Guest Editorial

FEDERAL MANDATES

by Senator Tom Norton

President of the Colorado Senate

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." This is the Tenth Amendment to the Constitution of the United States which has been long forgotten by the Washington, D.C. bureaucrats with the beltway mentality. As a result, federal mandates continue on, causing unmanageable state and local budgets, and tax revolts continue on.

Long before Amendment I, Colorado had a balanced budget requirement, a limit on spending, and one of the lowest state tax rates in the nation. Now we have Amendment I which reduces the flexibility for managing state and local governments' budgets, and we still have the federal mandates which continue to squeeze these budgets without allowing the state and local governments to set the priorities in accordance with their constituents' requests.

These mandates cut across all areas of the budget process. They include entitlement programs such as social services increased eligibility for Medicaid, highway and other transportation standards that are not designed to meet the needs of the West. More importantly, they include environmental standards designed to meet the water, land and air requirements of the East or West Coast with little concern or knowledge about the needs of the Rocky Mountain States. These mandates cost states considerable dollars in direct spending to implement these federal programs. Additionally, the cost of the regulatory process for implementing these programs, whether effective or not, is putting a burden on state budgets which cannot be handled with limited resources.

If we are going to accomplish the intent of Amendment I of less government and limited taxation, we must change the policy controlling the implementation of federal laws to allow priorities to be set by the state. In order to change this policy, it is necessary to recognize the desires of the people within the states and local areas, their needs, their ability to set the priorities in accordance with those needs and the economic resources available.

The present federal policy of continuing to tax and hand down federal programs without a commensurate return of the tax monies to implement those programs will only continue to squeeze the states into economic catastrophe.

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EGOLOGICAL INTEGRITY, NEW WESTERN MYTH

(A CRITIQUE OF THE LONG'S PEAK REPORT)*

by Gregory J. Hobbs, Jr.

The myth-makers of the American West have produced another one. Bierstadt painted "The Rocky Mountains-Lander's Peak" (1863) and "A Storm in the Rockies-Mt. Rosalie" (1866), immense canvases which fired the Eastern imagination with water shining at the base of savage peaks. The Long's Peak Report (Dec. 1992) conjures up an imaginary Western landscape promising "A New Era of Sustainability For America's Waters" based on "social equity, economic efficiency, ecological integrity, and continued commitment to federal trust responsibilities to tribes, a national water policy "to fulfill Aldo Leopold's land ethic."

But the Long's Peak Report is no Bierstadt. Its loftiness quickly fades into a one-dimensional brief for the exercise of federal agency power over State and local planning. Composed mainly of representatives of the major national environmental groups and their ideological allies, the invitation list foreordained the outcome; a set of biased recommendations intended to nationalize water policy and effectuate a reallocation of existing water supplies. Recommendation 30, for example, asserts that "Reallocation of existing supplies should be preferred as an alternative to new storage." Representatives of the Colorado General Assembly, state agencies, water organizations, farmers, or cities who hold rights to those water supplies were not asked to participate, although the forum was hosted by the Natural Resources Law Center of the University of Colorado School of Law. 1 As a result, the report is biased by its anti-storage, anti-use, anti-local government agenda. The group's timely message about the need for water use efficiency, environmental protection, market mechanisms for water transfers, and community participation in water decision-making are lost amidst the din of strident preservationism.

Hitching State water law and the Bureau of Reclamation to the whipping post has been a favorite sport of writers like Fradkin and Reinstein and professors like Wilkinson and his colleagues at the Natural Resources Law Center who helped to author the Long's Peak Report. At Lewis and Clark in February of 1991, Wilkinson eulogized the death of a mythological figure he called "Prior Appropriation." 2 In subsequent writings, he broadly smears Continued on Page 4

Colorado Water Congress
36th Annual Convention

Holiday Inn — Northglenn
I-25 & 120th Avenue

January 20 & 21, 1994
Hey, you Lords of Yesterday. Well, that’s what one of them there professors who writes fiction at the legal ivory tower (Center) calls you. Course, we thought that was a visionary effort by the pioneers when they developed Colorado’s water resources, but, no, you buffalos have been put out to the “ole water hole.” Even ole Tom Hornsby Ferril must have not understood when we wrote:

“Here is a land where life is written in water.”

