Water and Public Land Management

by Congressman Michael L. Strang
(R-Third District, Colorado)

Wayne Aspinall was many things to many people. Above all, he prided himself as an educator. In addition to his friendship and the influence that will remain with many of us forever, we all learned from him, and were instructed by him. As I sit in the Committee Room, as a Member of the House Interior Committee, the Chairman’s portrait is there to watch over all of us always a reminder of his far reaching legacy. Our individual characters and our children are stronger, and the beloved State of Colorado more beautiful and productive because of him.

I would like to concentrate on two basic issues today: They are issues to which Wayne devoted his life — water and public land management.

WATER CONSERVATION PROJECTS

First of all, water. Twenty years ago, Chairman Aspinall spoke to a Grange meeting in Cortez and said: “Water continues to be Colorado’s most important natural resource. The future growth of Colorado agriculture and industry will be measured by the sum total of her available water supplies.” The future economic development of our state depends upon protecting and holding our water from encroachment of use by others during the years before it is put to final use. I am fearful that if it is temporarily put to use elsewhere, it will be permanently lost.”

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Meeting Tomorrow’s Water Challenges

by Congressman Ken Kramer
(R-Fifth District, Colorado)

Let me congratulate you — members of the Colorado Water Congress — for providing the high quality of leadership our state needs to help take us through the end of this century and beyond — to ensure that we have enough of that most precious of natural resources for good growth and development — to ensure a prosperous future and preserve that special quality of life we enjoy here in Colorado — and that we want for our children and grandchildren. I would like to congratulate you for being at the forefront of Colorado’s water resource development.

You are leading the charge in what I believe is the issue for our state in the coming years. Your efforts are crucial. In planning to do business, you must consider water, from taking a shower, running a dishwasher, growing crops, grazing cattle, extracting minerals, building a new high-tech industrial center or residential subdivision. Coloradans will look to you.

As you know, far better than I, Colorado’s average annual precipitation is just 16.2 inches, which translates into about 15 million acre feet. Of that 15 million acre feet, Colorado is allowed to keep about 7.4 million — the rest either evaporates or is allocated through various compacts or treaties to other western states and Mexico. As we’re all so painfully aware, the bottom line problem is 2 million of that 7.4 million acre feet slips through our fingers!

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Indian Water Rights: Past and Present

by Frank E. (Sam) Maynes, Esq.

For more than a century the attention of western states has been focused on their need for water and on the competition for water that will remain with many of us forever, all learned from him, and were instructed by him. As I sit in the Committee Room, as a Member of the House Interior Committee, the Chairman’s portrait is there to watch over all of us always a reminder of his far reaching legacy. Our individual characters and our children are stronger, and the beloved State of Colorado more beautiful and productive because of him.

Almost any discussion of Indians and their rights brings immediate focus on the Winters Doctrine of reserved rights.

In the realm of water law in the West, Winters Doctrine has been the well-anchored rock that has stood fast amidst an angry cascade of surging claims and counter-claims. Its very name still challenges the creative minds of those who would attempt to understand the background can

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... Any man's death diminishes me, because I am involved in mankind ...

— John Donne
Colorado Water Rights

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Kramer: Develop water plan together

Mr. Kroeger has been the La Plata County representative on the Southwestern Water Conservation District Board for over 20 years. In addition, he was a member of the Colorado Water Conservation Board representing Southwestern Colorado for over 16 years and served as Chairman of that board for one term. He is also currently a member of the Durango City Water Commission.

Kramer has also been active in many other civic activities, namely: Chairman of the Durango City Charter Commission, member of the “Downtown Durango” Business Committee, Chairman of Heritage for Tomorrow, member of the Board of Directors of the La Plata Electric Association, Past National President of the International Hardware Dealers Association, Past President and longtime member of the Durango Kiwanis Club and former Mayor and City Commissioner of the City of Durango.

Fred Kroeger, according to Sam Maynes, “is an extraordinary person. His commitment to civic betterment and pride in his community and area has been and continues to be demonstrated by the countless hours of devoted service which he contributes year after year to southwest Colorado.” It should be noted that Fred was President of the Colorado Water Congress in 1973.

J. BEN NIX

This past spring the Colorado Water community was saddened to learn of the death of Northern Colorado Water Conservation District Director Emeritus J. Ben Nix. Ben had been an integral part of the Northern District for nearly 40 years. He had served as NCWCD Commissioner for over 20 years, as its President for 21 years and as Director Emeritus for the past 9 years. During that period, he provided sound judgment and competent leadership to the NCWCD Board and staff.

Ben was involved in numerous other civic activities throughout his life. He was a member of the first chairman of the Weld County Planning Commission, a Director of the Weld County Planning Commission, a Director of the Greeley National Bank and served on many ditch and irrigation company boards.

