Wayne N. Aspinall
1896-1983

The following eulogy was delivered at the memorial service honoring 87 years of Wayne N. Aspinall's life by his son, Owen. Mr. Aspinall died on October ninth at his home on the banks of the Colorado River in Palisade.

On behalf of the Aspinall family, I would like to say that usually a memorial is a place of sadness. Usually a memorial service is a place of tears. For the next few minutes I wish to change that. Today is a time of victory! Today is a time of rejoicing! Our father, our brother, our grandpa, today our great-grandfather, our leader, our confidant, our friend has won the race of immortal­ity. His reward - eternal peace with his heavenly creator and a legacy for the future.

Our family has listed a few of you here that we would like to thank for your continued support and assistance. Our family has known that you gave Dad down through the years. Our family has known that you held him in high esteem and letting him know about it so he could appreciate it. The latest honor was a resolution of the American Mining Congress Public Land Committee. Dad did not live to see it, but it will be added to the multitude of his other adulations.

The family would also like to thank Dr. Patrick Moran, his medical doctor that helped him through the final years of his life. Always kind, always courteous, always thoughtful and always frank and honest, Dr. Moran led him through the torment of eventually took his life. The family would also like to thank the members of the Veterans organizations represented here today. Dad was always proud of his honorable participation in World War II and his membership in the American Legion.

CWC President Ed Boresen, dead at age 61

see page 2
Colorado's efforts to make fuller use of its share of Colorado River water have been frustrated by recent turns in federal policy. We have substantial hopes that the Senate will approve initial appropriations for the Animas-La Plata Project, but we know that prospects for major federal funding for other water development projects are remote. I have a proposal for breaking the impasse that has held back our west slope water development. It requires tapping the revenues produced by electrical power generated by Colorado River water in the Upper Basin.

The Upper Colorado River Basin Fund was intended to facilitate the development of Colorado's compact entitlement to Colorado River water. We have indirectly benefited from the power revenues generated by the Colorado River Storage Project (CRSP) storage units. The revenues are to be used to repay the costs of building the existing dams in the Upper Basin. But commitments were made by the federal government and the other basin states to furnish additional storage facilities and those commitments cannot and will not be honored under the present structure of the Upper Basin Fund.

In recognition of our plight, Colorado has insisted to the federal authorities that the lines of control between our states and power customers in all states (which we call the Lower Basin) be made whole. But the Colorado Water Conservation Board has not recognized the division of states. We have discussed several concepts for making power revenues available to the Upper Division states. One would involve changing the procedures by which power rates are determined, thus making it possible to divert a portion of the revenues now generated to the Upper Basin states without actually altering the rate charged for CRSP power. Two other concepts would involve an outright increase in the uniform or surcharge on, the existing power rate (which is about 10 mills per kilowatt-hour, composite rate). One surcharge would be levied only on Colorado customers of CRSP power ("a differential" surcharge), while the other surcharge would be uniformly applied to all CRSP power customers in all states (which we include the Lower Basin).

We are suggesting that the revenues from any differential surcharges go to the state whose power customers are so charged. Revenues from the uniform surcharge and the portion diverted from revenues under the existing rate would be divided among the Upper Basin states pursuant to the percentage allocation for the Upper Basin Fund embodied in the 1956 Act (i.e., 46 percent to Colorado).

Ideally, any CRSP power revenues directed to the Upper Basin states will be available for investment in water projects development as each state sees fit. This would free us of the inevitable strings that are attached to federal dollars. We would decide what projects to build and when."Coloradoans would set criteria for Colorado projects."

Many details still need to be sorted out and admittedly difficult questions addressed. The Colorado Water Conservation Board is the proper agency to discuss and debate these issues, receive the public's input, and detail Colorado's legislative efforts that are to be undertaken.

We look forward to working with the Board in the months ahead. Our "window of opportunity" is narrow. We must move quickly and deliberately. I invite Colorado water interests to make their comments known to the Board, which will have the lead responsibility for the negotiations and federal legislative efforts that are to be undertaken.

