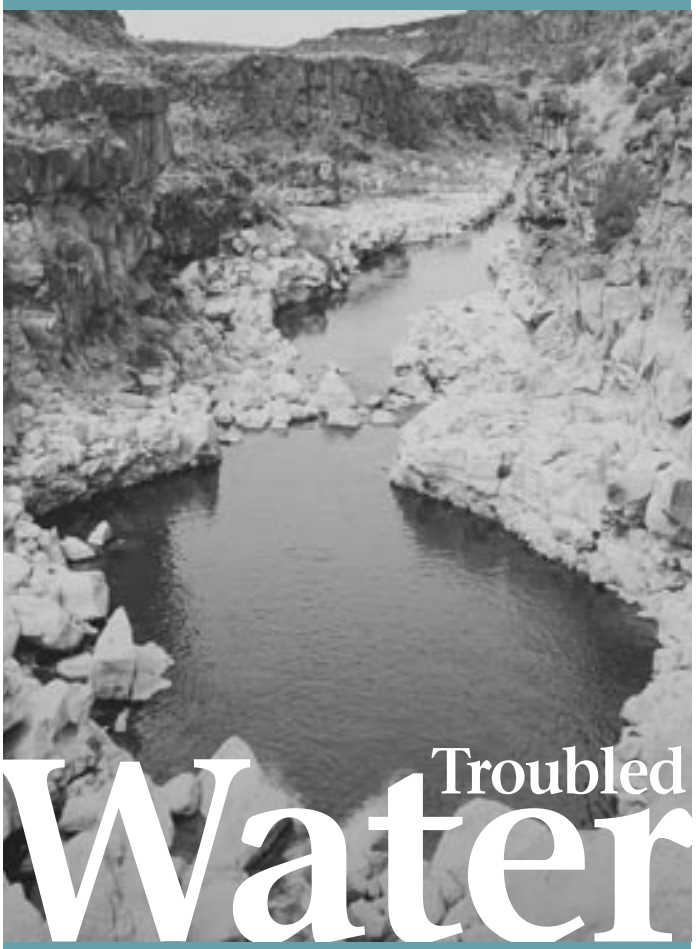
CONFERENCE REPORT



Troubled Water

ANDRUS CENTER FOR PUBLIC POLICY

The Idaho Statesman

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Conference Report

Troubled Water

Exploring solutions for the western water crisis

Tuesday and Wednesday, April 19–20, 2005
Jordan Ballroom, Student Union
Boise State University

Presented by:

The Idaho Statesman
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This document is also available in PDF format at www.andruscenter.org.

Conference Schedule

Tuesday, April 19, 2005

9:00 AM	Welcome and Introduction Cecil D. Andrus, Chairman, The Andrus Center for Public Policy Robert Kustra, Ph.D., President of Boise State University Leslie Hurst, President and Publisher of The Idaho Statesman
9:15 AM	Keynote Address: "The Global Water Situation: Crises in Management" Richard A. Meganck, Ph.D., Rector of the UNESCO Institute for Water Education in Delft, The Netherlands
10:00 AM	Audience Question-and-Answer Forum Moderated by Governor Andrus
10:15 AM	Break
10:30 AM	Address: "An Investor's Approach to Water Scarcity" Joan L. Bavaria, President, Trillium Asset Management Corporation, Boston, Massachusetts
11:00 AM	Question-and-Answer Forum Moderated by Dr. John C. Freemuth, Senior Fellow, Andrus Center
11:10 AM	Discussion: The Global Balancing Act: Water as a Right and a Commodity Moderated by Rocky Barker, Environment Reporter, The Idaho Statesman Maude Barlow, Chairperson of the Council of Canadians Patrick Cairo, Senior Vice President, Suez Environnement North America Jan Dell, Vice President, Industrial Business Group, CH2M Hill
11:50 AM	Audience Question-and-Answer Forum Moderated by Rocky Barker
12:00 PM	Break
12:15 PM	Lunch — Student Union
12:30 PM	Luncheon Address: "Water in the American West: The Fight Goes On" Patricia Nelson Limerick, Ph.D.: MacArthur Fellow and Professor of History, University of Colorado
12:50 PM	Audience Question-and-Answer Forum Moderated by Governor Andrus
1:05 PM	Break
1:20 PM	Discussion: Whiskey's for Drinking; Water's for Worrying Moderated by Marc C. Johnson, President of the Andrus Center Michael Clark, Executive Director, Western Water Project, Trout Unlimited, Bozeman, Montana John W. Creer, President, Farm Management Co., Salt Lake City Karl J. Dreher, Director, Idaho Department of Water Resources John Echohawk, Executive Director, Native American Rights Fund, Boulder, Colorado

