Dammed If You Do,
Damned If You Don’t
Conflict Brewing in the West
1966-1999

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I. Introduction

In a dry land where the parched summer winds blow and the earth becomes as dry, scaly and cracked as a horny toad’s back. Sagebrush, four winged salt brush and yucca scatter the landscape. The occasional tumbleweed jubilantly dances across the dusty loam. A dust devil licks up dust as it races across the desiccated terrain of the terra firma. The tumbleweed is discarded into a dormant arroyo waiting for the next summer rain to awaken its slumber. The rain first teases the lethargic land with small drops, which are greedily soaked up. As the summer afternoon squall swells, the ground becomes over saturated and turns into a wild deluge. And, as quickly and sporadically as it began, the rain stops, the dark clouds dissipate and the hot sun blazes once again upon the ground. The tributary dries leaving the bed of the wash as cracked as a farmer’s gravel pitted windshield.

This barren land is the staging ground for the next civil war. The next civil war in the United States will be fought on this western battle front but, not over as chivalrous a cause as abolition, striving to give all men their dignity. It will be waged over water. The scarcity of water in the arid, desert regions of the West will cause western states to secede from the Republic. They will battle to control the region’s lakes, rivers, and aquifers. Sound farfetched? A handful of water activists have posed this sketch. They argue that controversies over water rights will cause civil unrest and ultimately bloodshed.
They also propose that as population skyrockets and industry flourishes in the West, the capability of desert civilization to survive will flop. Although this apocalypse may never happen, these doomsayers are doubtlessly on to something. Water is a hot commodity in the West, and is considered precious. And, the fight to acquire it is continually sculpting the western United States.

Edward Weinberg, solicitor of the Interior Department under the Johnson administration said, “If you’re not a Westerner, it’s hard to understand that water underlies every major decision made there.”1 The issues revolving around the lucid sustenance, water, becomes as murky and stained as the rivers after a fresh rain. As far fetched as it may seem when water rights and the doctrines allocating them are examined the water war begins to transform and embody a realistic postulate. It poses a potential and comprehensible volatile scenario.

The volatility of water in the West stems from the general lack of abundance. The chaos theory is exemplified in the flighty weather patterns governing the rain bearing cumulus fractus nimbus clouds. It can only be visualized by man, through abstract theoretical patterns of fractals and the butterfly effect.

Growing up in Colorado, I recall years of abundant snowfall or the daily occurrence of afternoon showers in the summer. As I grew older I wondered

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what happened to the days of plenty? In retrospect I realize those years were abnormalities. I remember talk of a seven-year draught. My quasi-epiphany is the norm of the West is not under the guise of draught, that this normality of the West it is not a façade, but a harsh reality. It is an arid region fraught with perpetual draught.

The capability of a desert civilization to survive has proven to fail throughout history. It is caused by the inability to harness water in times of abundance. Today water is taken for granted by the bulk of our society. However, this important element has sculpted the western United States as a civilization. My theory lies herein that in order to maintain western civilization in the United States the parties involved in water management will ultimately need to become unified and cooperate under a collaborative effort to maintain sanctity and avert conflict. The groups presently and historically involved in the United States have been the Bureau of Reclamation, the Conservation Movement and Native American tribes. The Animas La Plata Project is a case study where all three groups have been thrown into a melding pot to divvy up the water in the San Juan Basin of the southwestern Colorado in the West.

II. “The Wild, Wild West”

It is imperative to grasp the concept of the “West.” Many theories have been posed on this issue since the flooding of westward expansion. Renowned western historian, Fredrick Jackson Turner, defines the region known as the
Great West as the “existence of an area of free land, its continuous recession, and the advance of American settlement westward, explain American development.” The idea, which historian Walter Prescott Webb clutched, came from drawing a line, a cartographic approach describing the West as “an area beyond the ninety eighth meridian.” Historically these two theories dominated the interpretation of the West. Historian Patricia Nelson Limerick challenged the predominating theories creating a shift in the archetype of the American West and the Frontier. She teaches contrast:

The contrast begins in geology and topography and is continued in climate reflected in vegetation, apparent in wild animal life, obvious, anthropology…The salient essential truth, is that the west cannot be understood as a mere extension of things Eastern.

For all intensive purposes in regard to the arid western United States explorer John Wesley Powell and Limerick proffer the most feasible definitions. According to Powell:

this arid region begins about midway in the Great Plains and extends across the Rocky Mountains to the Pacific Ocean. But on the northwest coast there is a region of greater precipitation, embracing western Washington and Oregon and the northwest corner of California.

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Powell was a trailblazer not only in exploring one of the last unadulterated stretches of water un-navigated by man in the United States, but also in his ideas and studies of water and its use and distribution in the West. His explication and Limerick’s will serve in the analysis of the conflict of water in the West.

The West is a region, which lies beyond the Great Basin and stretches to the coast of California and acts as an autonomous contrasting region to the East and is not solely an extension jutting out of the East. The colonial United States is the tame half of the Republic, out of which came the need to fulfill the lusty primordial desire of man to explore and conquer. This passionate appetite was filled with the American Westward Movement, which started out as a dash to make a fortune trapping soon afterward it evolved to the rush for gold. The mining and cow towns chartered during the early frontier period erected the pylons for a western civilization to evolve.

III. A Brief History of How Water Shaped the West

“Trying to make the desert bloom”\textsuperscript{6}

\footnote{\textsuperscript{6} Interview with Chris Arend, research associate and policy Anylist for Earth Justice Legal Defense Fund, Denver Office, Phone, 11 March 1999.}
It was natural that a second wave of pioneers would establish cities and growth in the West. The new wave was woven around those seeking a new life, an escape from the eastern Puritanism or a chance to experience adventure and escape the monotony of the city and head into the unknown “Wild West.” These pioneers were intoxicated on the notion of free land and ownership. A plot of your own to propagate brought both experienced and mostly inexperienced farmers in droves.