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A future shooting match? INTERSTATE COMPACTS: ANY CLEAR UNDERSTANDING?

by John Carlson, Holland & Hart, Denver

Colorado is probably the most-compacted state in the Union. In fact, the interstate compact as a device for apportioning between states the waters of interstate streams is almost a Colorado discovery. Our predecessors were in the forefront of the efforts to bring litigation to an end by use of the compact device. The United States Constitution sanctions the use of compacts, and the United States Supreme Court has urged litigation the parties to reach agreement, and particularly when the parties are interested parties, to import their differences by recourse to a compact. This judicial fostering of compacts has its basis in the Court's realization that the adjudication of interstate water questions is better left to a political arena than for the Court to render decisions as close to the political arena as judges forsooth. The consequence of Arizona v. California is in an obvious sense a political choice. Arizona is not to be allowed to appropriate the waters of the Lower Colorado River. These consequences determine the future of our own state. No wonder judges get a little nervous and plead for the politicians to retrieve the issues.

Colorado's attitude toward interstate allocation of water has been more than a bit schizophrenic. On fully appropriated streams we have wanted to keep all we have as prior appropriators, and on the undeveloped streams we have sought to preserve our future opportunities against those who may develop first. Our first experience with the law of equitable apportionment (the legal principal that I translate as "everybody gets something") was at the turn of this century in Kansas v. Colorado. The Court there recognized the fact that the waters of the Arkansas River, Colorado unambiguously claimed that it had the sovereign right to kill the Arkansas River at the state line on two principles. First, that the right to consume all water arising in the state was a part of Colorado's sovereign right as a state of the Union, and second, the right to appropriative appropriation as junior to Kansas should be content with what reached it.

The decision of the U.S. Supreme Court in Colorado v. Kansas left Colorado in firm control of the Arkansas River.

"Colorado's attitude toward interstate allocation of water has historically been more than a bit schizophrenic."

But the decision enunciated principles which Colorado people quickly realized would work to their disadvantage on other stream systems. The Supreme Court declined to approve the notion that an Upper State, Colorado had the sovereign right to consume all water rising in the State; rather the Court recognized the common right of downstream states in interstate waters. But because of Colorado's earlier development and because the Court could not find any actual injury in Kansas, the Supreme Court refused to give Kansas any relief. The result was attractive enough on the Arkansas River, but it posed obvious dilemmas for the rest of the State. The South Platte was also a largely developed stream, but the question of priority of development and injury as between Colorado and Nebraska waters users were sufficiently beclouded to make for a shooting match. And the great resource of the Colorado River was largely untapped in Colorado. High volumes of water, far exceeding the virginal flow of the South Platte and Arkansas Rivers flowed in the Colorado, the Yampa, the Gunnison, the Dolores, and the San Juan. People realized that the Arkansas and Platte essentially already sustained the level of economic development of the water resources and that Colorado could go a step further.

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The architect of Colorado's strategy was Delph Carpenter, a Greeley lawyer. Mr. Carpenter did a great deal of work to convince the world and his state of the threats of interstate infringement, and to provide a framework in which the water resources of the entire river system might proceed to orderly development. The South Platte and Colorado River Compact was concluded in 1922. Mr. Carpenter filed with the Governor of Colorado a report, dated December 15, 1922, which is his analysis of the economic impact of the Compact. He clearly thought it a great achievement, and be unequivocally urged the Governor and the Legislature to ratify the compact.

"The South Platte was also a largely developed stream, but the questions of priority of development and injury as between Colorado and Nebraska waters users were sufficiently beclouded to make for a shooting match."

Today we have to ask ourselves painful questions: is the protection for Colorado's water rights to be based on the case for the Compact as follows: The apportionment to the upper territory is perpetual. It is in no manner affected by subsequent development. It is not required that the water be used within any prescribed period. Further development on the lower river will in no manner affect this apportionment or impair the right of the Upper States to consume their apportionments whenever their necessities require. Any immense reservoir hereafter constructed on the lower river cannot be the basis of a demand transferred from the Upper States to the Lower States, which will interfere with the future development of the Upper Basin.