You got to know, we got more sophisticated (ain’t that a 98¢ word) ways for stealin’ water than we used to in the old days. Now we come up with fancy legal words or phrases like “Public Trust Doctrine,” or better yet, we get the FEDS to steal water, ostensibly (another 98¢ word) for new uses that nobody did ever figure existed before. We get a take-care of them that endanger fishes or whatever, plus the trout fishermen and the rafters. However, you gotta watch out, fishermen, for them thar rafters. They’ll run you down. And, rafters, those fishermen get in your way.

Well, Water Buffalos, don’t worry, when you get the Barons of the Free Branch up there at the legal ivory tower takin’ care of all this, with their high-falutin’ terms like “Lords of Yesterday.” I’m still not sure I understand what’s higher, a Baron or a Lord! I never did understand this nobility stuff. Anyway, I guess I’ll kinda head back to the ole water hole — what’s left of it!

Norton: Federal Mandates

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I believe that the states and the federal government should pass laws requiring the federal government to prove that the federal laws that are passed and mandated to the states be proven necessary at the local level and that the priorities be set by the people. To accomplish this, as federal laws are established and required by the federal government for implementation by the states, the states should be allowed to implement these laws in accordance with state priorities and develop each plan so that plan meets the specific needs of the area.

Once these plans are implemented through the passage of state laws, it should be a requirement that state implementation plans are inadequate at the source of the economic activity is needed between the commerce clause and the Tenth Amendment to allow the people to set the priorities and to allow budgeting and funding of projects to be accomplished at the source of the economic base. I believe that it is necessary to implement state laws requiring this policy so that the states can in fact reactivate the Tenth Amendment to the Constitution.

We have heard stated many times that we need to re-invent government. However, it appears to me that the framers of the Constitution established a very adequate clause to allow the states and the people to determine their own destiny and to set their own priorities. The federal government has overturned the boundaries of their authority and therefore, re-inventing government is not as necessary as going back to government for and of the people.
I'm BENUMBED!

Excuse me, but isn't there an underlying issue of federalism that ought to be part of this discussion?

by Colorado Springs Mayor
Robert M. Isaac

There has been very little debate about the appropriate relationship among the levels of government as set out in the Constitution. I suppose it's hard to see what's happening to the republic — the loss of freedom and local determination — when your head is always in the trough.

Most mandates are developed in that 10-square-mile area on the Potomac, fashioned by pressure groups, political activists, and congressional staffs who are used to talking to each other. Public interest groups in Washington are sometimes as out of touch with their constituencies as our elected officials. They play to each other and to the Washington press; and to them, that's all there is. The bottom line is they know best what's good for us. They seem to assume that local elected officials are out to poison the public, take away individual rights, and destroy the environment. They operate on the theory that the further they are from the problem, the more capable they are of determining the solution.

Congress, the Administration, and agencies have been empowered to do anything they wish — and local governments and their citizens pay dearly for it. Unfortunately, the people who must pay and the people who benefit are never in the same forum. In the Garcia case eight years ago, the Supreme Court left the field saying they would not determine if Congress had exceeded its delegated powers, leaving it to us to use the ballot box to throw the rascals out if they stepped on states rights.

Federal power

It's no easy task for us to challenge a Congress which continues to distribute goodies to the voters, when the odds for reelection are well above 90 percent. Even though a majority of the citizens almost universally dislike Congress, they love their own Congressman or woman who brings home the bacon.

Congress now determines everything to be a matter of national interest and orders us at the local level to perform under threat of civil and criminal sanctions. Congressmen and women care very little about state and local tax and spending limitations. In most cases, we at the local level have to provide the revenues to carry out their mandates.

Bribing the public

The public has been bribed for years by the federal government, and now we expect to turn all that around with a slogan, NUM, and a few bells and whistles.

