was reused 14 times between the mouth of Platte Canyon and the state boundary. Today, estimates show five reuses from metropolitan sewage outfalls to the border.

Transmountain diversions in the amount of 300,000 acre-feet per year help to stabilize the Platte River. Although peren-

ially short of water, the Platte has had no substantial water calls for the past two years, both of which were very dry.

Cloud seeding is one of the last topics discussed at this conference. Here is a real opportunity to bolster our water supply. We have heard that by seeding we can increase our water by 10 to 20 percent, and by putting up some proper fences in the mountains to catch more snow we may be able to raise that as high as 30 percent. The problem here, though, is that 10 percent of nothing is nothing. If we only have 50 percent of the water we need, and we increase that by 10 percent, we still do not have enough. Intelligent conservation and planning measures are still necessary.

Other methods of conservation and storage include storage in upstream areas and the zoning of land to regulate water distribution.

All this brings to mind one final point. How are we going to determine our priorities on all of these different concerns? The answer may lie in an old humorous adage that water flows uphill to money. Money is a good criterion of the public will and priorities, because it represents the most unprejudiced vote that the public ever gives.

The fact is that people apparently are more willing to spend money for other commodities than for water. This will change as demands exceed our supplies. Every one of us uses some 20 tons of materials from the ground each year, and every one of those tons requires the use of water. It is time we faced these varied water problems and resolved them so that we may continue the kind of life we have become accustomed to in years to come.