John W. Keys III, Commissioner, Bureau of Reclamation, Washington, D.C.
John D. Leshy, Former Solicitor, U.S. Department of the Interior;
now Professor of Real Property Law, Hastings School of Law
Patricia Mulroy, Director, Las Vegas Valley Water District
Norm Semanko, Director, Idaho Water Users Association

2:50 PM Audience Question-and-Answer Forum
Moderated by Marc C. Johnson

3:00 PM Presentation: Real Solutions in a World of Scarce Water
John Tracy, Ph.D., Director, Idaho Water Resources Research Institute,
University of Idaho

3:45 PM First day adjourned.

Wednesday, April 20, 2005

9:00 AM Address: "The Perspective from Washington"
Mike Crapo, United States Senator, R. Idaho (via satellite)

9:15 AM Audience Question-and-Answer Forum
Moderated by Carolyn Washburn

9:30 AM An Andrus Center Dialogue: The West's Worst Nightmares: Drought, Thieves in the Night, and Thirsty Lawyers
Moderated by Marc C. Johnson, President of the Andrus Center
Maude Barlow, Chairperson, Council of Canadians
L. Michael Bogert, former Counsel to Governor Dirk Kempthorne
Patrick Ford, Executive Director, Save Our Wild Salmon
Karl J. Dreher, Director, Idaho Department of Water Resources
John Echohawk, Executive Director, Native American Rights Fund
Dan Keppen, Executive Director, Family Farm Alliance, Klamoth Falls, Oregon
John W. Keys III, Commissioner, Bureau of Reclamation
John D. Leshy, former Solicitor, U.S. Department of the Interior
Patricia Mulroy, Director, Las Vegas Valley Water District
Rep. Bruce Newcomb, Speaker, Idaho House of Representatives
Patrick A. Shea, former Director of the Bureau of Land Management
James C. Waldo, former Water Advisor to Governor Gary Locke,
Washington State

10:45 AM Audience Question-and-Answer Forum. Moderated by Marc C. Johnson

11:00 AM Discussion: Advice to the Policymakers
Cecil Andrus, Former Governor of Idaho and Secretary of Interior
John W. Keys, III
Rep. Bruce Newcomb

11:30 AM Governor Andrus adjourns the conference.

Troubled Water

Exploring solutions for the western water crisis

Tuesday and Wednesday, April 19–20, 2005
at Boise State University, Boise, Idaho

Presented by:
The Andrus Center for Public Policy
The Idaho Statesman

Principal Author: John C. Freemuth, Ph.D., Senior Fellow

On April 19 and 20, 2005, the Andrus Center for Public Policy and the *Idaho Statesman* convened a conference, entitled *Troubled Water,* on the campus of Boise State University. Its purpose was to explore solutions for the Western water crisis. The conference was organized around the premise that in the 21st Century, water scarcity will reshape the West's economy, growth, agriculture, environment, and recreation opportunities. In addition, access to clean water will be a global issue of huge importance.

The conferees met with several goals in mind. First, it sought to bring together experts, officials, and water activists of various persuasions to address the question of water and its uses in the western United States. The ongoing drought and its management were central concerns, but attendees also heard keynote presentations and panel discussions in addition to a hard-hitting role-playing scenario that entered into related topics such as the changing patterns of use and ownership of water and the demographic developments in the West.

Second, the conference sought to explore international water issues. Drought is a persistent phenomenon that is found worldwide. Just as important, *access* to water can be difficult, whether in a drought region or not, a problem not familiar to most Americans. The questions of how and under what conditions water is made accessible led to spirited discussion as reported below. Water's increasing definition as a commodity also played into these discussions, both internationally and within the western United States.

As mentioned, one of the key reasons that the Center decided to present this conference was the persistent drought in much of the intermountain West, including Idaho. Southern Idaho is home to a huge source of water: the Snake River Plain Aquifer. Over time, the citizens of the state have learned that groundwater and surface uses of water affect each other. Water "calls" were being made in several places where surface water uses were challenging ground water pumping because it was affecting their ability to use the water allocated to them. Within that issue was a further paradox: increased water efficiencies (less surface water used for irrigation) has led to reduced groundwater recharge.

