Guest Editorials

LEGISLATIVE UPDATE

Senator Don Ament

We’re in the ‘After Two Forks Syndrome’ now, and I think if you take a look around you’ll see what’s going on. You hear some talk about the federal government. In fact, quite frankly, Larry Simpson alerted you to one very serious problem. And that’s what we’re going to do with wilderness and federal reserve water rights. You know that we’ve just spent $10 million in water court in Greeley defending our water right against the Forest Service and, really, didn’t resolve anything. So we’ll spend a lot more time in the 90’s debating, at a great cost to our taxpayers, and a great drain on our resources, we’ll debate a lot and spend a lot of money in court with the federal government, a new uninvited partner to Colorado water discussions. And that’s not even getting into the water quality end of it.

What has happened after Two Forks? I suppose a lot of us tried to say to those that we visited with, that there’d be a grab for water. Water is just part of living, it’s part of growing, it’s part of feeding a growing nation. It’s part of economic development and economic recovery. Quite honestly, it’s the way agriculture, in my view, subsidizes a

Continued on Page 4

Senator Tom Norton

Upon leaving our morning leadership meeting, Dick Maclayev directed us by saying go down the path and across the bridge. I felt like I’d heard that before. Is this a legislative directive? Is the legislative process we stop at point “A” wanting to end up at point “B” with many changes in the direction and many obstacles along the way. I believe we need some basic policy changes in Colorado including both water quality and water rights.

Senate Bill 106 was introduced to include solutions to these problems. However, as the legislative process goes, we started with Senate Bill 106 and ended up with House Bill 1200. When the dust settled there was a change in the antidegradation policy, an urban runoff water quality program, and a study: one on the drinking water programs and one on the reorganization of the Water Quality Control Division and Commission to the Department of Natural Resources. The bill had none of the specific Colorado Water Congress language.

But it was an interesting process and that’s what brings to mind coming down the path

Continued on Page 5

Colorado WATER RIGHTS

to assist in or contribute to the protection, conservation and development of water in the state of Colorado

SUMMER 1992

Published by Colorado Water Congress

VOL. 11, NO. 2

THE FOREST SERVICE AND FLPMA

by

John U. Carlson

Among the changes in heart which confound water users is the developing hostility among federal land managers, particularly those in the Forest Service, towards the presence of ditches on public lands. In days of yore, the Congress had encouraged and invited settlers to construct ditches and canals across the public domain. The more act of construction, coupled with actual usage, created a complete right of way across public domain. But with the creation of reserved lands, that is, reserved from entry under the homestead and other settlement laws, the United States embarked on a more restrictive set of policies towards use of federal lands for water diversions.

The original laws for the creation of national forests did not signal any great change of heart to the casual observer. Prominent in the Organic Act of 1897 is this provision: “All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder.” 16 USC 481. There may even be living today persons who remember when the Forest Service adhered to this proposition root and branch. Perhaps the Forest Service, however, is not so different from the general class of landowners: landowners seem never to regard an outstanding easement or other use of their property without also seeing encroachments, nuisances, and general annoyance.

This tendency to move toward construction if not elimination of outstanding uses of national forest lands for ditches and canals has, however, given rise to a Congressionally created opportunity for water users to solidify their role as an easement across national forest lands for ditches which meet narrow and precise criteria. The legislation which created this opportunity may be invoked for only a further four years. If there are water users with ditches on forest service lands, and doubts about the efficacy of their right of occupancy of those lands, it will pay them to examine with great care the provisions of the so-called “Ditch Bill”, Public Law 99-545, Act of October 27, 1986, which is a 1986 amendment to the Federal Land Policy and Management Act of 1976.

Prior to FLPMA, there were a host of different statutory federal laws for water users with a full four years. If there are water users with ditches on forest service lands, and doubts about the efficacy of their right of occupancy of those lands, it will pay them to examine with great care the provisions of the so-called “Ditch Bill”, Public Law 99-545, Act of October 27, 1986, which is a 1986 amendment to the Federal Land Policy and Management Act of 1976.

