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Gunnison River Part II

Gunnison

by Gary Sprung

Two Forks gets all the press attention these days, but issues on the Gunnison River of the Western Slope may yield as much progress in solving Colorado water problems. Last month's Colorado Wildlife analyzed problems on the lower reaches of the river. This month, we take a look at the action at the headwaters.

When the City of Aurora in April, 1986, applied for a right to divert water from the Gunnison River basin through the Continental Divide to the Front Range, the issue quickly thrust the Gunnison region onto the center stage of water policy-making. A total of 42 individuals, companies, associations and governments objected to the diversion in the Gunnison River Water Court, starting a long process that may soon go to the Colorado Supreme Court.

Conservationists including the Colorado and National Wildlife Federations are playing a key role. They have long desired to see a broader range of public values considered in Colorado water decisions. The federations, along with the High Country Citizens' Alliance, the Gunnison Angling Society, Western Colorado Congress and a Taylor Park homeowners group called Rainbow Services, have introduced to the case a set of "public values" not usually considered in water court.

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This summer, Meyer convinced Brown that he should send the question up to the state's highest court. Whether the Supreme Court will tackle the difficult subject remains to be seen.

Widespread affects of water diversion

Aurora's plan would divert a whopping 70,000 acre-feet per year from the upper reaches of the Taylor River, a major Gunnison tributary, and transport that water under the Collegiate Range to the Arkansas River valley. The pipeline would flow under the Arkansas, then up over the Mosquito Range into South Park — the headwaters of the South Platte River. Once in the South Platte, the water could flow downhill into Aurora's municipal plumbing.

In addition to the "Pieplant" dam on the Taylor River, Aurora would build a reservoir on the East River about 15 miles south of Crested Butte. This "Almont" dam would provide replacement water for downstream irrigators

who have senior water rights, especially the Montrose-area Uncompaghre Water Users Association (see last month's article).

The healthy, beautiful environment of the Gunnison country is the foundation for its growing tourism and recreation economy. The dams and reservoirs of Aurora's "Collegiate Range Project" and Gunnison County's loss

of water would significantly affect both the economy and the environment.

At the court hearing on public values last April, Attorney Bruce Driver, representing the High Country Citizens' Alliance (HCCA) of Crested Butte, led the arguments with an observation that water is essential to "a constellation of values on which the very cleansing of our souls depends." Front Range residents and thousands of nonresidents regularly visit the Western Slope to experience those benefits, he noted.

According to a brief filed by attorneys Meyer, Driver and David Getches, the proposals by Aurora and NECO, "portend significant, deleterious impacts on public recreational uses of water and related resources, on fish and wildlife, and on the economic viability of life of an entire region of the state."

More specifically, the Almont dam would flood out the Roaring Judy fish hatchery. Roaring Judy is one of the state's most productive hatcheries because of its unique water source, a high-volume spring with a constant temperature, perfect for breeding and raising trout and kokanee salmon. Aurora has consistently promised that public resources of such value would have to be replaced, but DOW officials have suggested that Roaring Judy is irreplaceable because of the spring.

HCCA President Don Bachman observed that the hatchery was built partly as mitigation for the Blue Mesa dam. "How ironic to be forced to mitigate the mitigation," he commented.

The Almont dam would also flood a riparian area downstream from Roaring Judy which hosts flocks of migrating great blue herons each spring. A few bald eagles spend their winters there. Anglers find this stretch outstanding. Last March, a fisherman there set a world record for catching brown trout on light tackle.

Furthermore, the Almont reservoir would flood out Colorado Highway 135. The relocated road would have to cross the Almont Triangle wildlife area, a critical wintering ground for bighorn sheep and elk. The land is so important to the animals that in winter humans

are prohibited from walking there.

Also, the dam would be located just one mile above the resort and retirement community of Almont. Homeowners there fear for their safety and the value of their property.

