

Written Testimony of

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To

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Oversight Field Hearing on
“The Fryingpan-Arkansas Project at 45: Sustainable Water for the 21st Century”
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Water Quality: Our New Challenge

“In the whole region (the West), mere land is not of value. What is really valuable is the water privilege.” – John Wesley Powell, 1877.

Water quality and water quantity can no longer be treated as separate issues. Water quality is rapidly evolving to become a matter of equal importance in water transfers as water quantity. Water quality can change as fast as its use. Just as Coloradans want water available in sufficient quantity and location, they also want and need to be assured that water is the right quality for its intended use. This past legislative session a bill was enacted into Colorado law to address the effects of a water right adjudication on water quality. The Fryingpan-Arkansas Project needs to be managed in a manner that recognizes this growing concern with water quality and assists, but does not hamper, this need.

Colorado Surface Water

Surface water laws were written into the Colorado Constitution at the time of statehood in 1876 and became known as the “Doctrine of Prior Appropriation.” Water is considered a separate property right in Colorado—rights can be sold or inherited, and prices may fluctuate according to supply and demand. The increasing demand for water by urban areas has prompted many sales of agricultural water to cities. Notably, the Lower Arkansas Valley Water Conservancy District was formed to “keep every drop of water in

the Arkansas Valley.” A water right is based on putting the water to a beneficial use. The Colorado Constitution recognizes a preference of water uses in the following order: domestic, agricultural, and industrial.

The Pueblo Dam

Lake Pueblo is one of the components of the Fryingpan-Arkansas Project—a project which moved water from one side of the Rocky Mountains to the other. It is a multipurpose project which built the Pueblo Dam and the system of pipelines dedicated to bringing Western Slope water to the southeast corner of Colorado. But foremost on the minds of farmers and ranchers at the time the Project was conceived was winter water storage and flood protection. In other words, the legislation was designed to provide supplemental water to the Arkansas River Basin. It was not designed to export that transmountain water, nor native water, out of the Basin. Apparently, there were no references in the legislation to Arkansas Valley water quality. However, water quality is clearly implied in the act. As an example of that implication, one component of the Project, which has not yet been implemented, is to deliver quality drinking water to the lower Arkansas Valley. The Arkansas Valley Conduit would take water from behind the Dam and via pipeline deliver it to communities and rural water providers east of Pueblo (an outlet exists on the Dam specifically for the conduit). Today there are competing bills in Congress attempting to address this conduit issue as well as addressing a “Preferred Storage Options Plan”—that is, an enlargement of the Dam and increased storage.

Colorado Water Quality

Regulation

The Colorado Water Quality Control Commission is the body responsible for establishing surface water quality policy in the state. For example, the Commission has the authority to maintain and enhance the quality of the state’s waters for public water supplies, for protection and propagation of wildlife and aquatic life, and for domestic, agricultural and recreational and other beneficial uses. The Water Quality Control Division is the state agency charged with protecting the quality of the state’s water by implementing federal and state water quality control and regulatory programs.

Despite the fact that water rights holders may perceive a threat from water quality regulations, the protection of good quality waters benefits all users. Thus, good quality waters need protection from degradation.

Effluent

Generally, effluent is the liquid that flows out of a waste treatment plant. For wastewater, the federal Clean Water Act, federal legislation that regulates surface water quality, and the Colorado Water Quality Control Act prohibit the discharge of pollutants from a point source (a discrete source of discharge of a contaminant) to surface waters without a permit. The U.S. Environmental Protection Agency has delegated authority to the Division to issue discharge permits to municipalities and industries. The permits specify the levels of contaminants, such as bacteria, metals, and chemicals that can be discharge by the permitted entity.

On October 12, 2005, I filed a lawsuit against the city of Colorado Springs, a Fryingpan-Arkansas Project participant, for the unlawful discharges of raw sewage, non-potable water, and chlorine from that city's sewage collection and treatment system into Fountain Creek and its tributaries. The Plaintiffs are downstream victims of this pollution. Instead of being an amenity for downstream communities, Fountain Creek is more like an open sewer running through Pueblo.

Return Flow

Return flow is unconsumed water that returns to its source or surface after use. Generally, the wastewater and return flow water at the new point of discharge should not exceed pollution limits established at the original place.

Use of existing or enlarged Pueblo Dam storage capacity by development hungry cities creates the probability of more Fountain Creek downstream victims. For example, the so-called Southern Delivery System, advocated for by Colorado Springs, would take additional high-quality water through a pipeline out of Lake Pueblo in exchange for effluent, or at least contaminated urban flows, running back down the Fountain Creek—in other words, exchanging good water for bad. Some have suggested that any diversion be piped below the confluence of Fountain Creek and the Arkansas River to assure that Colorado Springs has an incentive to send quality water downstream.

Summary

We must recognize the value of preserving high-quality waters, stop gutting the power of water quality administrators and provide adequate funding and teeth for enforcement. The Fryingpan-Arkansas Project must be managed and evolved to support these goals not work to defeat them.