A second reason that influenced the decision to hold the conference was the recently-approved settlement agreement between the state of Idaho and the Nez Perce tribe over the tribe's claims on water in the Snake River and its tributaries, as part of the Snake River Basin Adjudication. This agreement, although contentious and having some of the contours of a gun-to-the-head collaboration, was nonetheless seen as offering a model for future collaboration over water.

Summary of Key Findings

FINDING NO. 1: We need to find a way to reduce the starkness of the "water as right" versus "water as marketable commodity" argument. It should be possible for water corporations to act in such a manner that people's access to water at low cost can be protected.

FINDING NO. 2: Our water future is increasingly dependent on collaborative processes. Within these processes is a need to understand and respect the various values that underlie our views of water. With agreement can come Congressional support.

FINDING NO. 3: The American West continues to undergo rapid demographic change.

Urban water needs are increasing in importance. Coping with that change will be harder for some than others. At the same time, ways must continue to be found to help agriculture-dependent communities as water use patterns change over time.

FINDING NO. 4: The West is innovative. We should continue to explore creative ways, such as water banking, to provide for more certainty in times of drought.

FINDING NO. 5: New storage is part of the solution, but it is place-dependent. Funding will not rest with the federal government but with a variety of funding sources. There will need to be local political agreement that storage is needed, and projects will need to contain instream values in order to gain support.

FINDING NO. 6: Much of the West is arid or semiarid. As the West grows, newcomers as well as natives must understand this reality of Western living. It can be a limiting factor at times.

Water: A Global Perspective

The conference began with a keynote address by Dr. Richard Meganck, the director of UNESCO's Institute for Water Education in the Netherlands. Water, according to Dr. Meganck, is now at the "top of the international agenda." He told attendees that the key international problem is the way water is distributed geographically in terms of population and in terms of timing, i.e. when people could get their water. The Achilles heel in the global water equation results from a combination of uneven distribution geographically vis-a-vis population; and, given flood and drought cycles, seasonality; the impact of global phenomena, such as El Nino and La Nina; and long term climate change. Mismanagement, corruption, competing and inefficient use patterns, and consumption rates are also affected by the water problem, sometimes severely. In the case of Sana'a, the capital of Yemen, the water table is dropping so fast the city will probably exhaust it by 2010. Of the over 1.2 billion people who don't have enough supplies of water, over 90% are in Asia and Africa. This is also true in terms of sanitary needs. Meganck went on to list transboundary water management, water quality, water pricing, and water as a human right as some of the most complex water management issues.

He did suggest five areas where some very hopeful progress is occurring: education and capacity building, the development of measurable targets for improving access to water, development assistance, governance, and improvements in technology. Still, it remains up to those of us in the developed world to help. It is, he suggests, a question of obligation. We should think in terms of a Marshall Plan for water. "Those countries that are richer have an obligation to help the countries that are poorer to get water—water for development, water for life."

Balancing Water as a Right and as a Commodity

Dr. Meganck's remarks were followed by a panel that illustrated a major disagreement over how access to water is viewed throughout the world. Maude Barlow, chairperson of the Council of Canadians, put the conflict in stark terms. She spoke in terms of two divergent views, one that looks at water as a commodity where it "should be put on the open market for sale and should be priced." Those that favor this approach are said to be the World Bank, large companies like Suez, Coca Cola and Pepsi as well as countries that host those corporations, primarily in Europe. The other view sees water as a right, belonging to no one, a "fundamental human right" that should be "outside the market."

In a fortuitous pairing, Barlow was followed by Patrick Cairo, Vice President of Suez North America, which, among other ventures, is the parent company of United Water, which supplies much of the water to urban Boise users. Cairo defended Suez, asserting that the company had to follow host-country rules and noting that the company had connected over 3 million new water users over the past seven years. He used Buenos Aires as an example, noting how Suez had improved the supply and quality of water to the city. He called for outright aid rather than loans to improve the situation in poorer regions of the world where cross-subsidy rates are not possible.

In the debate that followed, Barlow countered by asserting that companies like Suez, with involvement by the World Bank and the host government, set water rates at "full cost recovery," thus leading to her charge that the provision of water is being done with a profit guarantee.