With the formal establishment of farms in the West, reliable sources of water for irrigation were preeminent in maintaining, retaining and developing agriculture. Dry land farming would only be adequate in subsistence agriculture and in order to sustain the pubescent civilization’s irrigation was imperative. The Mormons were the first white settlers to develop advanced techniques of irrigation in their new Israel called Deseret. Today, this region is in Utah near Salt Lake City.

As a persecuted religious culture the Mormons headed west in search of religious freedom. Led by their saint Brigham Young they discovered their Zion, July 24, 1847. They soon realized in order to survive a feasible infrastructure of canals, aqueducts and ditches would have to be implemented to irrigate, without their new civilization would crumble. Their solution was counterattacking the norms of the society they had fled, by repudiating common ‘‘Riparian Rights’, which forced every property owner who used water from a
stream for power to return the same amount before the river reached their neighbors lands.”\(^8\) The structure of allocating water was rather founded on the “Spanish Doctrine of Appropriation” placing the power to distribute water in the lap of the county court.\(^9\) The Mormons, however, devised a unique irrigation plan derived from a cooperative unification. “It placed the good of the community above the interest of the individual.”\(^10\) It was based on a unified effort and is the salient reason for their successful efficient use of the precious resource.

The Mormons were not the first people to attempt irrigation in the arid western region. The Native Americans of the Southwest had also dabbled and experimented with irrigation, but not enough to preserve their civilization as it began to grow around large centers such as Chaco Canyon or Mesa Verde. Some archeologists theorize the disappearance of the Anasazi in the southwest was due to drought and a general lack of water. As the Anasazis transformed from hunters and gatherers to an established civilization based around hubs, which reached populations as great or greater than twenty thousand inhabitants. The need for consistent supplies of natural resources was essential to sustaining life.

Today the Central Arizona project pipes water from the lower Colorado in to the Phoenix Tucson area. In the past this was a thriving emporium of culture.

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\(^8\) Ridge 483.
\(^9\) Ridge 483.
\(^10\) Ridge 483.
One of the proposals for whole abandonment of the Phoenix basin by the Hogukawa Indians in the 1400’s had to do with the sustainability of agriculture in that area due to the minerals in the soil. This is another feat to overcome in the West: salinity of water as it comes off the irrigated fields. The perpetual need for water has challenged every civilization established arid regions. The United States is no exception. The government’s solution to the aridity problem in the West was to establish an organization, which acted as a device to provide reliable supplies of water, be it an oasis manufacturer, christened the Bureau of Reclamation. Prior to the establishment of the Bureau of Reclamation, no concerted effort had been given by the United States to develop sustainable supplies of water in the West.

IV. The Establishment of the Bureau of Reclamation

“The Rainmaker”

For many years the infrastructure of the Eastern and Midwestern United States had been developed. The mechanism of interior expansion came through the construction of subsidized canals, roads, and railroad projects. Eastern states opposed the idea of the government footing the bill for water development in the adolescent half of the United States. The debate over financing western states to advance irrigation development through federal funds ended when western states filibustered a harbor and rivers project. In the end the Bureau of
Reclamation was conceived out of the June 17, 1902 Reclamation Act. Secretary of the Interior, Ethan Allen Hitchcock created the Reclamation Service in July of the same year under the U.S. Geological survey with the burden of irrigating the West.

The idea of reclamation was rooted on reclaiming the arid western region of the United States through the development of irrigation. Theodore Roosevelt was a proponent of the Act on the basis it would encourage homemaking. The idea of homemaking was a key argument of reclamation supporters. The rational was families moving west starting family farms would instigate homemaking, a cherished concept in the early 1900's. At first, the Reclamation service embraced sixteen states. Texas was added in 1906 in an addendum to the Reclamation Act. The act made provisions to Texas despite the state’s lack of salable federal land, which would provide funding for projects.

The Reclamation Service's duty was to build dams and irrigation projects financed through income from the sale of government land. The beneficiaries of the irrigation water, in turn, would have to repay the Reclamation Service in ten installments. Thirty Projects were started in the period from 1902 to 1907 during this time the Secretary of the interior detached the Reclamation Service
from the U.S. Geological Survey and reinstated it as a bureau in the department of the Interior.\textsuperscript{16}

The Reclamation Service however, was not an immediate success. The endeavor was greater than had been attempted by any other civilization in respect to water. The Reclamation Service’s plan to irrigate the vast West arguably failed in certain respects due to immature development of irrigation practices. Certain soils were poor for all intensive irrigation. The westward expansion movement brought droves of unskilled or untrained farmers who thought they possessed a green thumb.

The Reclamation Service was not a failure it did have it success stories. Founding the Bureau of Reclamation was one of the wisest investments made in the United States. This is demonstrated later in history with the hydroelectricity generated, which powered the military industrial complex during World War II.\textsuperscript{17} It can be argued that the development of Hoover dam, Grand Coulee dam, Shasta dam and Bonneville dam in the West won the war.\textsuperscript{18} The United States commanded the world in its output of power. The country was generating more power than any other entity. The reason for success came from the joining of forces to unite, a revelation by the “father of reclamation.”\textsuperscript{19}

\textsuperscript{17} Marc Reisner. Cadillac Desert: The American West and its Disappearing Water (Penguin: New York) 163.
\textsuperscript{18} Reisner 163.
V. Down the Colorado: The Father of Reclamation

John Wesley Powell culminated the concept for a collaborative effort to develop means of storing water in the West. The United States government responded in support to his 1878 publication, Report on the Lands of the Arid Region. Powell was a trailblazer in his own respect. Major Powell’s fighting days ended when the Civil War resolved. Major Powell was discharged from the Union army with one less arm. A few years later he took up the oar, per say, and headed west. Powell was the first to traverse one of the last unnavigated stretches of the Colorado River, which goosenecks its way through the Grand Canyon.