(a) the ditch must have been constructed and in operation prior to October 21, 1976;
(b) the national forest lands used by the ditch are in a state which adheres to the doctrine of prior appropriation;
(c) the water system is used solely for agricultural irrigation or livestock watering purposes;
(d) the use of water is not located solely on federal lands;
(e) the ditch has been in substantially continuous operation without abandonment;
(f) the user has a valid existing right, established under state law for water conveyed across national forest lands;
(g) the user-applicant for the permanent easement furnishes a record survey and other information regarding the location and characteristics of the diversion system.

Continued on Page 6
August 27 & 28, 1992 – CWSC 17th ANNUAL MEMBERSHIP FORUM AND WATER WORKSHOP — Red Lion Hotel, 1775 East Cheyenne Mountain Boulevard, Colorado Springs. For more information, contact CWC office in Denver: (303) 837-0812.

September 17 & 18, 1992 – CWSC ANNUAL COLORADO WATER LAW SEMINAR — Holiday Inn Northglenn, I-25 and 120th, Northglenn. For more information, contact CWC office in Denver: (303) 837-0812.

October 7, 1992 – CWSC WORKSHOP ON STATE & FEDERAL WATER QUALITY DEVELOPMENTS — Holiday Inn Northglenn, I-25 and 120th, Northglenn. For more information, contact CWC office in Denver: (303) 837-0812.

October 20–23, 1992 – NWRA ANNUAL CONFERENCE — Radisson Hotel Denver, Denver, CO. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

November 5, 1992 – CWSC WORKSHOP ON WETLANDS — Holiday Inn Northglenn, I-25 and 120th, Northglenn. For more information, contact CWC office in Denver: (303) 837-0812.

November 6, 1992 – CWSC WORKSHOP ON WHAT YOU SHOULD KNOW ABOUT THE LEGISLATIVE PROCESS; THE LAW, THE RULES & PRACTICES — CWSC Conference Room, Suite 312, 1390 Logan Street, Denver, CO. For more information, contact CWC office in Denver: (303) 837-0812.

November 12, 1992 – CWSC WORKSHOP ON FEDERAL ENVIRONMENTAL LAWS IMPACTING WATER INTERESTS — CWSC Conference Room, Suite 312, 1390 Logan Street, Denver, CO. For more information, contact CWC office in Denver: (303) 837-0812.

January 21 & 22, 1993 – CWSC 35th ANNUAL CONVENTION — Holiday Inn Northglenn, I-25 and 120th, Northglenn. For more information, contact CWC office in Denver: (303) 837-0812.

January 28 & 29, 1993 – NWRA JANUARY LEADERSHIP MEETING — Doubletree Inn, Monterey, CA. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

August 11–13, 1993 – NWRA WESTERN WATER SEMINAR — Tamarisk, Durango, CO. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

November 30 – December 3, 1993 – NWRA ANNUAL CONFERENCE — Hotel del Coronado, San Diego, CA. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

December 12–16, 1994 – NWRA ANNUAL CONFERENCE — Hyatt Regency, New Orleans, LA. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

December 10–13, 1995 – NWRA ANNUAL CONFERENCE — Hilton Hawaiian Village, Honolulu, HI. For more information contact the NWRA office in Arlington, VA: (703) 524-1544.

CWC 1992 State Laws of Interest to Water Users

The Colorado Water Congress has published, in June, a book containing all water and water-related laws of the second regular session of the fifty-eighth General Assembly. Since this book is 150+ pages in length; and paper, printing, postage and labor are significant costs, the price of the book is $50 (CWC members) and $100 (non-members). Furthermore, since there will be only 25 copies of this book available, distribution will be governed in order of requests. Readers are urged to place their order for the "1992 Colorado Laws Enacted of Interest to Water Users" as quickly as possible — call or write the Colorado Water Congress, 1390 Logan Street, Suite 312, Denver, CO 80203, or phone: 303/837-0812. (Tax is 0.73%)