Another panelist, Jan Dell, Vice President for the Industrial Business Group at CH2MHill, offered a way out of this seemingly intractable dilemma by referring to a notion attributed to Shell Oil, urging thinking "outside the fence line." It is the perception that people have of a company and what it is or is not doing in a community that may be as important as its legal rights, profits, and internal matters. Richard Meganck added to this notion when he said that "the corporate sector might be able to look at a larger spreadsheet, a global spreadsheet, in determining what they can do locally. I don't know that every single project has to render the highest profitability for shareholders. Obviously, at the corporate level, they must deliver, but I think there can be a contribution, a component in a larger profit-making venture."

Whiskey's for Drinking;
Water's for Worrying

The afternoon of the conference's first day began with a panel of well-known individuals who were asked to think about the West and its water and about Marc Reissner's irrefutable fact that "the West has a desert heart." The current drought in much of the West has illustrated the significance of that statement. Our panelists revealed the disagreements one might expect; yet in the end, the panel left room for an agreement that they needed to work collectively to resolve common problems.

Not surprisingly, some panelists thought that the solution to Western drought is the creation of more storage capacity. Clearly all agreed that previous storage has allowed much of the West to weather the current drought better than otherwise would have been possible. Commissioner of Reclamation, John Keys, perhaps put it best when he suggested that in *some* cases in some basins, more storage is needed: "You can argue till the cows come home about whether we need new storage. There are some places that need new storage. Period. There are some basins that don't. The challenge to us is to decide *where* new storage is necessary."

Others, such as Mike Clark of Trout Unlimited, focused on better water management although former Interior Department Solicitor John Leshy, pointed out that concern over endangered species and climate change have added further complexity to water issues. Leshy also reminded attendees that the cost of new storage projects would be huge, and that perhaps market mechanisms might allocate water more cheaply. If projects are to be built, the era of their being built solely from Federal construction monies is well over. The Commissioner and Norm Semanko of the Water Users Association suggested that such projects were likely to be joint efforts. Semanko outlined support for such projects, citing strong local support based on some specific needs, and capital that came from a number of sources, i.e. it would not be all federal money. Some of the most interesting and revealing comments came from Kay Brothers, the Deputy General Manager of the Southwest Nevada Water Authority, which includes Las Vegas. Most people are aware of the rapid growth of the Las Vegas area, whose urban area population is now over 1.5 million people. In 2003, the population of Nevada was 2.3 million people. Brothers noted how the drought had taught Las Vegas residents the need for conservation of water resources.

As one example, her group has spent $22 million over the past year, helping people remove blue grass lawns. More traditional actions were also being undertaken, including the extension of Lake Mead intake pipes. But perhaps the most sobering comment came in her discussion of the dam being built to capture water from the Virgin River that headwaters in Utah. Although very expensive, as Brothers noted, nonetheless it reflected the current arrangements institutionalized in western water law. As Leshy noted in reference to the dam, "…You're building that as a result of a political problem. You can't reach agreement with Utah about using the Virgin River, and you have to control it inside the state of Nevada. The point here is that the basic water management problems are not technical; they are not even climate-related. They are really institutional and political."

Finally, Brothers talked about change. As she said, "Now I'm in the midst of trying to talk to rural Nevadans about perhaps coming up and taking water out of their basins for urban Las Vegas. That's very difficult. They don't want things to change." She went on: "If we don't establish a program through which we can forge partnerships, talk to each other, and come up with solutions, it's going to be very difficult for the West to grow. John Keys echoed this concern when he said that "…the people who know water rights inside and out, the irrigation people who have the contracts for the water in storage, the environmental groups, and the fish folks who know what's required… When you get all these folks together, …we can solve some of these problems…"

Creative solutions also received much discussion by the panel, including paying farmers for their water and having them continue to farm, (1) except in drought conditions where the water would be reallocated to urban needs; (2)by expanding the re-use of water; (3) by water metering; (4) by water conservation; and (5) by various water banking strategies. Yet, it was up to John Tracy of the Idaho Water Resource Center and the University of Idaho to give attendees some sense of the realities surrounding some of those solutions.

Real Solutions in a World of Scarce Water

Tracy first considered conservation. He reported that water metering had made a difference in a study of small Kansas water systems. Water use dropped from 250–300 gallons a day to 160–200 gallons a day. As he said, "When people saw the water they used, they used less water." Native vegetation was also effective, depending on how aggressive the strategy was. Greenhouses, as used in places such as New Mexico and the Middle West, were cited as having 300% efficiency. Yet Tracy commented that conservation can also have costs if it is too efficient or if it leads to reduced water quality.

