WATER DEVELOPMENT - A WEST SLOPE PERSPECTIVE
BY STAN CAZIER

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I guess I can begin at the end and tell you what the perspectives have been and work from there. First of all, it is very simple - Not one more drop. Arguably you don’t hear too much about that any more because many of the trans-mountain diverters are in much better position than the West Slope users and accordingly, we have to barter or trade and the only thing we can barter or trade are additional diversions.

The present River District position is: see attached

When we first started talking about major diversions, particularly the Colorado Big Thompson Project, Congressman Taylor’s position as well as others was 1 acre foot of storage for 1 acre foot of diversion. Ultimately, if you look at Senate Document 80, which is the document of settlement between the West Slope and the East Slope, the ratio of replacement turned out to be 3 to 1. Approximately Green Mountain Reservoir in return for all the West Slope diversions for the Colorado-Big Thompson Project.

A statement which you don’t hear very often, which was often made by trans-mountain diverters is, there is a master plan for Colorado water development. It is known as the Appropriation Doctrine. While the appropriation doctrine has served the state with distinction and allowed flexibility, that has kept us out of many of the disputes on transfers that have occurred in other states, it is a simple answer at this stage in Colorado history for a much more complicated set of issues.

As with most of us, the West Slope perspective comes from what has happened historically. You can divide the West Slope perspective on trans-mountain diversions unartfully into three different segments. The first one, I term the early years, similar to those people who used to watch the Texas Rangers on television, where they had two segments on the old days and modern times. In the early years, the West Slope saw the development of the Denver Water Board Moffat collection system, augmented after the 1950 drought, by purchase and drying up a fair amount of land, particularly in Grand County. Also, it has been stated that Grand County didn’t fight the project that hard. However, one needs to remember that even with the 1921 priority date, Denver was fairly junior and until the purchase and abandonment of senior agricultural water rights, there was a fair amount of downstream calls against the Denver system.

The East Slope/West Slope agreement for the Colorado Big Thompson Project in the 1930’s was a harbinger to the Water Conservancy Act, wherein West Slope concerns were addressed as part of the project including construction of Green Mountain Reservoir and addressing maintenance of stream flows and lake levels.

In the 1950’s and early 1960’s we saw the development of Denver’s Dillon/Roberts Tunnel collection system and attendant litigation in Federal District Court. Somewhere around the 1960’s saw the start of the development of the
FryingPan/Arkansas Project by the Southeastern Water Conservancy District.

The middle years, which I note “detente” involved not only litigation where there were winners and losers, but more importantly the development of East Slope/West Slope agreements.

One of the more important localized one was the Summit County Agreement wherein Denver agreed to accommodate Summit County water needs in return for some West Slope support of Two Forks. Shortly thereafter, there was an agreement arising out of the Eagle River Diligence case of Denver in which Denver, the River District and Northern came to an agreement on development of future projects on the West Slope.

In betwixt this time period came one of the most startling decisions ever to hit Colorado water law. The EPA denied a permit for Two Forks. After that result, the proponents of Two Forks tried to make the case that they had settled everyone’s opposition. What they had forgotten about was the lack of any accommodation for Grand County, or agreements with the Northwest Colorado Council of Governments as well as the environmental community. I believe it was in this general period that the water attorney for the Denver Water Department, Glen Saunders, opined that it would be impossible to build another major water project without state-wide support.

Also arriving on the scene in 1980 and 1985 as well as the early ‘90’s were major settlements involving the East Slope and West Slope. The first one is known as the Windy Gap Settlement involving the Municipal Subdistrict Northern Colorado Water Conservancy District as well as the West Slope opponents to the Windy Gap Project. For the first time, really, since the advent of the Colorado Big Thompson Project, another major settlement (excluding the Frying Pan/Arkansas) occurred, which had protections provided to the West Slope including development of a West Slope water project, localized protections for Grand and Summit Counties as well as agreeing not to divert water below instream flows as well as other benefits.