Video Available

The provocative and educational video of the session on the Colorado River at the CWC 34th Annual Convention is now available for purchase. The participants were: Presiding Officer, David Robbins; Arizona Department of Water Resources Director, Betsy Kieke; and Colorado River Board for the State of California Executive Director, Jerry Zimmerman — also there was some interesting audience involvement. This 95 minute, VHS video is available from CWC for the following prices: CWC members who attended the convention — $65; non-members who attended the convention — $100; CWC members who did not attend the convention — $150; and non-members who did not attend the convention — $200. Applicable sales tax will apply.
Water by Committee: An Opinion

by Frank Milenski
Swink, Colorado

Since the late 1950’s, major changes have taken place in the way water is controlled in the State of Colorado. Gradually decision making has shifted away from those who actually hold priority rights for the use of water to various committees and boards — committees and boards composed of individuals who may or may not have a firsthand knowledge of water. This change in water control appeared simultaneously with the switch to a cabinet style of state administration during the McNichols era and the growth of government bureaucracy at all levels. Since that time, water has become politicized.

Before the late 1950’s, the concept of water distribution according to a priority system remained largely intact. To put it simply, water in Colorado was allocated according to the time in which the water was first put to beneficial use. Some claim that this was a wise system. In this shibboleth, another miner wasn’t allowed to come along later and put him out of business by diverting the water upstream. The late-coming gold miner, however, could sell his claim for the price of gold and new users could come in and water would continue to flow out of the state.

In order to build and operate these complex systems of ditches and canals, water had to be brought to farms and into communities. For instance, when several ditch companies in Kansas sued Colorado over the use of water in the Arkansas River, 26 ditch companies in Southeastern Colorado joined together in 1902 as the Arkansas Valley Ditch Association to protect themselves. Members came from shareholders in the mutual ditch companies and were knowledgeable in water matters. They simply didn’t draw much of a salary.

Cities also eventually formed water boards, but they often worked somewhat differently from the boards of mutual ditch companies. Board members did not always have expertise in water matters. Because of this and because cities often had greater economic resources at their disposal than mutual ditch companies, the Board or the city would hire engineers and other experts to help them manage their water use.

Whether it be a mutual ditch company, a city, or an industrial board, the priority system (or the day of the week priority system—representatives) made the major decisions about how their water was to be used. Power largely remained in the hands of those who had invested time and money in putting water to beneficial use in Colorado.

With the institution of the cabinet system in the late 1950’s and the growth of government bureaucracy, this situation continued to be exacerbated as a result of the creation of new boards, agencies, and committees created by government which concerned themselves in some way with water. A quick count of the listings in the Colorado Water Almanac and Directory for 1990 shows 16 U.S. congressional committees, 20 federal agencies, 6 federal and 80 state agencies, 3 regional organizations, 20 county organizations belonging to the Colorado Water Congress, 40 city organizations belonging to the Colorado State Water Board, 3 water conservation districts, 48 water conservancy districts, 6 local water users associations, 10 irrigation districts, 9 groundwater management districts, 2 water authorities, 20 water and sanitation districts, and 7 water quality management agencies, 10 non-government national organizations, 17 western states water associations, 19 non-government Colorado organizations, and 38 Colorado environmental organizations. In short there are 313 organizations listed. This does not include the various state legislative committees. Each one of the groups listed can affect water legislation and water policy in some way. Obviously this is a jungle. No one individual could possibly keep tabs on all these various entities.

What is omitted from this directory is an intriguing as what is listed. The directory does not include many of the canal companies, reservoir companies, pumping companies, or private irrigation systems which actually held the lion’s share of priority rights to the water. Since agriculture still maintains around 85 percent of the water rights, one might think they should be considered worthy of inclusion.

This directory listing reflects a major trend in the water business in Colorado. Agricultural users who hold the bulk of the water rights in the state are being ignored or played down in the decision making process. The composition of the committees concerned with water policy reflect this trend. Those who actually held most of the water rights, receive less and less representation on committees and boards that are making decisions about water use.

Interest groups who have not invested in the heavy financial risk of putting water to beneficial use began to realize that they could use these committees to further their own interests “on the cheap”. What they couldn’t gain through the well-established priority system, they could gain by undermining the priority system through the passage of new laws and regulations instituted amidst the jangle of water committees. This process was accelerated as groups and individuals came to realize that manipulating water meant “money”.

