Colorado's ornery, independent water guardians finally agree on one thing: Wall Street can look elsewhere

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The calls came in shortly after the story in The New York Times announced Wall Street was on the prowl for "billions in the Colorado's water."

"Can you help us? How do we get started?" wondered the New York financiers, pals of Andy Mueller, the manager of the Colorado River Water Conservation District.

"My response was really that if you want to invest in Colorado, you might want to look at something other than water," Mueller said. "There is nothing to see here."

The national story raised hackles across Colorado. It defined agriculture as a "wrong" use of Colorado River water and detailed a growing swarm of investors eager to inject Wall Street's strategies into the West's century-old water laws. The idea of private investment in public water has galvanized the state's factious water guardians.

Population growth and persistent drought exacerbated by climate change are stressing the Colorado River, which supports 40 million people in seven states and Mexico and irrigates some 5.5 million acres of crop land. Now, the increasingly parched communities along the 1,450-mile river can add an additional threat: speculation.

It's rare to see Front Range water managers like Denver Water and Northern Water joining counterparts on the Western Slope. Heck, neighbors on the Western Slope don't often agree over agricultural, municipal, recreation and tourism-based uses of water. But everyone involved in the perpetual tug-of-war over Colorado water is ready to fight Wall Street investors eyeing "billions" in the state's most precious resource.

"We have different interests and we have different things we use water for on the Western Slope," Martha Whitmore, the Ouray County board member on the Colorado River Water Conservation District Board, said during the board's quarterly meeting last week. "but the one thing we are really unified on … is we don't want this to be a New York hedge fund's new thing."

Water law requires beneficial use

Colorado has some of the toughest laws to prevent profiteering on water in the West, anchored in a nearly 160-year-old state water law that requires users to put their rights to beneficial use. That definition has expanded from irrigation and home taps to include snowmaking, protecting wildlife and even kayaking in a whitewater park. Beneficial use does not include making money.

Even with the state's strict law preventing a gold rush on water, an 18-member Anti-Speculation Law Work Group created by Colorado lawmakers last year is studying how to give the law preventing water profiteering even more teeth.

Jim Lochhead, the head of Denver Water, agrees with water managers around the state that institutionalized private investment in water "is inherently a problem for the entire state of Colorado."

“The resource is not owned by any one person,” Lochhead said. “The role of Colorado in complying with the Colorado River Compact is a state role and not the role of any individual entity in the state and certainly not the role of the private sector.”

The 1922 Colorado River Compact — and subsequent agreements — have forged a tenuous but workable system. The so-called Law of the River assigns ownership to every flake of snow that falls on the Rocky Mountains and every drop of water stored in Lake Powell and Lake Mead.

Of course landowners, farmers, ranchers and other individuals own water rights, which they must put water to beneficial use. They cannot move water across state lines and they definitely cannot store water in federal reservoirs, like Lake Powell.

“This idea of private capital coming in to buy water rights in order to later sell that water off the land, without regard to the consequence of that, is not something we can tolerate,” Lochhead said.

The Law of the River, shepherded by veterans of hard negotiations, has allowed the Upper Basin states of Colorado, Wyoming, Utah and New Mexico to develop at their own pace without having to race against downstream metropolises, like Los Angeles and San Diego, to use their allocated water or lose it. (Without The Colorado River Compact and the Law of the River, Southern California, with its senior rights to Colorado River water, would have sucked Colorado dry many decades ago under the doctrine of prior appropriation — which delivers water to whomever was first in line to claim a right.)

The Law of the River could be upended by Wall Street investors buying up and fallowing farmland for water rights, or even worse, buying agricultural water and holding it unused until it makes them rich, like some kind of water-logged bitcoin bros. (Which, by the way, is illegal under Colorado law that doesn’t really allow the sale of actual water as much as the right to use water for beneficial use.)

But, in a way, that buy-and-dry scenario is already part of Colorado’s water landscape. Cities like Aurora and Pueblo often buy water rights to support growth. And more of that is coming. The Colorado River Drought Contingency Plan — part of a historic water management agreement inked in 2019 by federal officials and leaders in seven states — aims to cut water use, by, in part, paying farmers and ranchers and other water users to temporarily suspend their water rights.

Details on the controversial “demand management” element of the drought contingency plan are still being hammered out. But the prospect of water speculation has led to calls for all types of safeguards of public water in a demand-management market.

There is a big difference between investors who likely would be moving water from farms to cities willing to pay big and water districts trying to temporarily secure water rights to bolster supplies, said Taylor Hawes, who directs The Nature Conservancy’s Colorado River Program.

Demand management is about conserving water and “creating water security, which is a public good,” said Hawes, who earlier this month published a letter in Western Slope Colorado newspapers along with the the national Family Farm Alliance and Trout Unlimited urging partnerships among often-contentious Colorado River users “to find durable solutions that make economic sense for water users and rural communities, as well as cities.”

“Demand management should be more of a guided market not a free market,” Hawes said in an interview. “It needs to have sideboards and restrictions, and one of those restrictions needs to be that it is serving the public good, to make sure we have water security for the future and that we can adapt to the changing climate.”