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I was a Teddy Roosevelt conservationist before most of today's citizens were born.

Representatives, shaped his life as a public servant. Many of you are aware of his third election to Congress when he won by only twenty-nine votes. Senator Eikenberry carried the Fourth Congressional District by 22,200 plus votes. Dad just barely broke even and although he enjoyed the kidding of being called "Landslide Aspinall", he was proud of the fact that to many people he considered that election to be his first public servant and thus a partisan politician.

Dad always enjoyed telling about himself on the subject that he was campaigning in Artesia, now Dinosaur, Colorado. He had purchased several hundred "Kilroy signs". They read "Aspinall Was Here". He had distributed

Aspinall

continued from page 1

the Veterans of Foreign Wars, the 40 and 8, the Military Order of Cooties, and the Knights of Columbus, a titled American War Veterans. In his family message to his family he pointed out:

"I have been a Senator and twenty-four years in the United States House of

the metropolitan area. The first segment a 10 mile long 108 inch diameter steel conduit for the initial phase, provides connection of the plant to the Highlands Pump Station at South University Boulevard and County Line Road. The second segment, a more than 7 mile long 90 inch diameter line transports water from Highlands to the Hiawatha Pump station, where connections are made with the rest of Denver's distribution system of some 300 miles of main under city and suburban streets.

The five years of litigation over environmental issues which delayed the start of Foothills construction were costly. Had the complex been completed as scheduled in 1977, it would have cost $90,000,000 to $160,000,000. During the protracted delay, double digit inflation marked the nation's economy and as a result, Foothills now represents an investment of around $160,000,000.

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Colorado Water Rights

Aspinall

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continued from page 3
ment. Front Range Colorado has the ability to pay. Surely we need not wait for the Messiah to agree upon some common and shared goals?

While economics and politics combine to delay our development of water resources, a series of problems under the Colorado River Compact continues to fester, and like all infections, threatens a different but final solution.

I summarize these problems as follows:

a) The overestimation of virgin water supply on which the Compact was predicated;

b) the Mexican Treaty/Gila River Problem;

c) The Endangered Species/Water Quality Problems.

2) The Overestimate. In developing an apportionment in the 1922 Compact, the drafters assumed that the water available from the Rio Grande River exceeded an average annual volume of 7.5 million acre feet. Thus the allocation of 7.5 m.a.f. to the Lower Basin (California, Arizona and Nevada) stands in pari passu with the 15 m.a.f. apportioned to the Upper Basin by the Compact. But then a later Article of the Compact provides that deliveries to the Lower Basin shall equal 7.5 m.a.f in every ten-year period.

We have in the past 40 years experienced a period of virgin water supply smaller than the assumed 15 m.a.f. average annual supply. The ugly question then arises. Who bears the shortfall? Should the available supply, up to 15 m.a.f., be divided equally, or should the Upper Basin bear the entirety of the natural shortage?

Many in Colorado have suggested that there should be a suit to construe the Compact to establish an equal division of the River, or alternatively, a recession of the Compact on the grounds of a common, mutual mistake. But such a suit would be wise only if one were to prevail on the true construction of the Compact. I venture the opinion that if we were to obtain revision of the Compact, Colorado would be better off under any possible construction of the Compact. Who today would assert that Colorado, of the Upper Basin as a whole, is as potent a national force as California or Arizona? Without a compact, California and Arizona on prior appropriation principles would probably end up with more water than is available to them under the worst-case (for Colorado) construction of the Compact.

"Western Colorado has the ability to thwart, to delay, and to impede development. Front Range Colorado has the ability to pay. Surely we need not wait for the Messiah to agree upon some common and shared goals?"