The Taylor and Gunnison Rivers would most likely never again reach high water levels. While the anglers on the Taylor might find somewhat easier

fishing, the growing boating businesses would be ruined. Currently, the boating and fishing interests each get their due at different times as the water released from Taylor dam is varied to suit a wide range of needs.

The decreased flows in the Gunnison might also affect fish far downstream, including the Gold Medal fishery in the Black Canyon and the endangered species of the Colorado River, though this possibility has not been investigated yet.

There also is an issue of foregone opportunities to deal with the future. Many would like to see the 70,000 acre-feet applied to new economic activity in the basin of origin. At the annual Colorado Water Workshop held at Western State College in Gunnison this July, State Rep. Scott McInnis, R-Glenwood Springs, commented, "Present overdevelopment in one basin will ultimately restrict development in another basin."

Competing appropriators

Aurora is not the only entity seeking to appropriate the unused portion of Gunnison basin waters. A private firm called Natural Energy Resources Company (NECO) has been working since 1983 to use the Taylor Park waters for hydroelectric projects. But Aurora was the first (in 1986) to claim those same waters for transmountain diversion purposes. NECO quickly made a similar filing. Now NECO must fight Aurora's claim to advance its own rights as superior.

NECO proposes a building reservoir in nearby Union Park. It would be the largest body of water in the state. The company touts this as an alternative to Two Forks. The company may have a reasonable idea, but the Army Corps in its Two Forks environmental impact statement concluded that the problem of water rights eliminates Union Park from consideration as a Two Forks option.

The Upper Gunnison Water Conservancy District is trying to represent local water interests with its own claims on the Taylor River. The district bases its claim on the fact that since 1975, it

has managed the Taylor Reservoir for recreation and wildlife purposes under an agreement with the Bureau of Reclamation and the Uncompaghre Water Users Association (for whom Taylor Dam was built in the 1930s).

Should the district prevail and obtain water rights, it would effectively foreclose Aurora and NECO. These water rights would entail no new structures or diversions. They simply would use the unappropriated water for a "second filling" of Taylor Reservoir. This water could maintain lake levels for flatwater boating or be released at appropriate times for boating, fishing and wildlife downstream.

The Upper Gunnison District is essentially applying for an instream flow right. A recent Colorado law prohibits anyone but the Colorado Water Conservation Board from owning such rights, so that board opposed the district's application. Judge Brown ruled in favor of the district, saying that their filing was different because it uses a "diversion" structure, the Taylor Dam. However, this issue also, may go to the Supreme Court.

Water issues can make strange bedfellows. Ironically, both of Aurora's competitors for the Taylor River water have sided with the big city in opposing the conservationists' proposals for consideration of public values. It seems the entire water establishment sees much to lose in these issues.

Key studies underway

The "public values" are often difficult to define and hard to quantify. To get the issues through water court, the opponents of Aurora's plan must not only win their legal case at the Supreme Court, they must also develop real data. Toward that end, the HCCA and researchers at Colorado State University sought and obtained a \$50,000 grant from the Ford Foundation. Most of the money will be spent on field work and analysis performed by students and faculty of the school's Agriculture Resource Economics Department. By 1990, they hope to show solid evidence of the values of instream flows.

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The CSU/HCCA study will supplement a more comprehensive \$500,000 study underway by the Colorado Water Resources and Power Development Authority. The authority, created in 1981 to study and finance water development, is developing hard information on the amount of water actually available in the Gunnison Basin and a range of alternatives for using the water. It's possible the answers will show there is no extra water for Aurora to appropriate.

Should that occur, the water court could deny issuance of any new water rights. But Aurora would still have an option to obtain the water. It could buy the water rights owned by local ranchers.

Alternatives to agriculture?

Since agriculture accounts for 90 percent of Colorado's water consumption, it might seem that a small decrease in agricultural use could supply most of the state's municipal water needs. Selling water is sometimes the only way farmers can stave off bankruptcy, noted Colorado Attorney General Duane Woodard this July.