He started out in Wyoming on May 24, 1869 and emerged from the Grand Canyon August 29, 1869 in Northern Arizona. Powell describes the triumphant moment:

How beautiful the sky; how bright the sunshine; what “floods of delirious music” pour from the throats of birds; how sweet the fragrance of earth, and tree, and blossom! The first hour of convalescent freedom seems rich recompense for all—pain, gloom, terror.

The journey was a rigorous test of man versus nature. Powell arrived at the end of his adventure with battered boats and men. The losses were striking,

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20 McCool 15.
21 Map of Powells Expedition Figure 1.
tallying in at two boats and three men. The men did not die on the river, but by the hand of the Shivwits Paiute Indians who mistook them for rapist. They opted to bail out August 28, 1869, at what is now called Separation Rapids, and climb out of the deep untamed chasm to the rim of the Grand Canyon. The expedition was successful in that the surmountable feat was tackled, but was also tragic because of the losses. Powell received $10,000 for accomplishing the feat. He used the money for further exploration of the Colorado River and later founded the U.S. Geological Service.

Powell went on to describe the condition of the arid west. He determined the “isohyetal,” the minimum amount of annual rainfall needed to sustain agriculture set at twenty inches in his extensive study of the western region. He also propagated ideas on the impossibility of watering the region with out a mass collaborative effort. Powell once said if all the water taken from the Columbia River to the Gulf of Mexico was evenly distributed in the West it would still be a desert. This was a revolutionary and visionary theory considering the preceding theory, of rainfall following in the wake of the plow. That mentally had a disastrous effect following the storms starting November 11, 1933 in South Dakota, which marked the start of the Dust Bowl, where entire

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24 Porter 9.
25 Porter 142.
26 Lavender 15.
27 Powell 13.
28 Reisner 5.
farms lost all of their topsoil in a single windstorm. The storms were described in one diary as, “Wind forty miles an hour and hot as hell. Two Kansas farms go every minute.” Powell was a trailblazer in the West and made way for the Bureau of Reclamation.

VI. Bureau of Reclamation: The “Hey Day,” Dominy, and the Simmering Conflict

The concept, which the Bureau was based on was that water, which flowed undiverted or unstored down stream, was “wasted.” It was based on the establishment of a system, which when created would allow man to avoid reliance on the spontaneity of Mother Nature chaotic weather patterns. The modern day Bureau of Reclamation was renamed in 1923. The first paramount project for the Bureau was the Boulder Canyon (Hoover Dam) project. With the green light on the project absorbent amounts of funding were necessary to finance the architectural feat. The project was supposed to use 17.5 annual acre-feet of water however, the flow of the Colorado River was overestimated exorbitantly as a result major altercations were necessary.

The winning bid for the project went to a conglomerate of six companies amalgamated to build the dam for $48,890,995.50. The project began in 1930

29 Reisner 149.
30 Reisner 149.

32 Reisner 126.
33 Reisner 127.
and the river sluggishly stirred from its bed, diverted from the natural stream it had poured through for eons to slither through its new channel on November 13, 1932.\textsuperscript{34} The actual dam was completed in approximately three years and the first surges of electricity poured from the charged power plant in the fall of 1936.\textsuperscript{35} The Hoover Dam stands today as an All-American achievement.\textsuperscript{36} The golden years of the Bureau ensued until the late 1970’s early 1980’s when the last of the authorized dams from the 1960’s where completed. The Bureau of Reclamation continued to build dams and reclaim the west until May 1959.\textsuperscript{37}

The most memorable and dominant water commissioner of the Bureau of Reclamation was Floyd Elgin Dominy. He was a pioneer in water resource development in the West. His quest was not in riding on the coattails of a gold craze. His crusade was to fill the Holy Grail with the scared waters of the West, to fill the cup. His quest was to create an oasis in the desert. Building on the foundation the Mormons laid in the west he dominated the Bureau of Reclamation as its commissioner for twenty years. In 1959 Dominy finally became the Reclamation commissioner. However, he had been involved with water development since the mid-1930 when he began planning and building small reservoirs for farmers in Wyoming.\textsuperscript{38}

\textsuperscript{34} Reisner 127.  
\textsuperscript{35} Reisner 127.  
\textsuperscript{36} Photograph of the Hoover Dam in Appendix 1.  
\textsuperscript{37} Reisner 231.  
\textsuperscript{38} Reisner 217.
Dominy has been characterized as “a two fisted drinker, a gambler; had a scabrous vocabulary and a prodigious sex drive.” He despised the idea of conservation. He even went to great lengths to antagonize conservationists with statements like “I’ve seen all the wild rivers I ever want to see” and calling the undammed Colorado River “useless to anyone.”

A prime example of Dominy’s cantankerousness dealt with Lake Havasu. The Bureau of Reclamation formed a fresh water marsh inadvertently, known as Topock Marsh. As a result migrating waterfowl began to frequent the marsh along the Pacific Flyway during the winter. The area became a site for nature enthusiast and it proved to be consolation for the dam to the conservationists.

However, Dominy said the grasses growing in the area consumed too much water. In 1948 he developed a solution. He ordered the marsh to be dredged to save the precious water, which could be sold for $3.50 per acre-foot. In 1960, millions of dollars later Dominy had succeeded in destroying 90 percent of the fowl habitat. An area, which was frequented by tens of thousands of ducks and geese was now only visited at most by a thousand birds. By leaving the habitat unscathed Dominy would have gained support and appeased those against the Bureau of Reclamation. It provided an added bonus, but he was headstrong and proud, so he continued to give the order to dredge.