Thus we have to look at our hole card: did the 1922 Compact impose a 7.5 m.a.f. delivery obligation on the Upper Basin when virgin water supplies are less than 15 m.a.f.? Let's look at the facts:

b) The Mexican Treaty. At the time of the Compact negotiations, the drafters anticipated that resolution of an international controversy between Mexico and the United States would be forthcoming. The Compact attempted to protect against this risk by apportioning a lesser quantity of water than the drafters believed physically available. Thus any later commitment of water to Mexico by treaty could be payable first from waters surplus to the 15 m.a.f. apportioned. But the River fails to adhere to the compact. Even if the Mexican Treaty is not enforceable, we must recognize that our current obligation to Mexico will not be a simple way to achieve these ends is to preclude further consumptive uses of water in the Upper Basin.

Many people in Colorado have wrestled and are wrestling with facets of each of these problems. But my fear is that we, collectively as a state, are bumbling along, hoping for the best, with no clear understanding of the risks or potential benefits of any course of action. It is my view that we have neither fully analyzed the merits of any legal claims Colorado might make, nor fully assessed by what means Colorado might obtain a simple way to achieve these ends is to preclude further consumptive uses of water in the Upper Basin.

My modest suggestion is that the Legislature commission an authoritative examination of our Compact problems on the Colorado River. The examination commission ought to be undertaken with an expectation that some answers will dispel some misconceptions, that some goals will yield to politics, and that some lawsuits are worse than the status quo. But we will at least have a common basis to work from.

From the foregoing one might think that our only compact problems revolve around the Colorado River. That is obviously false. Under the Rio Grande and Arkansas Compacts, our problems are more severe, for what is at stake is the maintenance of present levels of water for the most powerful than Mexico's claim to water of a certain quality, and that it wants to improve or at least sustain the level of water quality available. As the irrigators of the Lower Basin in excess of its apportionment. To the extent those waters are counted in the River, they are on the just and the unjust in more or less equal share of the Mexican Treaty.

"...That the Rio Grande Treaty has been signed, and yet the Upper Basin states contend a surplus at Lee Ferry. To the extent those waters are counted in the Upper Basin states contend a surplus at Lee Ferry. The unjust and the unjust in more or less equal share of the Mexican Treaty.

The nation thinks the simple way to achieve these ends is to preclude further consumptive uses of water in the Upper Basin.

That the rain on that day of reckoning will fall on the just and the unjust in more or less equal share. But it does. And the unfairness of regulation for shortages in compact deliveries which will not be created because of an increase in consumptive use. We in Colorado are neither smarter nor more powerful than our neighboring states. We cannot solve our water problems by ignoring the compact.

The most powerful witch of a lawyer must acknowledge that cases in equity as well as in law tend — more often than not — to be decided out of regard to the legal principles of the case. As a result, the lower courts are more concerned with a form of the Mexican Treaty. The nation thinks the simple way to achieve these ends is to preclude further consumptive uses of water in the Upper Basin. How it is that there is insufficient water for an equal division at Lee Ferry and yet the Upper Basin states contend a surplus in the Lower Basin? The answer lies in the volume of water generated in the tributaries of the Colorado River (principally, the Gila River) which discharge to the River below Lee Ferry, and yet the Upper Basin states contend a surplus in the Lower Basin.
David H. Getches is the new Director of Colorado's Department of Natural Resources,
having been appointed by Gov. Richard D. Lamm in September to replace Monte Pascoe
who returned to private law practice.

Getches, 41, is a former Associate Professor of Law at the University of Colorado's School of
Law where he taught Environmental, Land Use, Public Land and Water Law. Prior to teaching,
he was a partner in the firm of Getches & Greene which specialized in American Indian Law.

New Strategies

Colorado River Basin were proposing to use Colorado's preferred source of water, Colorado's
compact entitlements to flow out of the state. He has also stated his interest in
furthering water conservation in the state and increasing the efficiency of water management systems.

David H. Getches
Director, Colorado Department of Natural Resources

He served the Native American Rights Fund from 1970 to 1976 in various capacities including
Founding Director, Staff Attorney and Counsel. He also practiced extensively in California
after receiving his A.B. from Occidental College and his J.D. from the University of Southern California. He has been admitted to
practice law in Colorado, California, the District of Columbia and before the United States Supreme Court.