The District lost not only a dedicated individual but a friend and colleague. His experience, knowledge and wise counsel cannot be replaced, but he leaves behind a philosophy of dedication to the wise and efficient use of Northeastern Colorado’s scarce and valuable water resources.
1985 CWC ANNUAL CONVENTION
Strang: Aspinall's visions still appropriate

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These prophetic words carry a poignant relevance today. I am fearful that if it is tempora­
yre to attempt to resolve some of these issues. Let me begin by stating from the top:

To PROTECT and to HOLD, Mr. Aspinall was more than a teacher; he was a visionary.
The compromises Wayne Aspinall crafted and the promises others made to Colorado for construction of the participating projects authorized in the Colorado River Storage Project Act (CRSRA) have not been met, thirty years later. It is clear to most of us, they will never be met as originally proposed and planned. But Colorado's allotment of water must be achieved.

One year ago, Senator Bill Armstrong spoke with you about the federal deficit; the lack of appropriations to start new federal water reclamation projects; and the fact that Western water projects are still at the center of a natural resources war, pitting the West against the rest of the Union, with continuing rhetorical charges of "pork barrel", and debate over project cost-sharing.

Aspinall noted, however, that if enough of the rest of the world will learn to be educated to the fact that these reclamation projects are investments in economic productivity, that they can bring resolution to some long standing American Indian water rights claims; that they will play a critical role in mitigating the effects of prolonged drought. We are fortunate in Colorado to have two quality projects — Animas-LaPlata and Upper Basin Projects to finance construction funding now. We will fight for funding of those projects this year.

To PROTECT and HOLD

I believe the vision and warnings voiced by Wayne Aspinall, in terms of threats to Colorado water rights and water allotments, are coming true. Therefore, in the area of water and public land management the time has come to make very serious efforts to accept the challenge of changing times. We must all recognize that we must respond to public pressures, understand the pressing needs of our communities, and it is my responsibility and firm commitment to pursue vigorously our entitled share of funding. Critics must be educated to the fact that our reclamation projects are investments in economic productivity; that they can bring resolution to some long standing American Indian water rights claims; that they will play a critical role in mitigating the effects of prolonged drought. We are fortunate in Colorado to have two quality projects — Animas-LaPlata and Upper Basin Projects. While crafting the President's budget, Mr. Aspinall, who considered himself a conservationist, was the primary author of and crafted the compromises embodied in the Wilderness Act of 1964. He adumbrated his view of public land management as follows: "I am a firm believer in the multiple-use theory for our natural resources. This includes a place for those who desire to enjoy the values of a wilderness experience. Such people are, of course, a very small minority of the overall population of the United States, and the amount of land set aside for such use should be in somewhat of a fair way dictated by the amount of use, as well as taking into consideration protecting such values for future generations," and he said such areas should be confined to a "limited area."

Aspinall's view of federal land management as an option in favor of state management is not, however, fallow wilderness to be designated specifically for the sake of conservation. Colorado now has 2.6 million acres of designated wilderness. All lands under federal management total about 19 million acres, of which 6.2 million are designated wilderness. How much wilderness is enough? Who knows? The key question is: are we discharging our responsibilities to future generations for resource management, for protection of the environment and resources, indeed, for protection from uncontrolled or thoughtless mismanagement?

Until the crucial issue of federal reserved water rights is resolved in favor of the people of the Colorado State of Colorado, either in the courts or by the Congress, and we can answer the hard questions of public and private responsibilities to all our resources, I as a Member of Congress must respectfully urge that we defer consideration of additional wilderness designations.

After twenty years of excellent compromise, the advocates of wilderness have done a magnificent job. I ask them to join us in a mutual discussion of these issues, in a can­did dialogue examination of their view of the future.

I hope the issue is equally important to all of you, because I need your help. My sense is, based on initial contacts I've had with some of my Colleagues from neighboring states, that they are not aware of the vast potential dangers involved. I ask all of you to discuss the matter with your friends and counterparts in other states. Discuss with them the explosive and far reaching issue with which we are dealing. Ask them to contact their Representatives and Senators, and educate them as to the problem. Without greater sup­port from my Colleagues, we will not be able to generate much of a discussion, and we are talking about the future for generations to come. I need your active participation.

PUBLIC RECREATION CONCEPTS

Paramount in redefining our goals and redirecting our energies is what I believe is a necessary rethinking of the basic concepts of public land management. Former Con­gressman Jim Johnson, one of the primary architects of the 1980 Colorado Wilderness Act, and forerunner of the notion of a "rotating wilderness." A system based on the natural life cycle of forest ecosystems. I believe we must look at that, and other initiatives to meet our national recreation needs. Wilderness is only the answer to provide recreation and communion with nature. There really is no alternative. You and I, I believe, look at managed roadless areas which would provide a similar experience, perhaps for a greater number of people, but would be less restrictively managed. Perhaps an expan­sion of the concept of national recreation to the nation's parks and others, as we attempt to address the whole traditional views of these values and de­mands on our land resources.