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39 Reisner 231.
40 Reisner 243.
41 Reisner 243.
42 Reisner 243.
Dominy did accomplish a lot for the Bureau of Reclamation despite his stubborn nature. He was able to manipulate politicians into supporting his projects or beating the Corp of Engineers to the next project. He once said “I’m an enigma, even to myself.”43 He was even described as “the most able bureaucrat.”44 He knew the game and was not afraid to stare down legislators. One endearing quality, which stemmed from his abruptness, was a sense of honesty. He was trusted amongst the Washington Officials. Dominy was well versed in Bureau of Reclamation projects as well as the Corp of Engineer projects.

Dominy and for that matter the Bureau of Reclamation was in competition with the Army Corp of Engineers. As a government organization the Corp had a hundred-year head start on the Reclamation Service. The Corp of Engineers was established in 1802.45 Its purpose was in continual evolution. In 1824 they had their first big project, which was to augment the navigability for boats on the Ohio and Mississippi River because it was growing as a means of transporting goods with the use of barges. The project was endorsed under the 1824 Rivers and Harbors Bill.46 The Corp of Engineers duties expanded by the 1900’s to include constructing bridges and piers.47

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43 Reisner 215.
44 Reisner 225.
45 McCool 20.
46 McCool 20.
47 McCool 20.
Even before its birth the Bureau of Reclamation was competing with the established Corp of Engineers, who had gained and dominated the eastern vote because of their work throughout the east. The Eastern Congressmen was partial to an organization, which was established and familiar. They did not want to fund an unknown new organization. Obviously there was a compromise and the Bureau of Reclamation was established. There was however, an ingrained competition between the two government organizations from the outset. The un-structured evolution of the Corp of Engineers did not solely limit them to eastern projects and they soon began to compete in the western front with the Bureau of Reclamation.

Through his term as commissioner Dominy was perpetually vying with the Army Corp of Engineers for water projects. The competitive vigor of Dominy combined with the Corps of Engineers zeal to vanquish the Bureau of Reclamation for the coveted fame of water projects produced an atmosphere conducive to the damming of every free flowing river in the United States.

The conservation movement in the 1960’s put an end to the childish competition between the organizations and pulled the reins on the rampant projects of the organizations. Historically the conservation movement was nothing more than an annoying fly buzzing around. Any attempt made by the conservationist had essentially been swatted and squashed. After all water development interest had,
twice managed to invade National Parks with dams; they had decimated the greatest salmon fishery in the world, in the Columbia river; they had taken the Serengeti of North America—the virgin Central Valley of California, with its thousand grizzly bears and immense clouds of migratory waterfowl and its million and a half antelope and tule elk—and transformed it into a banal palatinate of industrial agriculture.48

This changed in the 1960’s possibly because of increased mass awareness and consensus towards the preservation of nature. It was more in part to a watershed in the conservation movement in 1964. Through years of debate the Wilderness Act passed September 3, 1964. The act provided the first wilderness protection in the world.49 The Congress also created the Land and Water Conservation Fund in addition to the act to aid in preserving the wilderness. This was a lynch pin for a mass environmental consciousness and movement, which had been ignited. John Muir was a catalyst to this event happening in regard to the foundation he laid for the conservation movement. Prior to the 1960’s there were respected conservationist, such as Powell as well as President Theodore Roosevelt, who was a proponent of environmental preservation. However, the bulk of society was naive to the destruction of the land. With the mass environmental movement came radicals as well. Today there are groups such as Earth First, whose members practice sabotage in the name of the environment called ecotage. Westerner and author Edward Abbey wrote is his book the

48 Reisner 241.
Monkey Wrench Gang about monkey wrenching or ecotage. With the new found conscience of the environment tension began to fester and organizations like the Bureau of Reclamation were put in check. Some would argue put in check to an extreme.

VII. Roots of Conservation, John Muir and the Sierra Club

“They aren’t rational because they don’t recognize your right to exist.”

The conservation movement began under the leadership and pioneering of characters such as John Muir. He has been called “Americas most famous and influential naturalist and conservationist.” Born April 21, 1838 in Dunbar, Scotland his family emigrated to Wisconsin in 1849. He had a strong religious upbringing in Wisconsin. However, he chose not to follow the canonized beliefs of the family preached from the strict religious principles of his pious father. He opted to take more of a free spirited approach to religion. He found his sanctity and sanctuary in nature. Muir’s religion was in the Yosemite Valley, in the wilderness he saw around him. He was a revolutionary in action as well as thinking.

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50 Interview with Mike Miller, grape farmer in eastern Washington State and irrigation District Board member, phone, 26 February 1999.
52 Ibid.
Through out his youth Muir secretly worked on his inventions, which he allowed him to attended the University of Wisconsin. However, he became disgruntled with college and soon dropped out. The paramount event, which transformed Muir’s life, was an accident while working in an Indianapolis carriage parts shop in 1867. Muir was blinded for a month following the incident. After regaining his sight he was a renewed man full of vigor much like the apostle Paul after his revelation.

With a renewed spirit Muir dedicated his life to observing the wilderness. He became instilled with wanderlust and began a nomadic trek. The point of departure was Indianapolis. From there he traversed thousands of miles walking to the Gulf of Mexico. He sailed to Cuba, and later to Panama, where he crossed the Isthmus and sailed up the West Coast, and in March 1968 he docked in San Francisco. From that moment on, though he would travel around the world, but would sink his roots and California and make it his home.

The antagonism in Muir’s life was that he saw the lords of the west destroying the natural beauty in an effort to harness the natural resources, invigorating him to create his protégé, the Sierra Club founded in 1892.

It is the nation's oldest and largest grassroots environmental organization, with 550,000 members in 65 chapters and 408 group nationwide. These individuals are using grassroots activism and community action to protect America's environment, for our families, for our future.

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53 Ibid.
54 Ibid.
Muir and the Sierra Club fought many battles to protect Yosemite and the Sierra Nevada. The most dramatic of those fights was the campaign to prevent the damming of the Hetch Hetchy Valley within Yosemite National Park. In 1913, after years of effort, the battle was lost and the valley that Muir had become attached to was doomed to become a reservoir to supply the water needs of a growing San Francisco. The following year, after a short illness, Muir died in a Los Angeles hospital.