Although the Colorado Water Conservation Board was established by the legislature in 1937, it shows many of the trends seen in committees and boards established since the late 1950’s. The Colorado Water Conservancy Districts of the Board sets major policy for water use in the state. Originally over half of this Board’s membership was made up of individuals representing agriculture. Today, the Colorado Water Conservation Districts of the Board sets major policy for water use in the state. Originally over half of this Board’s membership was made up of individuals representing agriculture. Today, the Colorado Water Conservation Districts of the Board sets major policy for water use in the state. Originally over half of this Board’s membership was made up of individuals representing agriculture. Today, the Colorado Water Conservation Districts of the Board sets major policy for water use in the state. 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Frank Milenski at Catlin Canal Dam on Arkansas River (about three miles east of Fowler, Colorado).
This basin of origin discussion has to be a hard hitting, rough piece of legislation. If we don’t do that the future of Colorado water development is down the drain.

This issue will come up again and I’m telling you, don’t ever forget the vote still is 4-3 in the Ag Committee that it’s going to have to go through and we don’t know what the vote is going to be 4-3 against it. The point here is that we met the enemies of the water development and it reminds me back when I was carrying a little bit of legislation that said if these ditch companies sell out their water every time they took a ditch, that some body was going to have to pay for the engineering and pay for the impacts on the last pay down the ditch. And I can still remember coming to the Water Congress, coming to the Board, and man, getting into the biggest fight, and we had more city attorneys and rural water users and everybody crossbreathed to the point that we couldn’t breathe and they voted with us.

Basin of origin, we can’t do that. This basis of origin discussion has to be resolved among us and has to be a hard hitting, rough piece of legislation that comes forth while we can still pass it. If we don’t do that, the future of Colorado water development, in my view, is down the drain. And so, I think it’s imperative that we get to the point, and it’s a tough one for me, I don’t want to see our agriculture water moved to municipal use. I don’t want to see the Western Slope dry up, contrary to what other people might think of me. But I want to tell you, that together we can save that water that runs out of the state of Colorado. We can keep the Western Slope happy and we can keep the Eastern Slope happy. We just need to use it first and get it on the move. And the only way we’re going to get that done is if we can work out together some kind of basin of origin bill that’s going to allow us to do those transfers and do it in a fair way. And so that’s what I had on my mind. I’m not going to get into telling anybody any more about use of agricultural water. I’ve expressed myself and will be glad to privately express myself some more on that issue. The point is, this issue that’s before us is one that commands compromise and that’s what we’re going to have to get. And that’s the part that’s really worrying me as I try to represent you in that business about striking compromise for legislation for Colorado water.

Colorado State Senator Don Amen (R) is a farmer and rancher who represents Senator District 1. The district includes Montrose, Delta, Garfield, and Eagle counties. Amen is a member of the Colorado Agricultural and Wildlife Federation, Trout Unlimited and Sierra Club. Even a lot of agriculture people are involved in those groups. Amen says they had some meetings where they were being spent, not particularly in Colorado, but nationally, they would find out that the people they are supporting are groups that lot agriculture not their friends, but as the enemies.

All right, what are we going to do about all this? I’ve laid out what it looks like after Two Forks. What are we going to do about it? Well, that brings me over and one more issue. Are we going to handle this all by ballot? Are we going to drive public policy that you all have to help me counteract. And I guess what’s bothering me is, we are start to talk about basin of origin, we’ve got to compensate them for that. And we’ve got to do it in a fair and equal manner. And, if we, in this group, can’t come upon the way to do that, then somebody else is going to do it for us. And it won’t be good. I guarantee you it won’t be good. I don’t feel this cooperative effort coming together to do some thing like that. This is going to be, tough, hard hit, legislation that nobody wants to stick their neck out for. And I’m worried, that we will be, as the water community, representing all segments of that water community, aren’t going to be able to get together ourselves on how we’re going to do that. And if we don’t do it, somebody will do it for us and it’ll either be on a ball or it’ll be by people involved in the legislation that don’t understand water. So that’s the choice we have. It’s very simple. And I guess, from the last go around, you thought, as a group anyway, that we probably weren’t far enough along on one thinking to put this together.
STATE ENGINEER AND WATER CONSERVATION
BOARD DIRECTOR APPOINTMENTS ANNOUNCED

On Friday, Aug. 1, Department of Natural Resources Executive Director Ken Salazar and the Colorado Water Conservation Board (CWCB) announced the appointments of Harold “Hal” Simpson as state engineer and Darries “Chuck” Lile as state engineer, effective Aug. 1.