Not to belabor the point, but possibly in the interest of civics lesson, I submit the states existed before the federal government. The drafters of the Constitution were extremely cautious and delegated specific and limited powers to the several branches of the federal government, reserving all else to the states or to the people.

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Hobbs: Ecological Integrity, The New Western Myth

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Western water use as "prodigal water" perpetrated by the "lords of dryness" who do not demonstrate "an essential pattern" which he describes as:

...the single-minded pressure to develop water for narrow agricultural or industrial uses among river basins, extensive federal subsidies for private users, far-reaching environmental impacts, the subdivision of established Indian rights, the adoption of "takings" for public works; the blunting of normal market incentives; and the inexorable drive toward bigger and grander projects.1

The Long Peak report echoes with such politically-charged hyperbole:

...the endangered Columbia River salmon, the over-fished San Francisco Bay Delta, the poisoned Kesterson National Wildlife Refuge, the salt-choked Colorado River, the vanishing Ogalla Aquifer, Louisiana's eroding Delta, New York's precious Delaware River water supply, and the dying Florida Everglades. The environmental costs of current water policy are extraordinary, both to this and future generations.2

Here is painted the modern myth that water diverters have wrecked western America for filthy gain. The Nineteenth Century boomer agricultural irrigation myth was therefore brought by "rain follows the plow." Neither myth accurately portrays the West of the past, present, or future. Wilkinson's so-called "lords of yesterday" were as afraid of men and women, and community officials. "Water follows the shovels and the city council" would more accurately characterize the history of Western water policy. Water projects are the product of state, local long-range planning in response to the natural hydrologic cycle and citizen need. The Colorado Big-Thompson project, for example, was sponsored by farmers and cities who had experienced the great Depression and devastating Dust Bowl drought of the Thirties.3 In those days the national government invested in the livelihood of citizens and the infrastructure of the nation, instead of determining how to obstruct both. Local sponsorship and the execution of multi-year repayment contracts ensured continuing community involvement and responsibility.

On the ground, the C-B-T project doesn't look like destruction. A National Recreation Area was set up in the upper watershed slope featuring canyons of the Grand Lake and Shadow Mountain, Granby, and Willow Creek reservoirs. A gold medal trout fishery exists below the diversion dam. A diversion from the Continental Divide underneath Rocky Mountain National Park delivers water to 650,000 acres of irrigated farmland and 26 northeastern Colorado communities, including Boulder, Longmont, Loveland, Fort Collins, and Greeley, highly livable cities surrounded by a sustainable rural irrigated greenbelt. The river below Fort Morgan now flows perennially because of irrigation and municipal return flows from the previously transmountain diversion into the South Platte River Basin. Historically, the river ran dry after the late Spring snowmelt. This subject is not unique. Water diversion and storage have made the West an attractive and productive region for habitation by Americans. The Long's Peak Report fails as sustainable water policy for this region, or the nation, because it ignores four enduring Western factors: 1) water scarcity, 2) state and local citizen initiative, 3) the essential role of water storage; and 4) the necessity for a stable, reliable, renewable water allocation delivers. If implemented, the report would intensify competition for already scarce water supplies in order to serve "the ecological community," "ethnic communities," "ecosystems," "a water flow portfolio," "pollution prevention," "ecological integrity and restoration," "water quality," "biological diversity," "the viability of ecosystems," "community and economic sustainability" and "watershed restoration."4

Presumably, a national water policy would address how much water is needed for these uses, by what means that amount will be quantified and administered in relation to other uses, and how such uses can be served with

new storage and without causing injury to State and local economies and established water rights. However, certainly neither should divert this need to implementing such a policy and without inviting the participation of those with opposing viewpoints and established rights, the Long's Peakers called for immediate implementation of their "Long's Peak Policy for Water Rights." The Executive Order in derogation of state and federal legislative process:

The President should issue an Executive Order establishing a policy of watershed-level aquatic ecosystem protection and restoration. The order should direct the EPA and the Departments of the Interior, Agriculture, Defense, and Commerce (with oversight from the Council on Environmental Quality) to: review, revise and coordinate the Federal laws and regulations that give us all authorities under existing law to manage Federal; lands; to operate federally-owned or licensed projects and facilities; and to restore, fish, wildlife, and their habitats on an equal basis with other primary project purposes (where such protection is not provided under the Endangered Species Act).