The next agreement is the Clinton Agreement. It involved Grand and Summit Counties and ended up making water available in the headwaters of the Fraser River as well as Summit County for localized benefits. A very complex agreement with many facets that has never been fully understood by many.

Lastly, the question is the present. It is impossible to touch upon the present without mentioning one of the most misunderstood events of the century. The drought in 2002 was unprecedented and many entities have chosen to completely disregard or explain it away or not include it in their water projections. However, a similar event may be much more common in the future.

However, 2002, as well as just growth and need, led to the concept of the Denver Water Board expanding its Moffat Tunnel expansion as well as the Municipal Subdistrict, Northern Colorado Water Conservancy District beginning work on their
Windy Gap Firming Project. As an offshoot of that, the headwaters’ counties, Denver, Northern, and the River District as well as others began a study of the Upper Colorado River to determine the exact amount of water that is necessary for municipal, industrial and environmental purposes. The study, while done, is not dispositive of all needs, particularly environmentally.

As an offshoot to the UPCO process, discussions have ensued between Denver and some of the West Slope entities regarding a “global settlement” that will allow for additional diversions to the East Slope in return for accommodations to the West Slope. Also, passage of HB1177 has allowed for an alternative system of negotiations between basins, which is still in its infancy at best.

Somewhere in between, the Statewide Water Supply Initiative was begun and finished by the Colorado Water Conservation Board. A mammoth study, but unfortunately, it didn’t address in detail most of the West Slope questions regarding instream flow issues, such as fish flows, flows necessary for wastewater treatment as well as just maintenance of stream channels. Hopefully, that is being cured.

No presentation of West Slope concerns can be complete without an outline of present problems, such as the following:

First of all, is there any water left. I think the basic use of this question by the West Slope has perplexed the East Slope. Let me explain. First of all, all the easy projects are done, which is why you see firming projects for the Moffat Expansion or Windy Gap Project. Those projects go through either the Adams Tunnel or the Roberts Tunnel, which were the easiest to do and involved only one tunnel or pass. Future projects will require two or more tunnels.

One of the more perplexing issues is how much water does Colorado still have under the Colorado River Compact. Under a number of assumptions that are not really very far fetched, very little. The Colorado Water Conservation Board is, in fact, studying the water supply issue. One of the concerns continues to be if there is a shortage of water and a Compact call, who has to assume that risk. The West Slope, probably wisely, assumes that the intent is they will be the ones that have their ox gored. That issue hasn’t been helped by the fact that the State Engineer has not developed guidelines with respect to the administration of a Compact call.

No discussion of West Slope concerns could be complete without a discussion of the four endangered fish. The Colorado River Biological Opinion, besides addressing a number of requirements, provided that after the development of 120,000 acre feet, progress on the endangered fish recovery will be looked at more closely. The development of Denver’s Moffat expansion, additional Blue River diversions as well as the Windy Gap Firming Project can take up the entirety of the 120,000 acre feet.

Lastly, as most of you are well aware, the problem, to some extent, is not that there may not be enough ground water on the East Slope, but it is located in the wrong
location for use. Whether it was wise to allow development based upon ground water or not is a debatable question. However, keep in mind that groundwater is the basic supply for many municipal areas in the United States.

The West Slope has been told that there are at least a number of proposed projects that could be utilized to satisfy the continuing thirst of the East Slope. The simplest would be a Green Mountain Reservoir pumpback with the functions of Green Mountain Reservoir, which is authorized by Senate Document 80, replaced by another reservoir. The pumpback from Green Mountain Reservoir to Dillon Reservoir and through the Roberts Tunnel certainly, while not cheap, is less expensive than many of the other proposals. Other proposals include the Green River Pumpback through Wyoming, the Yampa River investigation by the Northern Colorado Water Conservancy District as well as the Big Straw Project from the Colorado/Utah border to the headwaters and over to the East Slope. The big projects, whether it is Green River, Yampa or Big Straw, have a certain attraction because of the huge quantity of water they can provide, however, they have a huge price tag and not all the questions regarding the Compact, environmental and other issues have been answered.

