

## THE NEED FOR DIALOGUE IN BASINWIDE MANAGEMENT

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Many of you have been contacted regarding a project in which Western Network is putting together a handbook about how the Rio Grande Basin is managed. The handbook turns out to be a springboard in helping groups come together to discuss various issues around water management in the Rio Grande Basin. It turns out that our work at Western Network and the Annual New Mexico Water Conference are plowing common ground.

Rather than trying to be reasonable and rational about research, which is the topic of this session, let me shake things up a little bit and take a look at the way we're going in western water resources.

We are in a transition in New Mexico as well as throughout the West regarding water resources and water management. While I think the presentations today were excellent, I think we are looking backward. We see river management as control, as ways of harnessing the river, as building levies and rehabilitating habitat. But if you look forward, you will see throughout the West that there are a whole lot of water management elements we can't control.

I used to be the assistant attorney general in Colorado and as a former state official, I can say that in some ways water will manage and control us unless we become prepared to deal with these forces. Not all the forces are negative, however.

I'd like to discuss four of the forces I think haven't been addressed at this river management conference. I think they need to be addressed in a meaningful way so that we may prepare for the future.

The first of those forces is water marketing. We hear that term water marketing used, and it is very subtly and effectively shaping water management decisions in many areas of the West. The water market has been operating in Colorado for many years. For example, when the city of Fullerton, a Denver suburb, announced it had secretly borrowed \$13 million worth of agricultural water rights from north of Denver, it also announced it was pulling out of the Newport Reservoir project. Several Colorado cities had planned to contribute to the costs of that project, but Fullerton found it cheaper to go out and buy agricultural rights.

In Arizona, speculators and investors are buying up ground water rights that were created and grandparented by the 1980 Arizona Ground Water Management Act. Using eastern capital, those speculators are wheeling and dealing with \$35

million in western water rights. Here in New Mexico we see the water market in operation to a lesser extent.

Albuquerque is a big actor in this picture and when you are buying and selling water the way they are, the long term implications on river management are very important.

Another force that we really haven't touched upon during this conference is the role of local Indian tribes in water management. You can't go anywhere in the West these days without reckoning with tribal rights to water. For 100 years these rights have been sitting dormant, but now the tribes aren't sitting there watching that water flow down the river and letting the non-Indian world use them without paying.

The tribes' paper entitlements to these massive quantities of water are both causing conflict and requiring cooperation as the tribes attempt to translate their paper entitlements into "wet" water. It's not only the water rights per say that the tribes are trying to control, they're also exerting tremendous control over the management of the water resources. They seek control over the water resources that flow from one jurisdiction to another while crossing tribal boundaries.

This year under the Clean Water Act and the Safe Drinking Water Act, Congress gave the tribes the same status as states to get federal funding to control pollution

discharges and to manage water quality control. You can't just talk water management on any river system where there are Indian reservations without talking about the rights of the tribes both to their water needs and to their jurisdiction. I hope the round table discussion tomorrow accommodates that perspective.

We have touched on the third force a little today through the question and answer sessions--public interest. In New Mexico we see that feelings are stronger than elsewhere concerning the public interest in water resources, at least we see that sentiment in the courts. The public right to instream flows is a component that is gaining importance throughout the West, and not just because of the aesthetic and spritual qualities of water that we heard discussed here today.

It is an absolute necessity to protect instream uses in western states where recreation accounts in great part for the stable economic base. Mining, energy and agriculture all fluctuate, but the recreation component is very strong. I see the results of that strength in states such as Wyoming and Utah--not just among the "hot tubbers" in California--that are passing instream flow protection laws. I think any state that does not pass such laws is hurting itself in the long run and not just because of the economic and aesthetic values.

Instream flows are becoming a big part of the western water picture. States like Wyoming and Utah, for example, realize that they also want a say in how the federal government controls claims to instream flows on Wild and Scenic Rivers, and now the national forests and wilderness areas are established and administered.

Another reason states are wanting to get in on instream flow decisions is the Public Trust Doctrine. The Public Trust Doctrine is creating the possibility of the courts requiring that the state protect its instream flow values even to the extent of jumping ahead of senior irrigation users to protect the stream. So states are saying let's get our instream flow program established so that we can control it.

I think the public interest certainly has to be part of managing the river in the years ahead. Twenty years from now it will be incredible for anyone in this field to think that in the 1980s the state legislature didn't consider instream flow as an integral part of water management.

The other problem with the public interest, which we know well here in New Mexico, is the protection of rural communities. In the Sleeper ruling, which involved water rights in a rural ski basin community, the court said that although there was a willing seller and a willing buyer, the

sale would not be allowed because it was not in the public interest.

What will the public interest mean to us in the future? How will it impact river management? We need to look ahead at these questions and decide where we want to go.

The fourth force I see affecting water management is "maximum utilization." The legislatures are using that term, and the courts are shoving it down the throats of state engineers. The courts are trying to encourage efficient use of the resource. Nineteenth century mentality is giving way to a recognition of the need to manage water resources in such a way that it maximizes its benefits.

However, there is certainly controversy and differences of opinion over what "maximum utilization" means. Maximum utilization, conservation and efficiency are forces that need to be reckoned with in managing the river.

We are seeing these new forces--water markets, Indian water rights, public interest and minimum utilization--emerge in the western water picture. We are seeing coalitions of environmentalists and entrepreneurs cooperating to promote the water market. And we are seeing coalitions of Indian tribes, energy companies and municipalities banding together to create new uses of water.

These new partnerships are making some groups nervous about the water market and what it is doing to instream

flows and community values. They are saying let's get together and talk about it and see where we're going. It's going to take thought, cooperation and dialogue to learn how we can all benefit from this valuable and precious resource.