Today there is a drastic contrast too the first days of conservation, the paradigm has shifted. We live in the time denominated by some as the age of ultra conservatism. Picture John Muir sitting in the grave cracking a gregarious smile, he would be proud of the growth and maturing of his brainchild. Conservationists are empowered to terminate or create a standstill on projects for over thirty years in this day and age. The Animas La Plata Project is one dam proposal, which suffers such a fate and is plagued with conflict due to the conglomerate of groups involved. Skeptics of the project “don’t think the Sierra Club in Denver is going to let go of this thing.”

VIII. The Animas La Plata Project, Rising Action

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56 Ibid
57 Interview with Shirley Powell mayor of Dolores and former head of Northern Arizona University’s Anthropology department subcontracted by the Bureau of Reclamation to conduct out cultural resource studies on the site for the Animas La Plata Project. She is also editor of the book Excavations on Black Mesa, 1971-1976 (Research Paper, No 48) December 1998.
The Animas La Plata Project is uniquely woven with threads of contrasting groups and issues creating a colorful fabric of quintessence value in comprehending the evolution of water and its volatility in the west. The project has been dubbed by critiques such as the Green Scissors organization and Sierra Club as a “pork-barrel program,” or a more satirized version “Jurassic Pork”\textsuperscript{58}.

The project was authorized under President Lyndon B. Johnson September 30, 1968 in the Colorado River Basin Act as a project under the Colorado River Storage Project.\textsuperscript{59} The project incubated out of the feasibility report given by the Secretary of the interior to the United States Congress on May 4, 1966.\textsuperscript{60}

The Colorado River Basin Act authorized nine projects in four states, Five in Colorado. The five big projects were Dixie Project the Uintah unit in Utah, the Dolores Project, Dallas Creek Dam, West divide, San Miguel, and the Animas La Plata Project (shared with New Mexico in Colorado); and Hooker Dam in New Mexico.\textsuperscript{61}

The Animas La Plata project is the only project authorized in the compact, which has not been built. The question then arises, why not? This is the axiomatic query about the project. The answer is multifaceted based on the interwoven, cooperation and antagonism of several different groups. The groundbreaking ceremony has been postponed numerous times. The ceremony

\textsuperscript{59} BOR S-1.
\textsuperscript{60} Ibid.
\textsuperscript{61} Espeland106.
will initiate the commencement of construction of the Ridges Basin Dam and the pumping stations, which are required to pump the water up hill to the reservoir from the river.

To understand the project a historic analysis is cardinal in delving into the development of the project. From its rudimentary virgin form, when authorized to what some call an abortion of the project in its current state nicknamed ALP ultra-light the project still lays on the drawing table. The project incipiently included in the blue prints the Ridge’s basin dam with a holding capacity of 280,000 feet and the Southern Ute Dam. The axis the dams construction rides on is a compilation of Indian water rights, the conservation movement, the Bureau of Reclamation, and the question of whether or not the new plan supports the needs of the Durango area citizens.

The project lies deep in Southwestern Colorado in the city of Durango. It is not a metropolitan boomtown, but Durango is an outdoor enthusiasts haven. Purgatory ski area in the winter, mountain biking in the summer and rafting the Animas River in the summer. It is renowned for all three recreations. Durango has become a popular year-round recreational area, with activities that include skiing, hiking, camping, fishing, rafting, kayaking and cycling. The Durango and Silverton Narrow Gauge Railroad is one of the city’s most popular attractions drawing hundreds of thousands of sightseers and tourists every year.

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The outdoor life of Durango and the train has drawn many new residents. With the increase in residence there will soon be a need to harness more of the Animas River's annual flow for municipal industrial water use. This was one issue Errol G. Jensen, chief of the Water Resource Group out of the Bureau of Reclamation Western Colorado Area Office, discussed in an interview. The project would aid in supplementing the municipal water supply. If the municipality does not get their water from Ridge's Basin then they will be forced to find other alternatives. Jensen said that the municipal water committee has already begun research to investigate alternative storage facilities for city water use.

The question remains, would alternative storage facilities and schemes be more economically feasible than a $744 million project? Much dissension and criticism lies herein in the necessity and economic feasibility of the original plan. Incipiently the project would have rung up around $400 million. Jensen said that although the project cost may sound exorbitant today, other big projects, seemed just as excessive in cost when they were built. Other dam projects have been able to recover the construction costs through irrigation water or hydroelectricity facilities.

Projects built to produce electricity have been nicknamed, "cash register dams" and they sprung up across the west through out the Bureau of Reclamation's and Army Corps of Engineers hey day of dam construction. The
1940's proliferated the idea of the “cash-register dam” whose sole purpose was to pump out power.64 This was necessitated from dams, which did not recover the construction costs through the sale of irrigation water.

With the implementation of cash generating reservoirs it provided a money-making device for the Bureau of Reclamation. The “cash-register dam” was implemented as a means of funding more dams. Electricity is where the real money is made from water projects. Irrigation water does not produce the funds to replenish the coffer necessitated to construct the dams. The idea was birthed from the need to reclaim costs from projects, which provided immensely subsidized irrigation water.

The Animas La Project essentially epitomizes the dam project, which provides subsidized irrigation and is unable to recover the cost. This is the Reason why the Sierra Club and Green Scissors have targeted the project. The groups feel the project will damage the ecology with an exorbitant price tag tacked on.