Summary - Where do you want to go from here? The East Slope and the West Slope definitely complement each other, but as we run out of water, the question becomes, who or what gets sacrificed. Colorado was originally founded, at least in my mind, based upon the mining, logging and agricultural industries. Mining is restricted, logging has pretty well been destroyed, witness the Pine Beetle epidemic. Do we need to destroy agriculture. Is it reasonable to destroy the West Slope instead by taking all the remaining available water, which could exceed, depending on where you measure it, 80% of the water in the headwaters in some counties. I guess the position of the West Slope is, it is not too late and you need to evaluate alternatives that are going to be less impacting, not only on the West Slope but the entire state, including regional cooperation, reuse, exchanges, rational groundwater development and most importantly, conservation in the true sense based upon the true cost of water, not the subsidized cost that people have paid.
The Colorado River Water Conservation District
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Transmountain Water Diversions
Colorado River Water Conservation District Policy Statements:
The Colorado River Water Conservation District believes there is no current or reasonably foreseeable need for new transmountain diversion projects. Transmountain diversion of Colorado River water results in adverse economic, environmental, and recreational impacts. Front Range water demands can be met through a combination of better groundwater management, conservation, reuse, system interconnections, re-operations, and in-basin transfers and exchanges.

Nevertheless, transmountain diversion proposals are likely to persist. Accordingly, the Colorado River Water Conservation District will continue its historical opposition to ill-advised proposals and pursuit of full mitigation for responsible proposals that include benefits for western Colorado.

Present and future West Slope water uses, including environmental and recreational needs, must be recognized and protected.

Background:
The primary goal of the Colorado River Water Conservation District (River District) is the protection of existing water uses and preservation of future economic opportunities for the residents of Western Colorado. The River District is committed to meeting the present and future water needs of its residents.

As identified in the state’s Metropolitan Water Supply Investigation (MWSI) and the Senate Bill 96-74 study, nearly 400,000 acre feet of legally usable water is currently available annually without construction of any new projects. Although these studies addressed only the Denver metropolitan areas from Douglas County to Denver’s northern suburbs, similar opportunities for additional water supplies, such as water reuse, conservation, re-operation, improved groundwater management, water sharing, in-basin transfers and exchanges, and others, exist for other areas of Colorado’s rapidly growing Front Range.

The more recent State-wide Water Supply Investigation (SWSI) identified more than 600,000 acre feet of new water supplies that will be required statewide by 2030 in addition to currently planned water development projects. SWSI, however, has not yet identified sources for this additional supply, nor quantified the environmental and recreational needs of individual basins.

The River District supports the completion of the SWSI study and the implementation of the initial recommendations of the MWSI study. Additionally, the River District is involved in and committed to several cooperative efforts designed to address or meet specific, identified Front Range water supply problems. Presently, these include: The Eagle River Memorandum of Understanding which seeks to identify and develop additional Eagle River water supplies for both East Slope (Colorado Springs and Aurora, and Denver) and Eagle River basin water users in a manner acceptable to West Slope interests; the Douglas County Water Resource Authority-Denver Water-River District collaborative water supply investigation addressing water supply needs of the Authority’s members in Douglas and Arapahoe Counties; and the Upper Colorado River study addressing water supply, water quality, instream flow and water-based recreation needs in the Upper Colorado River basin. The River District acknowledges that any or all of these efforts may result in some additional transmountain water diversions, but any such diversion will be accomplished only with the acceptance and involvement and to the mutual benefit of East Slope and West Slope interests.

Western Colorado’s economy is increasingly dependent on tourism-related construction and recreational industries that rely on adequate stream flows and healthy river systems. As such, adequate protection for all Western Colorado water uses, including non-consumptive environmental and recreational uses, benefit the entire state.

Establishment of adequate protections for instream flows, recreational use and stream levels, and water quality, especially in the headwaters regions, protects our high mountain valleys and preserves opportunities for future consumptive and non-consumptive water uses.

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