The Departments of the Interior and Agriculture should assert rights to stream flows for federal lands and use preservationist advocacy of those like John Muir and Gifford Pinchot. Federal law enforcement and enforcement with strength in instream flow programs by using authority to grant or withhold federal funds and federal permit approvals.5

What the authors of this agenda really seek is a national riparian water law implemented by federal agencies outside of state water law forums. But the Eastern riparian doctrine of natural or continuous flow and de minimus use was rejected long ago by Congress and the United States Supreme Court as a sustainable national policy.

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By ignoring state and local water law, custom, and forums, and encouraging federal agencies to effectuate reallocation of water supplies by regulatory controls, the Long's Peak Report subverts sustainable water policy, rather than offering a viable alternative. If implemented, this agenda will lead to unprecedented conflict, litigation, and intrusion on established uses.6 Under the Supreme Court's Cursoe rationale, state-created water uses are "equities" protected against regulatory takings. Water law entitles water rights owners to remove water from natural streams and lakes.7 The exercise of a water right usually and necessarily involves allocation of water from one use to another. Colorado, for example, a water right is the right to use a particular quantity of water; 2) for an identified beneficial use or uses; 3) diverted or stored at a specified location; 4) with an administrable priority vis-a-vis other uses of the available water source; 5) resulting in a quantifiable yield; 6) reallocation of such a right by agency action in order to maintain or restore ecological integrity can result in a compensable partial or total regulatory taking.8

The Long's Peak Report states that "equities of people with existing uses" should be "respected" where "the framers of the Constitution" and the "19th century advocates of the Colorado River Storage Project" reallocated water from one use to another. The report does not require an acceptable "public purpose" to justify the destruction of the "right of the water owner." 9 The phraseology implies that courts or administrative agencies may balance interests between an existing use of water and the perceived social and political importance of "new values" in determining whether to pre-empt some or all of the owner's interests in a water right. But water rights are created by law, and a remedy at law — damages — is owed to owners for their taking. This report's choice of "equities" instead of "rights" when describing present uses water uses clearly demonstrates the fundamentally erroneous doctrine of the Long's Peak Report that a changing federal definition of relative equities among competing uses of water can supersede property interests which have vested under state law. Fortunately, the Constitution of the United States is not so fragile. Property.

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Western interests, and their desire to rearrange and regu­
late away established rights, encourages hostility and resis­
tance.

The public interest in environmental protection which the Long's Peak Report seeks to vindicate cannot be assured by rhetoric. Federal regulation is a transitory means for protecting the use of water for environmental purposes or any other purpose. There is no substitute for

integrating new water uses into a proven, reliable system. The Western states have the job well under way, so it is in the genius of Mr. Price. Contrary to popular rumor, he's not dead yet. Not by such a Long's shot.

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3. National environmental groups with representatives invited were: the Environmental Defense Fund, american Rivers, National Wildlife Federation, Sierra Club, The Nature Conservancy, and The National Audubon Society. Those attending but not necessarily committed to the objectives of these groups apparently feared to articulate or gain inclusion of different points of view.

4. at 11.

5. This article discusses Colorado law and policy as an example of Western water principles which the Natural Resources Law Center views as evidence that the Mountain West is a global environmental leader.


Reclamation law made sustainable water supplies for settlement of the West a matter of national importance.

In those days, Congress heard the truth about water storage.

--Reprints, CADILLAC DESERT, THE AMERICAN WEST AND ITS DISAPPEARING WATER, JERROLD HOBBS (1988).--


"Long's Peak Report" at p.3. (Emphasis added.)

"Long's Peak Report" at p.3.

"Long's Peak Report" at p.5.


John Weir, PERSPECTIVES ON THE LANDS OF THE ARID REGION OF THE UNITED STATES (1979) at 137.