Tracy's main point, however, was not to rely on technological "fixes" for water shortages. Rather it was on how we might find agreement when we have disputes over water. As he said, "There is no technological fix for any of our water problems, and there never will be." He offered up a useful set of observations that are worth summarizing, some of which were stressed by other speakers as well.

1. Learn the relevant facts about your watershed.
2. Get involved in basin and watershed advisory groups, such as the ones we have in Idaho.
3. Have a transparent set of protocols for action.
4. Seek out broad involvement.
5. Learn to understand the various "languages" used by different water-related disciplines.
6. Understand your adversary's assumptions and point of view
7. Be able to adapt as values, goals, and visions change, and they always do.

The Perspective from Washington

Idaho Senator Mike Crapo addressed the conference from Washington, D.C. He presented a thoughtful history of the expanding role of the federal government in water issues through what he termed regulatory, incentive, research support, and financial support mechanisms. Even though there has been a long tradition of federal deference to states in the area of water, the federal government has played—and increasingly plays—a large role.

Crapo is a strong believer in state primacy in the area of water, but he acknowledged that there would be a clear federal presence in future water discussions. Thus he was led to ask the rhetorical question of what the federal role—especially of Congress—should be in allocation and use questions. Crapo suggested that solutions collaboratively agreed to at a state level were better than those imposed by Congress at the national level.

Congress is closely divided, he said, and neither a pure state's rights position nor an expanded federal role position is going to rule the day. Thus he argued, "When we can come to the Senate with a consensus built around a large group of valid stakeholders on an issue, we can then address the issues in a way that will help us build the necessary consensus at the local level and sustain it through efforts to filibuster or even to threaten vetoes at the executive level." This, of course, is a model that is increasingly invoked, at least in Idaho, where local members of Congress play roles more as facilitators or ratifiers of locally or regionally crafted agreements, such as the one Crapo is sponsoring with the Owyhee Initiative.

Finally, he reminded people of a changing western demographic, represented earlier by Las Vegas. He noted that 74% of Idahoans reside in just five counties: Ada, Canyon, Bonneville, Twin Falls, and Kootenai. Thus, the "Idaho Constitution, right now, provides that agriculture be given a priority in the decisions about how to manage and allocate the use of water, but other uses (users) are starting to demand that they be addressed." He also acknowledged the necessity (and also the difficulty) of having all *interests* represented while not necessarily having to have every group represented.

The West's Worse Nightmare: Drought, Thieves in the Night, and Thirsty Lawyers

The highlight of the conference was the Andrus Center Dialogue. Here, a distinguished group of panelists was asked to play different roles in a scenario that assumed that the Western drought had continued unabated until 2015. Panelists included John Keys; Kay Brothers; former BLM director, Patrick Shea; Speaker of the Idaho House, Bruce Newcomb; Dan Keppen of the Family Farm Alliance; John Leshy; Karl Dreher, Director of the Idaho Department of Water Resources; Pat Ford, Executive Director of Save Our Salmon; Jim Waldo, former staffer for Washington Governor John Locke; John Echohawk, Executive Director of the Native American Rights Fund; and Michael Bogert, a key player in negotiating the Nez Perce agreement in Idaho. Not surprisingly, panelists were strong advocates of approaches that underlay their own values and positions. What follows is a summary of key remarks, as prompted by questions from Marc Johnson.

When asked what she might do as Director of the Los Angeles Water and Power Authority, Kay Brothers said that the scenario's dire conditions would demand that the entire basin come together as the Watershed of the Colorado River. Cities would have to show much higher efficiencies of water use to persuade agriculture users that urban needs should have priority. That, in turn, would demand some sort of payment to agriculture to improve efficiency during good water years.

On the question of dams to aid in reducing the impact of drought, panelists were split. Dan Keppen was strongly supportive, but added that markets and drought management were important, too.

Pat Ford answered the question in terms of a slightly larger picture: "Show us a project that will have a significant, actual, long-term impact that is beneficial for the water crisis while taking account of the same kind of crisis, in a different way, that is affecting instream values." John Leshy addressed the questioning in terms of market responses, using the varying cost of water as his example. Water that the Imperial Valley of California might pay $12 an acre-foot for, Los Angeles might pay $3,000 for, rendering dams problematic in his judgment.

