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## Super Ditch Company - Using Rotation Land Fallowing to Create a Crop of Water

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In summary, Mr. Gover and Ms. Whiteing provided a thorough overview of Indian water rights so that attending practitioners may understand their inception, legal history, and cultural significance. Furthermore, they evaluated numerous issues arising from the modern administration of water, including the difficulties tribes face in litigation, negotiation, water settlements, and water marketing. Finally, they expressed the need for flexible and creative solutions to managing reserved Indian water rights in order for the tribes to remain culturally intact and economically solvent.

*Sarah Quinn*

#### SUPER DITCH COMPANY—USING ROTATION LAND FALLOWING TO CREATE A CROP OF WATER

Leo M. Eisel, Principle Engineer Brown and Caldwell, Golden, Colorado and Peter D. Nichols, Esq., Trout, Raley, Montano, Witwer, & Freeman, P.C., Denver, Colorado, presented on the Super Ditch Company. Eisel discussed five alternatives to “buy and dry,” or the permanent transfer of water from agriculture use to municipal use that can dry the land, and their lack of success to date. He first described how the Arkansas River Basin Water Bank Program has not provided a workable alternative because it has limited buyers to Arkansas basin customers, which excluded the Front Range as a customer. The Water Bank program also creates an uncertainty of supply to buyers because water is stored for short periods.

The second alternative Eisel noted are proposals set forth by the Arkansas Basin Roundtable Water Transfer Committee, which ultimately are not that helpful because their objective limits transbasin diversions. The third alternative, the Super Ditch, is a collective approach led by the Arkansas Valley Water Conservancy District that involves seven ditch companies and fifty different water rights. This approach attempts to eliminate some of the historic competition between buyers and sellers by allowing the Lower Arkansas District to lease water from farmers on an interruptible yield basis and then enter into thirty-year contracts with buyers. Eisel felt that leasing is a viable alternative to buy and dry because it can provide a reliable income stream to farmers. His concern, however, is that the thirty-year contract was not long enough for cities and districts with water supply responsibilities and the location of sufficient customers and lessors is necessary.

Eisel then spoke of how the *Kansas v. Colorado* legislation looked at the feasibility of paying Kansas in water rather than dollars. This alternative determined it would be feasible to lease 30,000 acre-feet a year to transfer consumptive use over a ten-year period for repayment purposes; however, many farmers expressed more interest in selling their ditch shares rather than leasing. He concluded that buy and dry must remain an option for farmers who want to sell. The final alternative was the Colorado Water Trust’s attempt to acquire water for instream

flow purposes. Eisel is supportive of alternatives to buy and dry to allow for the change of agricultural water rights to instream flow purposes on a permanent basis. The Trust is hesitant, however, to lease water for only short term periods.

Nichols then took the floor to discuss the specifics of the Super Ditch Company. Nichols began by framing the problems of permanent water transfers, or buy and dry, of water from agricultural irrigation to municipalities: the transfer is a one-time deal where municipalities buy shares in a ditch company, often far from the actual municipality, and the water is permanently removed from irrigation use by the ditch company. The irrigator and the region then can suffer from the limited or lost agricultural productivity resulting from the water transfer. Mr. Nichols favors the Super Ditch Company as an alternative to this historic problem.

According to Nichols, the Super Ditch Company would consist of participating ditch company shareholders and would grant shares of stock to persons offering up their unused water with long-term leases of the unused water to others. This program utilizes rotational land fallowing, where irrigators fallow a portion of their land and then lease the corresponding water that they save, providing an alternative to outright purchase. Nichols is optimistic that this program ultimately will create a new cash crop in the Arkansas Basin—water.

Nichols elaborated that the Super Ditch Company is a “win-win” for municipalities and ditch companies. Specifically, the rotational land fallowing program “will level the playing field” by not allowing municipalities to prey on economically distressed ditch companies. It will also protect the long-term viability of agriculture interests in the Lower Arkansas Valley. Municipalities will benefit by the cost-effective program because they will receive water at competitive prices, even in dry years. Nichols concluded that program’s success depends upon the cooperation among all ditch companies and shareholders, as well as municipalities coming to terms with not having total control of the water rights.

*Christopher Hudson*

#### PRAIRIE WATERS: AURORA, COLORADO’S WATER RECYCLING PLANT

This session involved municipal water reuse and its associated environmental effects. The panelists for this session included: Peter D. Binney, Director of the City of Aurora’s Water Department, Aurora, Colorado; Bart Miller, Water Program Director for Western Resource Advocates, Boulder, Colorado; and Steven O. Sims of Brownstein, Hyatt, Farber & Schreck, Denver, Colorado.

Peter Binney gave the first presentation, discussing Aurora’s Prairie Waters Project. He began with the history of Aurora’s water supply and explained that Aurora requires more water because of recent area droughts, an exhaustion of the local water supplies, and Aurora’s unprecedented growth of five thousand people per year, which requires