In Gunnison County, ranchers oppose Aurora's efforts to get Taylor River water through the water court. However, several of these hard pressed ranchers have publicly expressed the idea, "Don't let Aurora take our water for free. Make them buy it."

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Cities can often buy agricultural water more easily and at lower cost than new dams, tunnels and pipelines. Gov. Romer in June pointed to water marketing as one of many possible alternatives to Two Forks dam.

But, Woodard warned, "The affects on farming communities of water marketing can be devastating." Dewatered farms and ranches lead to loss of business for downtown merchants, reduced population and an erosion of the property tax base, with consequent deterioration in schools and roads.

"How can we make sure the market makes the right decisions?" he wondered. He urged the state Legislature to protect rural communities and lifestyles.

Aurora has bought large amounts of agricultural water on the lower Arkansas River (east of Pueblo), and the city government is well aware of the consequences. Tom Griswold, Aurora's utilities director and the current president of the Colorado Water Congress, noted that farmers are compensated for the loss of their water. "Other residents and businesses are not similarly compensated," Griswold explained. "There is little incentive or expertise for farmers receiving water sales proceeds to reinvest in the area in the form of new economic development. A significant local replacement economy for the Arkansas Valley has not yet surfaced."

Sheldon Boone, director of the Colorado branch of the federal Soil Conservation Service, has likened the problem to a favorite topic of Colorado football fans:

"It's like Oakland would come to town and buy the Denver Broncos and move them 'lock, stock and barrel' to that town. The owner, Pat Bowlen, would be paid in full . . . But do you think the people and businesses of Denver would feel fully compensated? Even the big corporate world of professional sports doesn't treat communities that way. Franchises are not moved around without cause. Franchise locations are protected," Boone said a year ago at the water workshop.

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water workshop.

Griswold this July urged continued stress on new dams, instead of purchases from agriculture. Replacing Two Forks dam with agriculture water would require drying up 10,000 acres, he said.

"We cannot maintain the status quo of our agricultural sector economy, and the virgin condition of our rivers and canyons, and continue to have economic development," Griswold asserted.

Battling Aurora's projects

Griswold offered the observation that there are no virgin rivers left in Colorado. All have at least one dam.

Nonetheless, significant free-flowing stretches remain and provide increasing wildlife and recreation benefits for the state. Aurora is a leader in efforts to destroy several of these. Aurora owns the largest share of Two Forks and plans to help fill the reservoir with water from both Gunnison and the Holy Cross Wilderness.

Homestake II, a project Aurora plans in cooperation with Colorado Springs, would provide the city with 11,000 acre-feet, enough for an additional 65,000 residents. It has been met with stiff opposition from conservationists and from the Eagle County government.

The Holy Cross Wilderness Defense Fund has tried to block the project with lawsuits. The 1,000-member group has, at the very least, created delays. The Defense Fund's leader, Warren Martin Hern, thinks it will take 20 to 30 years before Holy Cross is permanently protected.

A more powerful barrier to Aurora may be Eagle County, which recently rejected Aurora's permit application for

Homestake II. Eagle acted under the authority of a relatively young law, originally H.B. 1041 (when passed in the 1970s). Gunnison County, too, has adopted a 1041 law in response to Aurora.

In the past, Front Range municipalities have more or less outvoted, overruled or simply ignored the protestations of Western Slope communities over transmountain diversions. But now, the "1041 regulations" appear to give local governments major new power.

On June 9 this year, the Colorado Court of Appeals upheld the basic constitutionality of the 1041 regulations adopted by Eagle and Grand counties. Denver is planning transmountain diversions from both counties and has asserted superior power based on provisions of the Colorado Constitution and the 1041 law.

But the Appeals Court disagreed: "Water projects may have a substantial impact on the environment and may greatly affect the health, welfare and safety of Colorado citizens far removed from the city and county of Denver," wrote Judge Aurel Kelly.

Aurora and Colorado Springs have also filed a suit against Eagle over Homestake II. One of the two cases will surely go to the Colorado Supreme Court. Should the law be upheld, the era of transmountain diversions might end quickly.