Mueller, with the Colorado River District, led a spirited discussion last week with his board, detailing specific issues with the increasing call for private investment in water. He warned that eroding trust in government institutions could sway more people toward a revamp of Colorado laws that would increase the role of market forces.

“The demand-management market needs to focus on rules and regulations and structures that protect our communities and if it can’t be done, the program should go away,” Mueller said.

Mueller, who has many issues with the New York Times article, says the article may “help make our case” as a launching point to rally not just water managers, but state residents, around the need to protect water.

Private, profit-driven investment in Colorado River water might not respect agricultural roots of communities that exist because of the river. But the eye of Wall Street might help champion the case for drought management and it’s share-the-pain plan to spread potential cuts. Mueller said the threat of speculators moving into Colorado’s water market could help convince residents about the need for big, climate-adapting changes in how water is conserved and protected in the state.

“How do we create a future where our communities continue to thrive? Where our agriculture continues to thrive, (and) our recreation and tourism industries continue to thrive? It’s going to require all of us working together and adapting to the future in order to make it work,” he told his board last week. “We can’t just continue to do the things we did 100 years ago and expect to survive and thrive with less water.”

Several years ago Northern Water in Berthoud tracked down a surreptitious investment group that was trying to buy up shares of its Colorado-Big Thompson Project in hopes of selling them later for a profit. That violates Northern Water’s agreement with the Bureau of Reclamation to use the system that collects water from the headwater of the Colorado River in Grand County and funnels it 13.2 miles beneath the Continental Divide to the Big Thompson River.

Northern Water was able to prevent the group from acquiring shares by enforcing existing laws, said district spokesman Jeff Stahla.

“We recognize that water shares appreciate in value because they are private property rights and as such their prices can move on the basis of supply and demand,” Stahla said. “But to own one of those shares, you need to be in compliance with state and federal law requiring beneficial use of the water.”

Most of the angst over Wall Street is coming from a group called Water Asset Management, a New York investment firm that has spent more than $16 million over the past few years buying more than 2,000 acres of farmland in the Grand Valley. The company is the largest landowner in the influential Grand Valley Water Users Association, which operates the 55-mile Government Highline Canal and 150 miles of irrigation pipe and ditches that water more than 23,000 acres of farmland.

It’s safe to say that Water Asset Management has succeeded where all others have failed: The fund has found a way to get Front Range and Western Slope water users in quick and easy agreement.

And advising the investment firm is James Eklund, the former director of the state’s top water protector, the Colorado Water Conservation Board. Eklund spent years as the state’s representative on the Upper Colorado River Commission, helping to draw up the drought contingency plan that, among many things, creates a pool of water for Upper Basin states inside Lake Powell that serves as the upper state’s own bank within the larger bank.

Eklund bristles at the notion that the WAM group is angling to take over that bank of Upper Basin water in Lake Powell.

“You can’t do that now and you could not do that before the Drought Contingency Plan and you can’t do it in the future. Because the Law of the River forbids it,” he said. “If we allow private accounts in Lake Powell, we will undo the benefits of the bargain of the 1922 compact.”

Water Asset Management buys farms, pays for upgrades that increase the efficiency of water used in irrigating crops and then leases the property back to the farmer, Eklund said.

The firm’s investment fund “develops and markets the water assets while our farming operators manage the farming operations of the properties, mitigating agriculture risk,” reads the firm’s website details of its Water Property Investor Fund.

The group is not trying to flip water. If it was, it would have already sold the water rights it has, Eklund said. The group wants to invest in agriculture in the Western United States, he said.

“The Water Asset Management-type of investment increases agricultural efficiency, sequesters carbon in the soil and increases regenerative agriculture that maybe a mom and pop outfit — like my parent’s and my family’s — could not afford to do,” said Eklund, who grew up on a ranch his folks still own in the Grand Valley. “The investments are in the cutting-edge agriculture we need with a decreasing amount of water. We have to get innovative and that does involve the private sector.”

Eklund said he understands the concerns and issues with institutional investment in Colorado water. But his hope is that water protectors, like the Colorado River District, will work with a group like Water Asset Management to help conserve more water and protect the state’s critical resource. The investment, Eklund said, can help prevent the federal government from issuing a dreaded call that would force harsh water cuts across the entire Colorado River Basin.

“There is a good role private investment can play, and there’s a bad role it can play. The bad role no one wants to see: shorting water and betting against water,” Eklund said. “I think doing nothing and continuing to fiddle when the system crashes is irresponsible and it will accelerate the buy-and-dry scenario. If we can work together we can work out a different way forward that helps us manage the system that prevents more buy-and-dry. This is something we should have started doing a long time ago.”

Across Colorado, water managers agree with at least of one of Eklund’s ideas: It is time to work together. But not necessarily with his group. A host of water managers across the state have been meeting, amiably, to discuss how best they can form a united front to stop Wall Street speculation on public water.

“The coming together of all these different interests is a recognition that the challenges we face on the Colorado River are already complex enough. So, so complex,” said Hawes with the Nature Conservancy. “The last thing we need is Wall Street getting in the middle of this as we try to work out the solutions which are going to be really really difficult to do.”