The question of litigation then entered the scenario. Endangered species became a key part of the discussion with both environmentalists and tribes potentially willing to take that route if appropriate, though, as Pat Ford noted, widespread political consensus was a more appropriate route. John Keys hoped that desalination had become cheap enough to also be an option for securing new water. Water banking also came up with reference to the Idaho Water Supply Bank as one example. Even so, during a prolonged drought, as Patrick Shea suggested, some mechanism, such as a federal subsidy, will be needed to sustain some areas.

The next issue the group was asked to mull over was regional cooperation, if not a regional water compact of some sort. The issue was framed in terms of Idaho's being the source of water with downstream states of Oregon and Washington having a growing need for some of that water. Even though some Idaho farm land had been dried up for various reasons, such as groundwater/surface water conflict, better irrigation practices, and declining subsidies, Idaho irrigation districts and canal companies were holding on to the water. Faced with this reality, James Waldo, in his role as Washington's governor, offered to pay up to $200 million to help create a water bank that could allow for more water to head downstream to his state. He also proposed a $3.00 per person surcharge on Washington citizens to help fund their water needs. Both the tribes, as represented by John Echohawk, and environmentalists, represented by Pat Ford, supported Waldo. Waldo also thought that, as a last resort, the courts might be open to the argument that Idahoans were using excess water beyond their needs. Someone even suggested that certain Idaho power users of Bonneville Power might support more water being sent downriver as it could keep their rates lower.

Bruce Newcomb, acting as Idaho's Governor in the scenario, sounded some alarms. He saw his charge as fighting for Idahoans and their water needs but suggested that a well-structured lease arrangement with a water bank was possible. But the onus was on Washington, not Idaho. Michael Bogert said he would advise the Governor that any compact negotiations would have to pass Idaho constitutional muster and the Governor's duty to protect Idaho water. Bogert added that any attempt to develop a long term strategy in the Columbia Basin would require the acceptance by all interests without a concession that resultant compromises were *legally* required, something that fit the dynamics of the Nez Perce agreement. Still, as Speaker Newcomb said, that

was a court-ordered mediation. As Marc Johnson summarized it, "So the certainty of a deal, even though there were elements of it that no one was comfortable with, was better than the uncertainty of litigation."

Karl Dreher thought that a compact, needing federal ratification, might be viewed as a major federal action, requiring Endangered Species Act consultation. He also thought that by 2015, the urban areas of Idaho might have worked out a way to acquire farms and thus water during times of need for instate water management issues. He also reminded people, upon a suggestion that the prior appropriation doctrine might be "dead," that the doctrine preserved us all from "utter chaos." John Keys reminded attendees that a compact had been negotiated in the 1930s but that one of the three states had not ratified it. He doubted that a compact could be ratified today. He added that American agriculture was more commoditized and more corporate than it had ever been, and that fact had to be kept in mind as well in discussions over food security.

Advice to the Policymakers

The final event of the conference brought together several individuals to summarize the key points they had heard over the two days. If there was one overarching theme that emerged, however, it was the one stated by John Keys: "There is no single part of the water industry that can do it by itself. Every one of us has to first honor the involvement that other parties have and then craft a solution so that we have the balance talked about yesterday…" To Commissioner Keys, this fit squarely into what he, as well as Secretary Norton, have termed "cooperative conservation."

Bruce Newcomb, Speaker of the Idaho House, cautioned all to reject pure market solutions to water allocation. As he said, "You don't want water to go to him who has the gold because water is essential to life and to the quality of life." John Keys suggested a potential way to ameliorate what might happen if water rights were purchased for environmental values, as happened as part of the Nez Perce agreement. He pointed out that there was to be a $2 million reimbursement to the affected county for lost agricultural revenues, a sort of Payment in Lieu of Taxes (PILT) arrangement in the water policy arena. Pat Shea echoed the Speaker when he urged attendees that "there has to be a broad consensus that water is a fundamental right, whether it's in Idaho, the northwest, or around the world."

It was up to Cecil Andrus to remind everyone that "it's time those of us in this room and in other rooms do a good job that we can brag about BEFORE we are forced to. If we do that, we're going to relieve a lot of heartburn, and some lawyers won't make quite as much money. But we'll move along a lot faster than we've been moving."

Therein lies the trick. Can we move toward what John Keys and others have called "cooperative conservation" without the threat of a major ecological or legal crisis before us?

* * *

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