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(A Response to Charles Wilkinson)**

by

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# THE RELUCTANT MARRIAGE: THE NEXT GENERATION (A RESPONSE TO CHARLES WILKINSON)

By  
GREGORY J. HOBBS, JR.\*

So Prior is Dead! But he was a prolific old cuss. In one of the great cities of the New West during the Second World War, his daughter Modern fell in love with a gentle man from the Plains of Colorado who had grown up on an irrigated farm outside of Fort Morgan, as a kid harvesting pinto beans during the long golden days of late summer and early fall, staying up long into the frozen winter nights helping to pull the young calves from their mothers, heavy with milk, into the world. His given name was Multi, Multi Use. Multi believed in husbandry, having learned with his brothers and sisters in the years of the Great Depression that families must pull together to survive.

Modern was a Denver girl. Multi and Modern met at one of those G.I. bars on Colfax Avenue when Multi was serving at Lowry Air Force Base. Their child, Beneficial, was born during the last days of the Second Great War when it was becoming clear that worldwide tyranny could not stand up to the great hydro dams of the Northwest and the power of the TVA. As a result of harnessed water, the Revolution borne of Thirteen Colonies, the world's greatest democracy, had become the earth's foremost industrial power, waging war for peace.

After the war, from thousands of farms across the irrigated

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This in-kind response was presented the morning after a satiric, damning, complimentary, and most witty dinner eulogy to the death of the prior appropriation doctrine delivered by Professor Charles Wilkinson of the University of Colorado Law School at the Northwestern School of Law of Lewis and Clark College during a conference: *Water Quality, Water Quantity: The Reluctant Marriage*, Lewis and Clark College (Feb. 23, 1991). Professor Wilkinson's *Eulogy* appears at page v of this issue.

West came the food to feed a region, a nation, and a rebuilding world. The immigrants came from the Northeast and the Midwest. From far lands across the oceans they came. To the mountains and the valleys they came. To find anew what another generation of grandfathers and grandmothers had known before them. That it's a hard land and a dry land and you must store the water high and hold it well when the snow melts before the rivers turn dry in mid-July so there'll be enough the rest of the year. Without the storage water, the crops wither in the fields and the fish flop and expire in evaporating pools. Storage water released into the stream brings in the crops and sustains blue ribbon fisheries in the Colorado and the Roaring Fork and the Platte and the Gunnison and a score of other places across the West where the trophy trout thrive. Weld County, where Horace Greeley had moved west with a group of idealists to the Poudre and the Platte in 1870, became the third largest agricultural producing county in the entire United States when the Colorado Big Thompson Project came on line in the mid-1950s. Life was good. Row on row it rustled green.

Prior's grandson, young Beneficial, went further west to college in the 1960s, to the Bay Area and to Berkeley. There he met a young woman with flowing hair and a love of life brighter than a golden sunrise, Miss Trust. Miss Trust was one of the Trust babies. She grew up in a pampered family in Palo Alto. She was delightful in every way and most generous to a fault. Everything of hers she'd gladly give away and what was yours she'd take. She was most generous when it came to water. "A stream should be a stream," she'd say, "let it flow to the Sea." "Let L.A. buy Calistoga water at Safeway!" she'd shout. She would brook no other argument.

Beneficial was confused. He remembered his Grandfather Prior saying back in Colorado that the water must stay in the stream unless it can be used without waste to grow the tall sweet corn and bottle the beer up at Coors and push through the taps of a hundred thousand homes—to actors, school teachers, bus drivers, football players, and, yes, even the money grubbing water lawyers on 17th Street. His Father Multi told him that water must be kept clean enough in all the streams for all the Uses. For the farmers and the cities and the businesses and the fish and the water skiers. So when the Federal Water Pollution Control Act Amendments of 1972 were enacted, that was very good, it seemed

to him. Sewage and oil and grease would no longer impair the future of the Uses. The promise of Prior was being fulfilled—good clean water for all the Uses.

When Colorado passed an instream flow law in 1973, that also seemed very good to Beneficial. Now the fish would always have water in which to swim, and recreation would have its place. They had become Uses. You'd think that with all these changes Miss Trust would grow brighter, but somehow she just got angrier and angrier. "They're still just a bunch of dumb cowboys sucking the stream for corn and kids and pinto beans. And it wasn't theirs to begin with anyway," she proclaimed. "So why not just stop all their sinful diversions!"

Miss Trust was a very resourceful, though single-minded person, and during Grandfather Prior's final days she thought out in one brilliant flash the Great Tautology. Like all tautologies, its reasoning (when based upon the thinker's own most fondly held and unquestioned suppositions and tried before a large audience of similar thinking adulators) stood unrebutted. The Great Tautology went like this:

Water Use Changes Water Quality  
Quality Without Use is Better  
Better than Use is No Use.

At Prior's deathbed Miss Trust felt a little sad that the Grand Old Man was gone. But secretly she rejoiced. The No Use Doctrine would be the Salvation of the Earth, replacing Prior's Appropriation Doctrine. "She'd really have us off this Earth," thought Beneficial. "My Mother was Modern. My Intended is a Modern Manichee."

Beneficial was grief stricken. He very much wanted to marry Miss Trust and have many little Trust Uses. (This had been a really long courtship!) But it was No Use or Nothing, it seemed. And this appeared to be no choice at all. But Beneficial just couldn't think of living without Trust and he was bred of strong stock: there was (1) Prior, (2) Modern, and (3) Multi. So he didn't drop his suit. He just showed up one Friday morning in late February of 1991 on Trust's doorstep and they eloped to Portland, Oregon, spending a delightful weekend at Lewis and Clark College. What was it that joined Beneficial and Trust together on that blissful day of their Union? It was the product of their love

and hope, amplified by a large dose of that Western optimism passed along by some fairly great ancestors. They contributed in equal measure. Their song sounds like this:

*Beneficial:* "Waste Not, Want Not"

*Trust:* "Let it Be, Let it Be"

*Beneficial:* "Use Only What You Truly Need"

*Trust:* "Efficiently, Efficiently."

In their joy they spread the word about the magic TMDLs<sup>1</sup> they had discovered. And together they raised a passel of little Trust Uses. They lived Really Cleanly ever after.

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1. TMDLs are wasteload allocations governing the amount of allowable discharge of pollutants to a water body.