“These appointments herald a new era in how Colorado will manage its water resources,” said Governor Roy Romer. “Board members have complete confidence in both Hal’s and Chuck’s abilities to develop creative solutions to the increasingly difficult water management challenges before us.”

Salazar said, “These appointments will provide Colorado with an opportunity to use the human and fiscal resources of both agencies to effectively address the critical water resources issues of our times.”

“The CWCB members are unanimous in our support for the appointment of Chuck Lile as the director of the CWCB and look forward to when he can assume his new duties,” said Board Chairman Tyler Martinez. “Board members were also unanimous in our recommendation that Hal Simpson be appointed as state engineer. Additionally, we are very pleased with the outstanding qualifications of all the candidates for both positions.”

As state engineer, Simpson will manage the Division of Water Resources, which has a staff of 220 employees and an annual budget of $11 million. Simpson began his career with the Division of Water Resources in 1972 as chief of the Land Use Branch. He subsequently directed the Water Resources Conservation Branch, which was organized in 1980 as the state engineer in 1985 and is appointed deputy state engineer in 1985. In February 1992, Simpson was appointed general engineer. Simpson has a bachelor’s degree in civil engineering and a master’s degree in water resources, both from Colorado State University.

“Hal is recognized as one of the top technical experts on Colorado water law and administration. He brings a wealth of experience and knowledge to our state,” said Board member Roger Francis. “Hal is a leader in the field of water law and has been instrumental in developing and implementing water policy in Colorado.”

Simpson will manage the 30 employees and $1.96 million budget of the CWCB. He began his state career in 1967 as a water resource engineer with the Division of Water Resources. In 1972, he was promoted to assistant division engineer in Steamboat Springs and assumed his current duties as division engineer of water district 7 in Durango in 1975. Lile has a bachelor of science degree in civil engineering and a bachelor’s degree in geology from the University of Southern Colorado.

Chuck has great people skills. He played a key role in Colorado’s negotiation of an agreement that successfully addresses the reserved water right claims of Ute Mountain Ute and Southern Ute Indian tribes. Colorado is unique in that it was able to achieve a settlement agreement with the Indians without resorting to litigation. As we continue to address such complex and controversial issues as the future of the Colorado River and water rights, Hal’s integrity and his credibility among stake- holders will be invaluable,” Salazar said.

The CWCB was created in 1977 by the Colorado legislature to develop strategies and policies to manage water resources in a sustainable manner. The CWCB is composed of nine members, including the state engineer, the state director of water resources, and seven members appointed by the governor. The CWCB is responsible for developing and implementing water policy in Colorado.

Norton: Update from the Colorado Senate

Continued from Page 1

and across the bridge. It was an interesting walk but you...
No piece of paper issued by a federal agency memorializes or records grants perfected under the Act of 1866. Rather, the grant was perfected in the same way that appropriations of water were made: the claimant dug a ditch and ran water through it to some beneficial use.

No piece of paper issued under pre-FLPMA grants, and will proceed pending application for amendment and other pending administrative matters in accordance with the applicable procedures and policies of the Department of the Interior.

The Department must of course maintain its authority to assure that holders of rights of way for water conveyance and storage systems must be adjudicated by the Department.

The Department recognizes that long-standing uses ought not be diminished by insignificant defects in survey or description or many years’ use, or diminution to the end use of the water of the Federal lands.

We hope that this letter has adequately clarified the Department of Agriculture’s position on the concerns that have been raised related to H.R. 2921.