CONCLUSION

There are issues I just do not have time to get into, but which are obviously important. Matters such as the Corps of Engineers intrusion into non-navigable waters in Colorado; water and property rights associated with irrigation ditches crossing federal lands; en­dangered species, salinity, and many more. These are issues about which I will be seeking your valuable guidance over the next two years.

I hope that you give serious thought to these two major issues — water resource development and how to finance the projects; and public land management issues and alternatives. I am sure they will be among the topics many of you will discuss in greater detail during the Upper Basin States seminar on Saturday. I am confident the leadership of the Water Congress and Senator Armstrong, such a gathering of water interests and experts has been brought together to discuss our mutual concerns.

Let me share with you my views on these issues and some of the problems we face as we pursue our vital mission — to protect and hold our natural resources for the use and enjoyment of all our people, and to produce a positive base and climate for economic growth which is vital to the future of Colorado. I look forward to your comments on this and all other topics.

Kramer: Meets challenges now

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Successfully developing this water blueprint for tomorrow depends upon your imagination and vision today. With the spirit of cooperation and compromise, we can meet the water challenge. I believe this is the challenge here in Colorado. Water is the fuel that will keep the engines of growth humming for our children and grandchildren. With your continued commitment, we can ensure that the fuel keeps flowing.
ASPINALL AWARD

The nomination form for the 1986 "Wayne N. Aspinall Water Leader of the Year Award" is available upon request at the offices of the Colorado Water Congress, 1300 Logan Street, Room 80203 or phone (303) 837-0812. Nominations, incidentally, must be received by January 1, 1986.

September 18-19, 1985 — COLORADO WILDLIFE COMMISSION MEETING — In Fort Collins. For more information, contact the Commission office in Denver: (303) 837-0812.

September 23-25, 1985 — AWWA/WPCA JOINT ANNUAL CON- FERENCE — Four Seasons Hotel in Albuquerque, New Mexico. For more information, contact AWWA/WPCA at 6666 West Quincy Avenue, Denver, CO 80235 or phone (303) 873-9000.

September 25, 1985 — COLORADO WILDERNESS ACTION CONFERENCE ON ENDANGERED SPECIES — Holiday Inn Northglenn, 125 & 120th Avenue, Northglenn, Colorado. For more information, contact the CWC office in Denver: (303) 387-5511.

October 4, 1985 — COLORADO WATER RESOURCES & POWER DEVELOPMENT AUTHORITY BOARD MEETING — 150 Logan Street, Room 100, Denver. For more information, contact the Authority office in Denver: (303) 830-1550.

October 7 & 9, 1985 — COLORADO WATER QUALITY CONTROL COMMISSION — 2400 East 17th Avenue, Denver. For more information, contact Alan Stewert in Denver: (303) 370-8333 ext. 3279.

October 8-9, 1985 — COLORADO WATER RESOURCES RESEARCH INSTITUTE CONFERENCE ON WATER ISSUES AND OPERATIONS — Resort Hotel, Denver for more information contact Bill Riley in Fort Collins: (303) 491-6309 or Larry MacDonnell in Fort Collins: (303) 492-1028.

October 10-11, 1985 — WESTERN STATES WATERShed COUNCIL QUARTERLY MEETING — Coronado Hotel, Spokane, Washington. For more information, contact the WSWC office in Salt Lake City: (801) 537-2602.

October 22, 1985 — COLORADO WATER CONSERVATION WORKSHOP ON NEW FEDERAL & STATE WATER QUALITY DEVELOPMENTS — Holiday Inn Northglenn, 125 & 120th Avenue, Northglenn, Colorado. For more information, contact the CWC office in Denver: (303) 387-0812.

October 23, 1985 — COLORADO WATER CONSERVATION WORKSHOP ON DAM SAFETY, OWNER LIABILITY AND LIABILITY INSURANCE — Holiday Inn Northglenn, 125 & 120th Avenue, Northglenn, Colorado. For more information, contact the CWC office in Denver: (303) 387-0812.

October 23, 1985 — COLORADO ASSOCIATION OF COMMERCE & INDUSTRY ANNUAL MEETING — Sheraton Denver Hotel, Sheraton North Center, 128 & Belleview in Englewood. Colorado. For more information, contact the CACI office in Denver: (303) 557-7411.


November 7-8, 1985 — COLORADO WATER CONSERVATION BOARD — Location in Denver may vary. For more information, contact the CWCB office in Denver: (303) 830-5441.

