

GARY HART
COLORADO

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
BUDGET

United States Senate

COLORADO OFFICES:
1748 HIGH STREET
DENVER, CO 80218
(303) 398-0800

COLORADO SPRINGS (303) 835-0001
PUEBLO (303) 544-9370
GRAND JUNCTION (303) 241-8585

July 14, 1986

The Honorable William Armstrong
Room SH-528
United States Senate
Washington, D.C. 20510

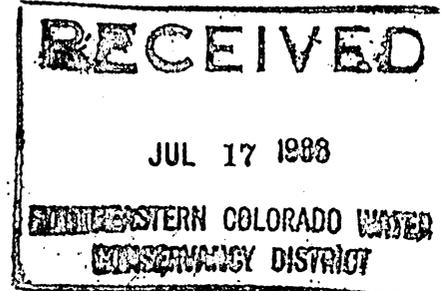
Dear Bill:

Thank you for taking time to share your thoughts on the proper resolution of the wilderness-water controversy in Colorado. I appreciate your interest in protecting Colorado's water resources and trust that you are equally interested in preserving Colorado's unique wilderness water values. I hope you also share my view that preservation of wilderness water resources is not incompatible with the goal of protecting water rights and development.

While I disagree with the particular approach you have taken in introducing a 1986 Colorado Wilderness Bill that incorporates a provision negating assertion of possible federal water rights for wilderness, I certainly share your interest in avoiding injury to Colorado's unique water law system. I am sure that your staff has spent many hours researching this topic (as has my own), but I am not convinced that we necessarily have a monopoly on all of the creative ideas advanced for resolving the wilderness-water controversy. As a matter of fact, I am aware of several new proposals or concepts that are currently the subject of discussion by members of the water community and among environmental organizations in Colorado.

As responsible members of Congress and as the principal authors of wilderness legislation in the Senate, I think we ought to consider new concepts and ideas that might ultimately serve as a catalyst for resolution of the current wilderness impasse. While this list is not meant to be detailed or exhaustive, the following concepts have been mentioned:

1. As you know, Representative Mike Strang has unveiled a legislative approach that would preserve water rights while making an attempt to protect some environmental values by utilizing the Colorado Water Conservation Board's instream flow program. Elaboration upon this concept might prepare the ground for a creative solution.



2. Larry Simpson, Manager of the Northern Colorado Water Conservancy District, has recently outlined an approach (subsequently endorsed by the Rocky Mountain News) that also utilizes the state instream flow program in addition to expressing federal rights by developing a mechanism whereby wilderness areas could secure junior appropriator status under Colorado law.
3. Some members of the environmental community have suggested an approach that focuses on characterizing actual wilderness-water conflicts. Under this approach, proposed wilderness areas would be designated as wilderness areas unless a water rights or water development conflict could be demonstrated. In areas of demonstrable conflict, a federal right might be asserted or given some expression through the state instream flow program.
4. Another suggestion is to utilize the instream flow program where it is established to be adequate for preserving wilderness values and to supplement such protection with either an expressed or implied federal right.
5. There is, of course, the approach currently favored by the Colorado Water Congress (your own legislative proposal) which might nevertheless be modified to reflect protection for wilderness water characteristics.
6. Finally, there is the possibility (suggested by the Sierra Club litigation) that absolute assertion of a federal water right needs to be recognized in statutory form.

I do not know whether any of these concepts (or a combination of approaches) will serve as the basis for an immediate solution to the current stalemate. It is clear, however, that new thinking by all interested parties has occurred following Judge Kane's decision in Sierra Club v. Block last year. These and other creative proposals ought to receive serious thought and discussion in a non-partisan, preferably academic, setting.

The election climate in Colorado does not lend itself to a sober, non-partisan and deliberative approach to resolution of the problem. For this reason, I think it is appropriate for you and I to join together in asserting bipartisan leadership on this issue. As prime sponsors of Colorado wilderness legislation, we ought to make a serious effort to get all interested parties talking to one another.