In May, 1992, the Forest Service finalized its internal procedures for handling Ditch Bill rights of way. Copies of those materials are available from Mr. Austin Condor, Arapaho and Roosevelt National Forests, 240 West Prospect, Fort Collins, Colorado 80526. Persons with an unsettled legal status in their usage of national forestal lands for ditches ought to review these materials carefully and assess whether their use is in accordance with the applicable laws for applying for an easement under the Ditch Bill. Whether or not such an application ought to be made is not a simple question. It involves a number of factors: answers which may require a good deal of historical research and title examination. But if there is no other outstanding grant of a right of way under the pre-FLPMA laws which the applicant contends can be made to prevail as the end use of the water diverted is for agricultural purposes, then recourse to the Ditch Bill is obviously inadvisable.

How does one determine whether there is an outstanding grant under pre-FLPMA laws which would obviate the need for invoking the Ditch Bill? I believe this question probably requires legal assistance, for to provide an answer, one must delve into a variety of title, BLM Land Office, land and water adjudication records which are spread out over the state, and filed in a manner that fairly well can be said, in a most perplexing and idiosyncratic manner.

The most efficacious of the pre-FLPMA grants of a right of way under the Act of 1866? Congress there provided a right of way for ditches and canals with this general provision:

When, by priority of possession, rights to the construction of ditches, agricultural, manufacturing, or other purposes, have been vested and accrued, and the same are recognized and acknowledged by the local agents, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes here specified is acknowledged and confirmed.

No piece of paper issued by a federal agency memorializes or records grants perfected under the Act of 1866. Rather, the grant was perfected in the same way that appropriations of water were made: the claimant dug a ditch and ran water through it to some beneficial use.

Thus, neither the BLM nor the Forest Service has any central file which contains the creation of 1866 rights of way. The Forest Service takes the position that the Act of 1866 was not applicable to water appropriators once lands were reserved for national forests. Accordingly, to establish a right of way under the Act of 1866, the applicant must show by actual use that the ditch was in place and used prior to the wholesale reservation of public lands for national forests in 1891 and 1906. The Forest Service, in its informational packet developed in conjunction with its procedures for implementation of the Ditch Bill, has included an informational sheet that explains the steps that can be taken to build a ditch. This sheet provides links to water decrees, permits, diversion records, ditch location statements, field survey notes, water rights applications, testimony from court decrees, irrigation records, ditch rider notes and other historical data in determining

Continued on Page 7
Carlson: Forest Service and FLPLMA

Continued from Page 6
whether a valid 1865 right of way has been created on what are now Forest Service lands. The search for confirmation of an 1865 Act right of way takes one back in the range of 100 years. But the historical search is clearly worthwhile. A right of way under the Act of 1865 is truly permanent, and not subject to cancellation by the Forest Service upon a change in the end use of the water as is the case for rights of way under the Ditch Bill. An 1865 Act right of way under the influence of the lawyers, simply grants a larger estate in land, and one of infinitely greater attraction to the water user.

No person ought to accept a Ditch Bill right of way without determining whether there exists a valid claim to a grant under the Act of 1865 or the companion acts which allowed for the creation of rights of way on national forests, e.g., the Act of 1891, 1901, and 1905. The reason for this warning is simply this: by accepting a right of way under the Ditch Bill, one is required to relinquish for all time any claim to any other kind of right of way. There is in my view a substantial risk that applicants may unwittingly surrender a larger, better right of way unknown to them for the immediate benefit of the limited kind of conveyance available under the Ditch Bill. Without careful scrutiny, only those who are in fact trespassers on the national forest would be well-served by such a leap.

As one who worked with Forest Service personnel towards the implementation of this legislation, I would like to say a special thanks to Ms. Ellie Townes of the Regional Forester’s Office in Denver. She has worked with great fairness and goodwill toward the sound implementation of this legislation. She is a public servant in every fine sense of the word.

John Carlson is an attorney with Denver law firm Carlson, Hammond & Paddock.