The completion date for the Animas La Plata Project was set for 1996, yet the ground has not even been scratched three years after the supposed finish date. The only surface work has been the collection of artifacts by archeologists. The project was tabled until the 1980's when it was revived and “raised from the dead.”65 On October 9, 1996 in order to prod the project along the Secretary of the

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63 Espeland 106.
64 Reisner 134.
65 Interview with Arend.
Interior Bruce Babbit, Colorado Governor Roy Romer and the Lieutenant Governor, Gail Schoettler met in order to draft a resolution, which would appease the different parties concerned with the project.\footnote{66 Interview with Jensen.}

The outcome of the meeting was the Romer-Schoettler Process staring in the fall of 1996 and carrying into the spring of 1998.\footnote{67 Ibid.} The process was forged to create discussion between the parties involved in the Animas La Plata Project. The concerned parties were:

The Department of the Interior (DOI) which incorporates both the Bureau of Reclamation and Fish Wildlife Service, the Environmental Protection Agency (EPA), the States of Colorado and New Mexico, the Project Proponents and Citizens for Animas River Alternatives. The Citizens' team is a coalition of environmental groups, including the Sierra Club, taxpayer groups and Ute Indian representatives.

The purpose of the discussions was to arrive at a more economical and environmentally friendly means of satisfying legitimate water needs in the Four Corners region. Thus far, the parties have examined a variety of criteria and issues that are considered by participants to be important and alternatives have been put forward by both proponents and opponents of ALP.

The first of the alternative plans was titled the Reconciliation Plan. The proponents of the Animas La Plata project designed it. The groups involved in
the proposition included the water districts and those who would partake and benefit from the water stored in the Ridges Basin Dam. The Citizens Correlation Plan was the second of the two proposals and provided a non-structural alternative. A non-structural alternative, meaning a plan considering a damless option. The layout of the non-structural alternative would establish a Ute legacy fund. With the fund the Ute tribes would be allotted large sums of money to purchase private land and water rights, which would satisfy the Indian water rights settlement in a sufficient quantity. However, “People who have those water rights are opposed to the idea of Indians purchasing water rights from existing sources because it will put a cap on them.” In addition water would be purchased from existing reservoirs in the area including the Dolores Project/ McPhee Reservoir, Lemon Reservoir, and Vallecito Reservoir. However, the Ute tribe objected to the alternative because they said it would not satisfy their water right needs. Indian water rights have created a big controversy over the project. Opponents of the project say that the whole involvement of the Indian water rights is a relatively late idea to make the whole project more politically correct and volatile to people. When you actually look at the breakdown of the water that was to be impounded by the original Animas La Plata project 30% of the water would go to Indians.

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68 Interview with Powell.  
69 Ibid.  
70 Ibid.
IX. Indian Water Rights: 100 Degrees Celsius, The Boiling Point

"all other water conflicts and disputes pale into insignificance compared to the political effects Indian demands could have."\textsuperscript{71}

The Indian water rights arise from the establishment of the Ute reservation in 1868. Ownership of the land gave the Utes senior water rights on the San Juan Basin’s streams in Colorado. By owning the land first the original water rights to the land were given to the tribes living on the reservations. The issue was not settled at that time though. The Colorado Ute Indian Water Rights Final Settlement agreement was signed by the Ute Mountain Ute and Southern Ute Indian tribes on December 10, 1986.\textsuperscript{72} The settlement subrogated the tribes’ claims to water in the San Juan Basin streams in exchange for a substantial share of the water from the Animas La Plata Project. It would also give $60,000 in economic development funds to finally settle with Ute Tribes in regard to obligated waters. This was the plan then submitted to Congress to decree as law. In November 1988 Colorado Ute Indian Water Rights Settlement Act was passed as law through the legislation.

This is the incendiary point at, which the war would start. It would be over the sacred fluid, water, which in its scarcity ignites the fuse of a modern civil war. When a person’s livelihood is directly threatened men and women will take up arms, which history illustrates.

\textsuperscript{71} McCool 3.
The West especially Southwestern Colorado is not a utopian haven where discriminatory beliefs are a mere figment of the imagination. The Utes and other tribes are not held in high regards by much of the non-Indian population in the area. Civil rights may have come along way since the Civil War and the preponderant Civil Rights push in the late 1950’s, but the Indians are looked down upon as much as any other minority race. The stereotype is the Indians are a bunch of drunks intoxicated on firewater.

There is even bitterness towards the Tribes because they were allowed to build casinos in the area. The prejudices along with the threat to the non-Indian settlement could potentially instigate conflict, which would boil over. If the Tribes are allowed to use all the water in times of draught, the non-Indian farmers could react because the direct effect on their livelihood. Herein lies the crux of the issue. The Native Americans are working together and the Conservationists are working together and the Bureau of Reclamation is trying to plod along, but because of conflicting interests all parties have not been able rendezvous at one point. They are like three parallel lines drawn side by side, which never intersect.

X. Winters Doctrine

72 BOR S-9.
Even more controversial than the conservation movement trying to pull
the plug in the Animas La Plata project and the archeological study, deals with
the laws pertaining to water. Water rights are probably one of the most volatile
and clandestine issues facing the West maybe even the nation. Solely the issue of
water rights does not sculpt an unstable condition, however when the element of
Indian water rights is added to the solution the solvent becomes as stable as
plutonium in a nuclear bomb.

Several lawsuits involving tribes in the northern United States were
brought to head under the Winters Doctrine Act. It basically stated Indians
should have sufficient water rights to enable them to live and make a living on
the reservation. This was a derivative of the 1868 water settlement act, which
clarified each of the tribes rights on the streams and allocated them water.

The Winters Doctrine came to fruition proceeding the benchmark Winters
vs. U.S. case dealing with water rights.\textsuperscript{73} This case stands as a cairn in
determining water allotment in the western United States. The Doctrine
implemented acted as lynch pin for protecting Indian water interests. Predating
the Winters Doctrine is the Prior Appropriations Doctrine.

The Prior Appropriations developed out of the increasing need for order
amongst the water dividends in mid 1800’s.\textsuperscript{74} The Doctrine devised a plot
establishing the hierarchical order for dividing water. Its layout relies on an

\textsuperscript{73} McCool 2.
\textsuperscript{74} McCool 2.
almost caste system where those with grandfather rights have first dibs on water. It was specifically tailored to the arid conditions of the West.