The Honorable William Armstrong
Page Three

Toward this end, I invite you to join me in contacting both the Colorado Water Congress and the Sierra Club to request their representative participation in a small working group that would be charged with evaluating the proposals outlined above (or any others that might be advanced), discussing possible solutions and generally exchanging ideas on this issue. This group would also be charged with reporting their findings to the entire Colorado Congressional Delegation following the November election.

The Colorado Water Congress could meet with others in the water community to select three or four representatives for the discussion group. The Sierra Club would do the same for the environmental community. The group could then meet in a neutral forum on a monthly basis to evaluate possible legislative proposals with other knowledgeable participants (representing the Forest Service, the Department of Natural Resources, etc.) in a manner that would promote a free exchange of ideas and concerns. It is important for the environmental community to understand the precise concerns of those in the water community and vice versa. The agenda needn't be overly formalized, but it would be clearly understood that the participants would report final conclusions to the entire Colorado Congressional Delegation after the election. This will help to de-politicize a controversial and emotional subject while enabling Colorado's next United States Senator to benefit from new advice and proposals.

The working group would have to be chaired by an individual with expertise on water issues. In addition to being a respected voice on water law, I think it is important to select an individual who will not be hindered by any partisan or political connections. In short, chairing such a group will require a high degree of objectivity, academic prowess and bi-partisan spirit. After consulting members of the water community and environmental groups in Colorado, I think it is fair to say that Mr. James Corbridge, Professor of Law and newly named Chancellor of the University of Colorado, is just such an individual. Chancellor Corbridge has indicated his willingness to assist in this matter. I would like for you and I to join together in seeking his active participation.

We needn't preemptively endorse anything the working group might propose. It may turn out that no real consensus recommendation can be developed. I do not see how it can hurt, however, to solicit the views of the principal interested parties in an atmosphere that encourages a free and frank exchange of ideas.

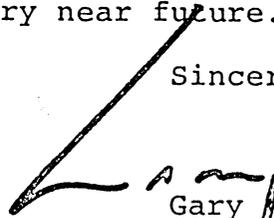
Bill, I think it is fair to say that one of the great obstacles to resolution of this controversy has been the fact that representatives from the environmental and water rights communities have never had an opportunity to meet in the same room, on an equal footing, to discuss areas of agreement.

The Honorable William Armstrong
Page Four

Our colleague, Representative Hank Brown, recognized this problem early last year when he began the search for a consensus approach encouraging all parties to support legislation designating a portion of the Cache La Poudre River as Colorado's first contribution to the nation's Wild and Scenic River system. Inspired leadership can bring adversaries together in a spirit of bi-partisan cooperation and compromise. The wilderness-water controversy in Colorado is in sore need of such inspiration and direction.

I look forward to your consideration of this proposal and hope to hear from you in the very near future.

Sincerely yours,



Gary

cc: The Honorable Richard D. Lamm
All Members of the Colorado Congressional Delegation
Mayor Federico Pena
Mayor Robert Isaac
Congressman Ray Kogovsek
Representative Ben Nighthorse Campbell
Chancellor James Corbridge
Regional Forester Gary Cargill
Mr. David Getches
Mr. Jeris Danielson
Mr. William McDonald
Mr. Monte Pascoe
Mr. Ralph Curtis
Mr. Gregory Hobbs, Jr.
Mr. Harold Miskel
Mr. Richard MacRavey
Mr. Roland Fischer
Mr. Ed Pokorney
Mr. David Robbins
Mr. Henry Tiegen
Mr. Larry Simpson
✓ Mr. Charles "Tommy" Thomson
Mr. John Sayre
Mr. Jack Ross
Mr. Tad Foster
Mr. James Engleking
Mr. Bill Cleary
Mr. Jim Evans
Ms. Connie Brooks
Ms. Maggie Fox
Ms. Lori Potter
Mr. Chris Meyer

Ms. Anne Vickery
Mr. Don Bachman
Mr. Steve Blomeke
Mr. Rocky Smith
Mr. Steve Smith
Mr. Daniel Luecke
Mr. Darrell Knuffke
Mr. Kirk Cunningham
Mr. Patrick Wheeler