Milenski: Water by Committee

Continued from Page 3
Reservoir by paying a very small fee for evaporation losses. Most of the recreational phases only appear after the project was completed and recreation users will not contribute directly to the construction costs of the project. However, the permanent pool of water at the reservoir will probably have to be maintained for above the 30,000 acre foot level originally agreed upon in order to accommodate swimmers and boaters. Naturally, the membership of the board changed after water and storage became a reality. In the late 1980’s, each of the eight counties was assured of only one representative, there was to be one—large representative, and the other representatives were to be chosen according to the population of the county. Today, the board is dominated by urban interests. El Paso County has five representatives and Pueblo County has four representing its rural areas.

The state legislature has already established a number of committees involved with water legislation and use. Agriculture which has 85 percent of the water, has two percent of the vote. This means that most legislators (65 representatives and 35 senators) are from the cities. Few know about water before their election. Most become experts after several weeks, educated by special interest lobbies.

It is no surprise, therefore, that legislation recommended by legislative committees and passed by the legislature has favored urban interests. Some of the resulting legislation has seriously undermined the original provisions in the constitution dealing with water. Legislation has passed circumventing the provision in the Constitution that water must be put to immediate beneficial use. This has led to stockpiling of water by the cities which in turn has led to water speculation and misuse of water. In the late 1970’s an acre foot of water was sufficient to provide for four urban families a year, now an acre foot of water is sufficient for only one and a half families. Cities have extra water, they must use it or lose money. The consequence is the opposite of the conservation of water being advocated publicly by all sides.

Special interest groups have made it politically impossible for the legislature to fully implement the Constitution in other ways. For instance, the constitution allows all water in Colorado to be put to beneficial use. There are still several hundred thousand acre feet of water unappropriated on the Western Slope. Yet, because of the pressures on committees and legislators by environmental groups and others, this water will probably be lost to Colorado.

Since legislators and state water committee members rarely have time to become experts in water, there is a tendency to pass legislation (wise or not), and then have the state engineer figure out how to implement the legislation. Naturally funding is inadequate and the state engineer rarely has the resources to adequately administer the vast number of water systems under his jurisdiction in the state. In many instances, this has allowed for abuse—excessive underground pumping comes immediately to mind. Also cities, because of the state engineer’s lack of personnel, keep and report their own figures on water consumption, exchanges, and storage to the state engineer.

Power largely remained in the hands of those who had invested time and money in putting water to beneficial use in Colorado. With the institution of the cabinet system in the late 1950’s and the growth of government bureaucracy, this situation gradually began to change.

The decreasing population of farmers has not only made it impossible to elect a legislative body favorable to their interests, it has also made it impossible to find enough qualified farmers to sit on the multitude of committees and boards that now exist. The remaining farmers are so busy trying to earn a living that few of them become water experts. While they may understand local water use, few farmers have the time needed to gain an understanding of all the intricate political, economic, and legal niceties demanded today. As the number of water committees increases, the demands become greater while the resource to meet the demands become smaller. Farmers not only lack time, they also lack money. They can rarely afford to hire full time specialists to represent their interests. Farmers simply aren’t getting their fair share of the food dollar and have little or no surplus to invest in this way.

Agriculturists are often excluded from meetings and committees dealing with water in other interesting ways. Meetings are often scheduled during the busiest time of year for the farmer at places far removed. To attend one often has to stay at expensive hotels and eat expensive meals. This is fine for the bureaucrat whose expenses are paid by the taxpayer or the lawyer being reimbursed by special interest groups. It is death to the farmer who is merely trying to live.

Clearly farmers and ranchers who hold 85 percent of the water lack proper representation on the boards controlled politically. This has allowed groups and individuals who hold no priority water rights to manipulate committees making major decisions about water. I was made aware of the full implications of this the other day when I told a number of people that “agriculture was going to be put out of the water business by red tape and regulations so the cities wouldn’t even have to buy the water they wanted.” Clearly committees are being used to undermine the priority system which has allowed for an orderly use and exchange of water. Chaos seems to be raining in the water. This is “water by committee”. And it seems that to waste is too important to mankind to be treated as a political football.