The doctrine was based on “a code of allocating water rights on the basis of priority of beneficial use.”75 In essence it stated whoever used the water first was guaranteed the water for as long as it was put to use. It also included a grandfather clause allowing senior appropriators in essence prima noctus to the water in periods of water shortage. They were allowed to fulfill all of their water rights before the junior appropriators could touch the water. In the case of non-use of the water it was cause for recanting the water and having it re-appropriated. This last limitation is still in effect today.

This was one of the main points illustrated in John Nichols book the Milagro Beanfield War, which deals with the impact of corporate and big business interest in the construction of dams on the “little guy” specifically dealing with the Hispanic population in the novel. The doctrines created were autonomous of one another, but clash drastically. In fact they are the antithesis of one another. Pitted against each other as the protagonist and antagonist in the literary pages of water rights. The problem lies in that the Winters Doctrine rights are federal rights developed independently from state laws where as the states have adopted their own water rights laws, which are dramatically different. Richard Froeman

75 McCool 2.
writes, “the controversy on the extent of such ‘reserved’ Winters Doctrine rights is now at the crux of Western water problems.”

XI. Phase Doubt

The federal government was going through changes in the 1980’s. In July 1986 in order to decrease the construction expense the idea of cost sharing was implemented in order to subsidize the project cost. The plan required the local entities provide 38 percent of the initial funding. The project financing was divvied between Federal and non-Federal entities in the Cost Sharing Agreement August 15, 1985. The agreement and the Indian water rights settlement divided the project into two phases. It divided the cost of the project in Phase I between non-Federal and Federal participants. The Phase II project cost would be the sole responsibility of non-Federal participants. The Settlement Act of 1988 by congress addressed the cost sharing required by the Ute tribes.

As far as the logistical construction aspect Phase I was subdivided into Stage A and Stage B. Stage A would include the construction of the Ridges Basin Reservoirs, the main water storage facility under the project. Also included would be the construction of the Durango Pumping Plant and the Ridges Basin plant, which would pump the 280,000 acre feet of water necessary to fill the

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76 McCool 3.
77 BOR I-4.
78 Interview with Jensen.
79 BOR I-4.
reservoir up 513 feet and provide irrigation water for 42,815 acres. The Ridges Basin Inlet Conduit would be constructed along with the Durango municipal and industrial pipeline, the Shenandoah municipal and industrial pipeline and the La Plata Rural municipal and industrial pipeline would be built. Other features included in Stage A are the electrical transmission facilities, the permanent operating facilities, the Ridges basin recreational element, recreation, fish and wildlife mitigation measures, and the cultural resources measures.

Phase I Stage B includes the Southern Ute Diversion Dam, which will later provide water for the Southern Utes under Phase II. Three pumping plants will also be included to transport water for irrigation purposes. Phase I does not provide any water for the Ute water users. Phase II includes the Southern Ute Dam and Reservoir. Phase II includes the Southern Ute Dam and the La Plata Diversion Dam. Five pumping plants will be constructed to transport the water to the various Dams and the final canal will be built. This plan has been considerably downsized with the ALP ultra light proposal.

XII. Anthropology of the Project

“The Indians only approve of the project because they are doing what is good for the community of the whole.”

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80 Animos La Plata Durango Herald, 1999
The Native Americans have thus far been able to work together united under one cause. Beneath the surface lies a microcosm of issues like picking up a rock and finding an ant colony, worms, and centipedes underneath the overturned stone. The push for water rights comes as a means of retribution for previous injustice to the tribes, but damming the river conflicts with their indigenous beliefs. The disturbance of sacred sites due to archeological work is disturbing to some members of the tribes as well.

Northern Arizona University was awarded contract April 29, 1992 for the cultural resource and data recovery, which was estimated to take 5 years to complete and cost $7.8 million. Cultural resource studies began with the plan to excavate and as soon as they did the Sierra Club immediately slapped a restraining order on continued work. In the interim they did surface collections of the artifacts on the archeological sites. The whole concept of the project developed before cultural resources had been defined. They began consulting under new definitions, including cultural properties and sacred places under the National Preservation Act. On February 16, 1994 Consent decree was filed regarding the Four Corners Action Coalition, Lawsuit. The outcome was the Bureau of Reclamation agreed to not perform cultural resource work related to ground disturbing activities prior to completion of the Final Supplement. As such, the previous preliminary injunction was vacated.

\[81\text{See figure 2 proposed plan diagram for further details.}\]
XIII. The Cattle Prod Needs Recharging

The conservation movement has fought the project from an array of stances. The project has been attacked from the cost issue and the ability to repay the monies allotted. The archeological attack flanked the project and it has been air struck from lobbyist in Washington D.C. On eof the biggest conservation steps in prolonging the start of the dam came in May 1990, when the U.S. Fish and Wildlife issued the statement indicating from their study the project would jeopardize the endangered Colorado squawfish and razorback sucker in the San Juan River system.

The legislation for the Animas La Plata Reconciliation Plan alternative, christened ALP Light, was submitted in July 1997 to congress in hopes it would be authorized.\(^{83}\) The legislation failed to confirm support. With the failure of ALP light in congress a new scheme was necessary.

The Secretary interior and Bureau of Reclamation began working with project opponents and proponents to establish a blueprint, which would settle the Ute Indian water rights settlement. Germinating from a cooperative effort in August 1998 the Secretary of the Interior proffered another plan, dubbed ALP Ultra light, metamorphosed from the Reconciliation Plan.\(^{84}\) The layout varied from the original Reconciliation Plan, but did manifest some similarities. The

\(^{82}\) Interview with Powell.  
\(^{83}\) Ibid.
new plan was established in order to concoct a way to appease all parties and devise a resolution, which all parties could agree. Attempting to devise an agreement, which everyone could agree on, proved to be a difficult task. If the plan is passed through congress the Bureau of Reclamation will draft a supplement to the supplement of the Animas La Plata Project.