And he and his wife, Anne reside in Boulder and
are the proud parents of three children, Matthew, age 14; Catherine, age 6; and
Elizabeth, age 6.

During his confirmation hearing before the Senate Agriculture Committee, Getches said that he
would protect water rights in Colorado in response to Draft Management Plans circulated
by the U.S. Fish & Wildlife Service which appeared to require large amounts of Colorado's
compact entitlements to flow out of the state. He has also stated his interest in
furthering water conservation in the state and increasing the efficiency of water management systems.

Charles Beise

Charles J. Beise passed away July 24, 1983 in Denver, Colorado.

Chuck Beise, as he liked to be called, distinguished himself as a husband, father, friend, Attorney at Law, a quiet leader, and was best known as an outstanding attorney in the field of water law.

In 1946 a group of men from the Arkansas Valley asked him if he would help them form a water association to unify the citizens in the Valley, and develop a water management project. In his quiet but effective manner, he worked tirelessly with the man on the street, the irrigation farmer, rancher and the news media to create the nine county Southeastern Colorado Water Conservancy District in 1958. Together, they worked with top officials in the federal, state and local governments to get the famous Fryingpan-Arkansas Project passed by the Congress of the United States in 1962. He then continued his tireless, and often times, unrecognized professional efforts in helping the members of the Board of Directors of the District, representatives from the Bureau of Reclamation, members of the Congress of the United States, and Presidents of the United States commerce, and continue development of the essential water project, and saw it completed just months before he said "goodbye."

A. Allen Brown

A. Allen Brown, a prominent Delta, Colorado lawyer for over 50 years and a pioneer in the development of water resources in the state, passed away February 10, 1992. He was 87.

Brown served as President of the Colorado River Water Conservation District for 23 years and was the Delta County director on the River District board beginning in 1956. His influence in water resource development over the years was far reaching and contributed to the success of numerous water projects including Paonia, Crawford, Dallas, Dolores and the three Currenec Units (now Wayne N. Aspinal) on the Gunnison River.

Brown's pragmatic vision and insightful leadership earned the respect of ranchers, governors, townpeople and legislators throughout the state of Colorado and beyond.

His service to his community, Western Colorado, the state and nation was recognized personally and for his active, dedicated career with awards and honors. Upon retirement in 1983, he received the prestigious "Citizens Award" from the United States Department of Interior, the highest honor given by Interior to a non-federal employee.

He is survived by his wife, Catherine, one daughter, two sons and seven grandchildren.
1983 Membership Report

This report is intended to bring the membership up-to-date with Colorado Water Congress developments and activities for calendar year 1983. No organization, it should be noted, will have a meaningful impact on issues of concern, unless its membership is involved, knowledgeable, and informed. Therefore, efforts will be made to keep CWC's concerns and activities of interest.

In terms of significant involvements, CWC's contributions were: (1) Twenty-six out of thirty-eight bills were introduced by the Colorado Water Rights 7 organization during the 77th State Legislature and supported by CWC were enacted into law (see list in next paragraph); (2) killed twelve water bills opposed by CWC; (3) seventy-five percent success rate in its "support/opposition" efforts as said efforts pertained to appointments to the Colorado Water Quality Control Commission; (4) involvement in the Executive Board and the Colorado Water Resources and Power Development Authority, and the Colorado Water Conservation Board; (5) appointed CWC member to the General Assembly's Water Committee and Colorado River Basin Study; (6) Attending the Whopping Crane case); appealing "support / opposition" National Wildlife Federation v. Marsh (February 23, 1983 - MA-23); (7) won over seventy-five percent success rate in its water bills opposed by CWC; (8) appointed to the Colorado Water Resources and Power Development Authority and Water Quality Control Commission; (9) attended numerous legislative breakfasts, legislative receptions, executive director's dinners, and Business Meetings.