Conservation and the metro area

Aurora must be credited for its conservation programs, which probably surpass all others in the state. They include public information efforts, lawn size restrictions, plumbing fixtures, metering, increasing rates for larger users, plugging leaks and irrigation of golf courses with untreated storm waters. Tom Griswold noted that Aurora's program is the only one that meets the level advanced by the Army Corps of Engineers in its Two Forks environmental impact statement. But he said that conservation is too uncertain.

"The metro area will need both new supplies and increased conservation to meet future growth demands," Griswold maintained.

"A lot more can be done," Chris Meyer retorted. The wildlife federation attorney pointed out that the majority of Aurora's water still goes to maintain bluegrass lawns. "It's time for us to recognize that we live in an arid climate."

Most of the Front Range cities practice conservation much less than farsighted Aurora. How can they be pressured into change?

Gov. Romer said in June that he wished he had the power to implement such change, but all he had was a recommendation on Two Forks. He asked the Army Corps to issue the dam permit, but only on the condition that the cities promoting the dam develop conservation measures to save 42,000 acre-feet a year. Romer demanded that the cities come together in a metropolitan water authority to share supplies and development. But he approved of the dam permit because it would help prevent "range wars."

"It seems to me we've got range wars already," Meyer reacted. "The Collegiate Range Project is a perfect example. Even with Two Forks in the works, we have people scrambling in every conceivable direction." Instead of Two Forks, Holy Cross and Collegiate Range, Meyer advocates solving Front Range water problems "through cooperation and stringent conservation. The Environmental Caucus study has demonstrated there is sufficient water in the various cities' water systems and the physical flexibility to supply enough

water for 50 years. Where there isn't any flexibility is on the institutional side. That's because cities view their next-door neighbor as an enemy instead of a potential associate."

Meyer said the cities are speculating in water and called the practice no more acceptable than speculation by Philadelphia lawyers. The cities use the "Great and Growing Cities Doctrine" to contend they can acquire more water than they foreseeably need, but Meyer plans to challenge it. "It's not like land speculation. Land speculation is a legitimate use of land. For better or worse, that's the law. But with water in Colorado, there are limitations. If you don't use the water, it's not yours anymore. The cities are hoarding unutilized resources."

Water blocks conservation

Cities could take a route of encouraging agricultural conservation and leasing the saved water. Modern technology offers several possibilities for conserving water through improved irrigation. However, Colorado water law gives farmers a disincentive against conservation: the doctrine of "Use it or lose it."

Like the speculation issue, property rights to unused water may be challenged by other appropriators. If a farmer uses less water because of conservation, he or she loses the right of ownership to salvaged water.

California has passed a law to correct this problem. In Colorado, the state Legislature stomped on a proposal introduced in the mid-1980s by former State Sen. Tom Glass, D-Frisco. Glass

observed that cities with great financial resources could line canals or install drip irrigation systems, then lease the saved water. The farmers and ranchers would get a cash flow and preserve their ability to produce food.

The Colorado Legislature's quick rejection of the agricultural conservation alternative shows the difficulty of water law reform. The proposal was barely even discussed. The Legislature's reaction was largely emotional.

However, the pressure for change will continue. With Aurora threatening a growing tourism/recreation economy in Gunnison, with the wildlife federation's public values challenge in the courts, and with increased public awareness through Two Forks of the value of free-flowing rivers, reform seems inevitable.

Growth

Is reform enough? Conservation can stretch water supplies, but the amount of water available is finite — probably more finite with energy supplies. Sooner or later, a finite resource inevitably conflicts with infinite demand.

Less than a decade ago, Aurora was growing in population at 7.9 percent. That kind of growth rate means the city doubles in size every 10 years. Today, growth is slower, but continues. Most metropolitan leaders rejoice in this trend.

Ultimately, Tom Griswold may be right about the fundamental tradeoffs between free rivers, the agricultural economy and economic development. If so, which of the three will be sacrificed?