Under the Ultra Light proposal the same parties will receive water, but in lesser quantities and it still calls for the construction of a dam. The beneficiaries of the water include the municipal and industrial sector, the Animas La Plata conservancy district the San Juan Water Commission, Navajo Nation and the two Ute Tribes (Southern Ute Tribe and the Ute Mountain Ute Tribe). The water would be divvied out to each entity, but with substantially decreased cuts. Because of the downsized allotment of water the Tribes would be supplemented through funding, which would allow them to purchase water from alternative sources in the given amount, which would fulfill and satisfy the water rights guaranteed to them in their treaty with the federal government.

The latest attack to the project comes from the anti-A-LP Citizens Progressive Alliance. They are striking at the adhesive holding the project together, Indian Water rights. They contracted a water rights lawyer to investigate the legality of the Utes claim to senior water rights. He determined that when the Utes were put on the reservation eight white settlers had been attacked and killed. The ownership on the reservation land was revoked until

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84 Ibid.
1938 when the Southern Ute Reservation was established. If true this would undercut the grandfather rights to water in the San Juan Basin leaving the Animas La Plata project high and dry. Supporter of the Animas La Plata project Durango resident and water lawyer Frank E. Maynes said, “Trying to attack these water claims is like trying to urinate up a rope.”

The project has other proponents in high places, including Ben Nighthorse Campbell the only Native American Senator. He is from Ignacio, Colorado, a reservation not far from Durango. As a Republican Senator he has adamantly fought to keep the project alive and represent the Native American interest. He will not be willing to let the project die and have the Indian water rights go unclaimed.

The attack on the water rights does not come from the big conservation groups like the non profit environmental law firm Earth Justice Fund, which has fought the project from the environmental slant. It has also lobbied legislation for the past few years to deauthorize the project. The debate will go on, but in regard to the Utes Water Settlement the expiration date is approaching in 2001. This is the date the settlement set for the Utes to have their water by. The retributions of not fulfilling the settlement will most likely not lead to Armageddon if they are not fulfilled by the turn of the millennium, but

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85 BOR II-5.
87 Interview with Arend.
retaliation could be in the cards of Fortuna. That milepost will have to be crossed if there has not been a feasible solution laid by the settlement date.

**XIV. Conclusion**

There is potential for escalated conflicts over water and its use in the West. If parties do not cooperate our desert oasis will be doomed to the same fate as other attempted desert civilizations. Extremism on all sides creates a detrimental apocalyptic scenario. The Bureau of Reclamation had its hay day with dam building and now it is the era of the conservation free for all where any thing is game to deem environmentally damaging. Many misconceptions have incubated from the hyper environmental conscience.

The attack on the endangered salmon species in Washington State and Oregon is volatile and potentially misconceived. “The salmon issue could potentially destroy the Northwest.” The reason environmentalist want to tear down the dams is to create free flowing rivers for salmon runs. With the loss of dams there would be a loss of electricity, a loss of agriculture, and the loss of livelihoods. A Washington State grape grower posed this sketch.

Endangered fish species is one aspect holding the construction of the Animas La Plata Project in the southwest. The idea of tearing down dams is akin to the Four Corners Region as well. The Sierra Club, who fought the construction of Glen Canyon Dam, still haunts the project after its completion. They want the
dam dismantled in order to return the native riparian habitat. The scenario described by the Sierra Club is that the reservoir is filling up with silt in astronomical proportions annually and Lake Powell will soon become a giant sandbox. The state of conservation today is directly proportional to the reckless actions of our forefathers. The message here is extremism on either side of the issue leads to extremism on the other side at the next stage. If the conservationists want to restore all of the rivers to their native state a feasible alternative would be essential in order to preserve sanity and law.

The idiosyncrasies of Animas La Plata create a kaleidoscope of geometric shapes and colors, which look like a psychedelic trip when meshed together. The conflicting parties and their ideologies of water allotment create the same colorful mismatch of images. Through dissection of each hue the underlying friction between the major groups associated with project becomes focused. The Native American water rights attached to the project in the 1980’s have been the glue holding everything together like an elementary student’s picture collage. Future growth and increased population in La Plata County will demand more municipal and industrial water in the future. Other facilities will have to be built by the city if the Animas La Plata Project is not constructed. The Utes Water Rights will also have to be settled if the project is not constructed.

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88 Interview with Miller.
According to the Bureau of Reclamation, “In terms of irrigation, yes there is a big need in the La Plata Basin for supplemented water.”

“The La Plata River is one of the worst streams to sustain agriculture because all the water comes off by the middle of June.”

“In terms of the project paying for it self yes, the project can pay for it self.” The converse side is that, “This is all done to fuel a growth that’s not sustainable.”

In order to maintain the civilization in the arid region some, “feel it would be better if they didn’t do it [build Ridges Basin Dam] and in the absence of water it would cap growth in the area.”

The groups thus far have not been able to work together to form a feasible plan that will appease all the parties. Even amongst the inner circles of each group there is a struggle to agree. The environmentalists have struggled to get along and find the same page. “The environmental community couldn’t reach a consensus on how to pursue the Animas La Plata Project.”

A s a result citizen groups were formed complicating the situation even more.

The scene has been painted and the battlefield has been set. As bleak as the situation may seem we must cling to something, hope. Hope that humanity will find peaceful conflict resolution in the West in regard to water management. And so we climb into the driver seat of the beat up farmer’s pickup, with the pitted windshield, as dark clouds form on the horizon and a summer storm.

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89 Ibid.
90 Interview with Jensen.
91 Ibid.
92 Interview with Powell.
93 Interview with Arend.
broods. With the smell of fresh rain we drive down the dirt road kicking up a trail of dust, searching for solutions and answers to the problem of water scarcity in the West.
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