Further information will be forthcoming, but mark your calendar for this event!
July 8, 15, 22, and 29, 1983 in Denver with 35 in attendance; (5) 8th Annual CWC Membership Forum Workshop held August 18-20, 1983 in Breckenridge with 85 in attendance; (6) CWC Workshop on Dam Safety & Liability Insurance held November 9, 1983 in Northglenn with 67 in attendance; (7) CWC Workshop for Board Members of Water Conservation Districts held November 10, 1983 in Northglenn with 77 in attendance; (8) CWC Water Quality Conference Workshop held January 12, 1984 in Thornton.

There were a number of other actions that were taken in making CWC more effective. These actions were (1) secured $644 new sustaining and 18 new individual CWC members during 1983; (2) published the 5th edition of the Directory for Colorado Water Users (64 pages); (3) named Felix L. Sparks as the 3rd recipient of the "Wayne N. Aspinall Water Leader of the Year Award" at the 1983 CWC Conference; and (4) published Colorado Water Laws Enacted in 1983 of Interest to Water Users (161 pages). In regard to CWC's written communications (newsletters), the following newsletters were published during 1983: (1) Colorado Water Rights News - Winter, 1983, and Spring-Summer 1983; (2) Water Legislative Report - 2/1/83, 3/4/83, 4/13/83, 5/9/83, 6/13/83, 7/1/83, 7/30/83, 8/18/83, 9/8/83, 9/16/83, 9/30/83, 10/14/83, 11/11/83, and 11/22/83.

New Strategies

Even though the momentum was present for new project construction, the Appropriations Committee had to be assured a clear majority vote on the House Floor for the last veto overridden on the Fiscal Year 1984 Energy and Water Development Appropriations Bill. Although the legislation passed the House, an attempt was made to delete funding for the Dillon and Dolores projects. However, even though they were challenged by fiscal conservatives, environmentalists and traditional anti-water development interests, the Colorado Congressional Delegation held together again. Significant in the debate was the fact that the members were able to demonstrate that both projects had the full support of the state and local interests, as well as that of the Administration. To say the least, the appropriations for these two very important projects were retained, and construction is progressing. Equally important, Congress recognized that the time had come for new construction to start.

In September of this year, the House Subcommittee on State and Water Development Appropriations began moving "new start" projects in the Fiscal Year 1985 Energy and Water Development Appropriations Bill. Included in the legislation were the Animas-La Plata and Narrows projects, among others, and, in and of itself, a model of legislative construction for political strategy purposes. It includes three important concept projects and four Bureau of Reclamation projects. Coincidentally, projects that generated enough support on the House floor for a clear majority.

As of this writing the Senate has moved the bill through Committee, but has yet to take the legislation up on the floor. The Senate version reduces the scope of the bill, to meet the President's preference, by eliminating a number of unauthorized Corps projects. In addition, this version of the Senate project was also eliminated from the bill. However, it may still be included when the Conference Committee negotiates the differences in the House and Senate bills. Although cost-sharing is applicable to Corps projects by making such future legislation retroactive, the Senate version of the bill leaves the door open for cost-sharing on Bureau of Reclamation projects. Ultimately, the final decision on state and local participation in project financing will have to be made by Congress. However, for now, the practical approach is to proceed with cost-sharing and making CWC more effective.

The dilemma now confronting Congress is how to establish a broad-based strategy for national water policy for project construction, maintain equity for previous authorizations, and accelerate a reduction in the construction-backlog. The House of Representatives, under the leadership of Subcommittee Chairman Tom Bevill (D-Alabama) has attacked this problem head-on. Its strategy is to establish equity for key projects and accelerate a reduction of the backlog of projects. In order to resolve the backlog buildup that has naturally occurred in the past, we are considering legislation to: (1) establish a broad-based cost-sharing policy for such projects, (2) expedite approval of projects, (3) establish a "hit list" of key projects, (4) require projects to be established for the five-year period, (5) accelerate a reduction in the construction-backlog, (6) reduce the rate of authorizing new projects, and (7) accelerate a reduction in the construction-backlog. The seven-year statutory construction period may be shortened to a five-year period.

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