November 15, 1985 — COLORADO GROUND WATER COMMIS- SION QUARTERLY MEETING — Holiday Inn, 43rd Street & Arapahoe. Denver. For more information contact Paula at the Commission office in Denver: (303) 866-3188.

November 20-22, 1985 — COLORADO ASSOCIATION OF SOIL CONSERVATION DISTRICTS ANNUAL MEETING — Hilton Hotel, Grand Junction, Colorado. For more information, contact Dan Parker in Denver: (303) 325-6424.

November 23-29, 1985 — COLORADO COUNCILS, INC. ANNUAL MEETING — The Anfars Hotel, Colorado Springs, Colorado. For more information, contact Lisa Rank in Denver: (303) 641-4766.

December 15-17, 1985 — COLORADO RIVER WATER USERS ASSOCIATION CONFERENCE — Caesar's Palace in Las Vegas, Nevada. For more information, contact Tommy Thompson in Pueblo: (303) 544-2040.


January 23-24, 1986 — WESTERN STATES WATER COUNCIL QUARTERLY MEETING — Marriott Hotel, San Antonio, Texas. For more information, contact the WSWC office in Salt Lake City: (801) 537-2600.

February 27-28, 1986 — COLORADO WATER CONGRESS 28TH ANNUAL CONVENTION — Holiday Inn, 125 & 120th Avenue, Northglenn, Colorado. For more information, contact the CWC office in Denver: (303) 387-0812.

TWO THINGS are clear about Colorado: it is a land of water and it is a land of change. Over the years, the state has seen an increase in population, a rise in tourism, and a growing awareness of the need to protect and preserve its water resources. The CWG Officers holds a vital role in ensuring that Colorado's water is managed efficiently and sustainably. Their dedication and commitment to the state's water resources are commendable. As we look towards the future, it is clear that the work of the CWG Officers will continue to be crucial in maintaining Colorado's water quality and quantity for generations to come.
Maynes: Indian water rights need fair settlement

Continued from page 1

not directly involving individual Indians. What Eagle County did was to establish precedent for use of state courts as the forum for disputes involving water rights, even while acknowledging that both federal and state courts could assert jurisdiction.

It set the stage for the major decision. Five years later in Colorado River Water Conservation District v. United States (324 U.S. 800 (1945)), that did involve the water rights of Indians. In this case, which concerned the Southern Ute Indian Tribe and the Colorado River Indian Tribe, the U.S. Supreme Court held that the Federal Government’s consent to state jurisdiction for the purpose of determining water rights did not in any way impair the rights of the Indians and did not represent a breach of the Government’s obligation to trust them. Despite the fact that states like Colorado, Wyoming, and Arizona gave fairly comprehensive and established systems for administering water rights, Indian tribes in general have greater confidence in the ability and willingness of federal courts to judge their cases equitably as compared to state forums.

The problem with state courts in water rights disputes, from the point of view of the Indians, is that these courts in the preponderance of cases are called upon to settle issues involving non-Indians, based on established principles of prior appropriation. A court, as noted by Judge Douglas of the General U. S. District Court for the Southern District of New York, has noted that prior appropriation is "a safe and sound way of settling water rights disputes in the arid West." Hence, the Indian water rights controversies have been settled by state courts and not by the federal courts.

State courts have been slow to recognize the special status of Indian tribes. The Tulelake case in 1942 established the principle that Indian tribes are "dependent nations" and that the federal courts have jurisdiction over water rights disputes involving Indians. However, the Supreme Court has been slow to apply this principle in subsequent cases.

The Tulelake case involved the water rights of the Siskiyou and plasma Indians in Oregon. The case was brought to the Supreme Court by the U.S. government, which sought to invalidate a state court decision that had awarded the Indians water rights. The Supreme Court held that the Indians were "dependents of the United States" and that the federal courts had jurisdiction over the case. The Court noted that the Indians were "dependent nations" and that the federal courts had jurisdiction over water rights disputes involving Indians.

In subsequent cases, the Supreme Court has been slow to apply the Tulelake decision. For example, in the case of Arizona v. California, the Court held that the United States had no interest in the water rights of the Indians in the area. The Court noted that the Indians were "dependents of the United States" and that the federal courts had jurisdiction over water rights disputes involving Indians.

The Indian water rights controversy has been a complex and difficult one. The Indians have been unable to obtain the water rights they need to sustain their way of life. The federal government has been slow to recognize the special status of the Indians and to provide them with the water rights they need.

Frank E. (Sam) Maynes, Esq., is a partner in the Denver office of Maynes, Bradford & Shipp. This article was prepared with assistance of Harrold S. Shipp. This article was prepared with assistance of Harrold S. Shipp, Jr., Ph. D. Paradis.