Frank Milenski has been a member of the Cañon Canal Board of Directors for 42 years and president of that board for 32 years. He is a charter member and has been on the board of directors of the Southeastern Colorado Conservancy District for 34 years. He also served on the Colorado State Water Conservation Board from 1959 through 1966.

Aspinall

12th Award Painting

A limited number of colored photographs (11 X 14) of the painting of the “Stagecoach Reservoir” presented to John Fetcher as the 12th recipient of the “Wayne N. Aspinall Water Leader of the Year Award” at the 34th CWCA Annual Convention of the Colorado Water Congress is available for $25. If interested in obtaining a copy of this photograph, please contact the Colorado Water Congress, 1700 Logan Street, Suite 312, Denver, CO 80203 – or call or fax in your order: (phone) 303/837-0812 (fax) 303/837-1697.

The twelfth recipient of the “Wayne N. Aspinall Water Leader Award” was John R. Fether, shown receiving a painting of “Stagecoach” from 1949. Aspinall Award recipient Bill Miller.
Thursday, September 17, 1992

7:45 a.m. Registration
Presiding, Senator Fred Anderson of Loveland

8:00 a.m. The History of Colorado Water Law
Jack Ross of Saunders, Snyder, Ross and Dickson, Denver.

10:30 a.m. Water Distribution Organizations
(mutual ditch companies, carrier ditch companies, special districts and municipal systems)
John Carlson, of Carlson, Hammond & Paddock, Denver.

11:15 a.m. The Water Court System and Procedure
John Carlson of Carlson, Hammond & Paddock, Denver.

11:45 a.m. LUNCH

12:45 p.m. The Relationship Between the Federal Government and Colorado Water Law
Greg Hobb of Davis, Graham & Stubbs, Denver

1:30 p.m. The Impact on Colorado of Interstate Compacts
Hal Simpson, State Engineer, State of Colorado

2:15 p.m. The Colorado Division of Water Resources, Ground Water Commission, and the Office of the State Engineer: Responsibilities and Roles in Water Matters
Hal Simpson, State Engineer, State of Colorado

3:15 p.m. Water Conservancy Districts: Responsibilities and Roles in Water Matters
Larry Simpson, Manager, Northern Colorado Water Conservancy District, Loveland.

4:00 p.m. Engineering Aspects of Water Rights
Leonard Rice, President or Greg Ten Eyck, Senior Vice President, Leonard Rice Consulting Water Engineers, Inc., Denver.

5:15 p.m. Recess until 7:45 a.m., Friday, September 18th.

Friday, September 18, 1992

7:45 a.m. Overview of Colorado Ground Water Law
Ronnie Sperling of Moses, Wittemyer, Harrison & Woodruff, Boulder.

8:45 a.m. The Colorado Water Resources & Power Development Authority: Its Responsibilities and Role in Water Matters
Dan Law, Director, Colorado Water Resources & Power Development Authority.

9:30 a.m. The Colorado Water Conservation Board: Its Responsibilities and Role in Water Matters
Darrie "Chuck" Lile, Director, Colorado Water Conservation Board.

10:15 a.m. Historical Overview of the Denver Water System
Hamlet J. "Chips" Barry, III, Manager, Denver Water Department, Denver.

11:30 a.m. The Colorado River, The Colorado River Water Conservation District, and Western Colorado Water Projects
Don Hamburg, General Counsel of the Colorado River Water Conservation District, Glenwood Springs.

12:15 p.m. LUNCH

1:00 p.m. Federal & State Water Quality Laws
Tad Foster, Attorney at law, Colorado Springs; and Tom Pitts, Tom Pitts & Associates, Loveland.

2:30 p.m. The Colorado Water Quality Control Division: Its Responsibilities and Role in Water Matters
David Holm, Director, Colorado Water Quality Control Division, Denver.

3:00 p.m. Colorado Water Resources Research Institute: Responsibilities and Roles in Water Matters
Dr. Robert C. Ward, Director, Colorado Water Resources Research Institute, Fort Collins.

3:45 p.m. Adjournment

For more information, please contact Colorado Water Congress staff at (303) 837-0812 in Denver.