

## **GROWTH MANAGEMENT OR GROWTH CONTROL**

Governmental sources have recently announced that the world population has reached the six billion number. Asia and sub-continent India have the distinction of being the major contributors to the world growth in population. The United States is estimated to have 270 million people and is growing. The logical conclusion is that absent any reversal as is taking place in the Republic of Italy, population in metro areas in the United States will grow rapidly and the population in the rural areas of the United States will grow proportionately.

The historic mission of the United States government has been to spread its population west from the original 13 colonies to the Pacific and to the Mexican border. Two great geopolitical movements in this mission were the 1803 acquisition of the Louisiana Territory bounded locally by the Arkansas River and the later acquisition of the Mexican Territory and California. The legislative tools to implement the westward population flow were the Homestead Act of 1862 and the Mining Act of 1866. Included in the Mining Act were the mining townsite patents issued to the mayors of each townsite to distribute by deed lots within the platted townsite to accommodate the miners, businessmen and families which would create the towns anticipated to fill the needs of the new mining industry. A spinoff of the Mining Act was the doctrine of priority as recognized in Colorado. The Mining Act stated, Whenever, by priority of possession, rights to use the water when mining, agricultural, manufacturing or other purposes, have vested and accrued and the same are recognized and acknowledged by local customs, laws and decisions of the courts, the possessors and owners of such vested water rights shall be maintained and protected in the same and the right-of-way for construction of ditches and canals for the purposes aforesaid are hereby acknowledged and confirmed. @ Colorado, in its Constitution of 1876, declared water streams to be public property and that water may be appropriated and diverted for domestic, agricultural and manufacturing purposes. Colorado later determined that water so appropriated must be adjudicated as to the court and created local water districts. In 1969 the legislature created larger water divisions and specifically created water courts to deal with water issues.

The Adjudication Acts of 1879 and 1881 are significant in Colorado water law inasmuch as the legislature has required that claims to water rights must be confirmed by the court. These are commonly called water decrees. These issues are significant in more recent water activities inasmuch as the Kansas v. Colorado case culminated in an amendment to Rules and Regulations Governing the Diversion of Tributary Ground Water in the Arkansas River Basin. Under the amended rules, all tributary ground water, with the exception of exempt domestic wells and exempt in-house use wells, are subject to the same priority system as surface diversions. This, as a consequence, means that water which is converted to consumptive use must have a decree with significant senior status supporting it or it must be transmountain water such as

Twin Lakes Reservoir and Canal Company water. The Upper Arkansas Water Conservancy District, with the guidance of Hal Simpson, the State Water Engineer, and Steve Witte, the Division Engineer, and his staff, has created a general augmentation plan which has been supplemented on Cottonwood Creek. These augmentation plans provide landowners, who otherwise may not have adjudicated water available to them for augmentation purposes, may, if they fit within the jurisdictional area of the water augmentation plan, apply to the District for depletion replacements which then satisfy the depletions which result from appropriation of the water through wells or on-stream reservoirs.

Modern mining activities and 21st century agriculture in the Arkansas valley may, in structure, bear a resemblance to these industries as we historically perceived them, but in real life mining patents have become preexisting subdivisions under the Colorado Subdivision Law created in May 1972 and agricultural land and associated water rights have become the cash crop of the ranchers and farmers. The Rocky Ford Ditch no longer irrigates Rocky Ford melon patches and the patented mining townsite no longer serve miners and their families. Large ranches and farms may become golf courses and exclusive home sites and mining towns like Aspen and Crested Butte may serve the recreational enjoyment of middle and upper income families, and also serve as and employment base for service industry employees and contractors. Water which was once measured in cubic feet per second to serve placer mines and hay fields is now measured in acre feet consumptive use for municipalities and augmentation plans.

Catch phrases for regulation of local population expansion are "comprehensive plans" and "growth management plans". Many of the metro comprehensive plans and growth management plans are directed at reality. The reality is that growth is inevitable and we must provide the infrastructure of utilities, highways, schools, hospitals, jails, etc. to meet the inevitable. Some smaller municipalities and counties are attempting to harness growth through a process known as "growth control" and thereby forestall or attempt to eliminate growth problems. In my opinion, the later cannot meet the test of time. Six billion people are bound to test the confines of political borders and spill over into open spaces of provinces, states and counties. Encompassed in the surge of population movement and growth management are all the political, social and environmental issues familiar to all of us.

My message today is that Thomas Jefferson, a sage of monumental scope, proclaimed a mission to acquire territory from France and to utilize his good friend, Meriwether Lewis, with the cooperation of William Clark, to explore a land to be populated and developed by the surging crowds from Europe rushing to be U.S. citizens and to acquire land. Jefferson's mission reached fulfillment beyond his anticipation and is now the centerpiece of a counter movement to control or curtail the western movement of people. We have come full circle, and water which was originally designated for fundamental uses is now a

common denominator for municipal and industrial growth.