United States v. New Mexico, 435 U.S. 686, 712 (1978). A monumental decision of the Supreme Court, nevertheless, limited federal water control to the "waters of the U.S." in Colorado's part of the Colorado River. In Greely, rejected the Organic Act claims of the United States but did afford the state beneficial use rights under its apportionment among the Arkansas, Platte, South Platte, and San Isabel National Forests, Consolidated Case No. W. 76-001, (U.S. District Court, Colo. Sept. 12, 1976). The United States has filed an appeal with the Colorado Supreme Court. In his opinion Judge Behrenstein said:

"Appellant contends that Congress, in creating the national forest system, was not creating a forest of perpetual flow, but a forest of the necessities of Western domestic and irrigation use of the waters from the forests. If that is true, the section of this memorandum is entirely irrele­vant. But this court believes such development was a primary use of the porous sandstone aquifer of the mountain region, and the Supreme Court of Colorado has held that the 'demand for water in the upper reaches of the State of Colorado has not reached the point where a necessity for permanent or certain water supply for the necessities of Southern Colorado'."
LEGISLATIVE COLORADO RIVER TOUR

by SENATOR DON AMENT

On August 16-17, 1993, a number of members of the Interim Legislative Committee on Water and School Lands participated in a tour of the Colorado River System within the State. Despite a rocky start in having to switch three buses, the participants of this tour had an opportunity to develop an in-depth understanding of the Colorado River System within the State, the associated interstate compact, and how the operation, use, and development are being managed.

The sequence of events was as follows:

Point/Reach | August 16/17 | Presenters | Topics
---|---|---|---
Denver - Empire | Senator Largent, Ken Salazar, Chuck Groben, Hal Topman | Introductions
Empire - Grants | Bill Barnes/DBW | Denver Water System, Moffat Tunnel Collection, Fraser-Colorado, Denver 40th Anniversary, Dillon Reservoir Operation
Grants - CB1 Project | David Holt/CDOH - WQCD | Colorado Water Quality Control Division, Boards and Commissions
Grants - CB1 Project | Eric Wilkinson/NMCD | Western Slope Project
Eagle County | Sonny Schmitt | U.S. Forest Service, Bighorn Stop
Program | Paul Kiker | Bill Gates/CDOT
Kremmling | David Miller/CDOT | Colorado River Water Conservation District, Waddens Mountain Project
Kremmling - Green Mountain | Ollie Belle | Blue River Administration
Green Mountain - Dillon | John Barnes/CDWD | Green Mountain Operations
Dillon Dam | Bill Barnes/DBW | Dillon Reservoir Tunnel System, Clinton Frazier Agreement
Fraser - Eagle | Ed Drager | Upper Eagle Valley Area, St. Vrain District, Transmountain Diversion Projects, Development Needs
Eagle - Denver | Ollie Bell | Diversion-Sanction, Water Law
Glenwood Springs | Glen Sorensen/CDCB | Colorado River Salinity Control Program, Aquas-Chart Proposal
Glenwood Springs - Rifle | John Barnes/CDWD | Endangered Fish Recovery Program
Parachute | Bruce Evans/CDCB | Water and Ecosystem
Boulder - Grand Junction | Gary Bishop/CEWD | Grand Valley Project & Boulder Dam
Boulder - Grand Junction | Mike Gross/CEWD | Orchard Mesa Irrigation District Check-Slap, Grand Valley Irrigation Co.

Point/Reach | August 17/17 | Presenters | Topics
---|---|---|---
Grand Junction | Wayne Cook, Upper Colorado River Compact | Colorado River Compact
Grand Junction - Delta | Keith Kopf/Division 4 Engineer | Upper Colorado River Compact Commission
Delta - Montrose | Chuck Combs | Colorado River Board
Black Canyon | Steve McCall | River Bank Study, Upper Colorado River
Blue Mesa | Rob Sonders | Upper Colorado River
Osborne | Bill Trumper | Delta Water Rights
Fontenot | Don Monroe | Colorado River Board
Fontenot - Baca | Jack Gentry | Upper Colorado River
Blanca Vista - Otero Pump | Harold Mikkola | Colorado Springs
Oroso Pump - Mt. Ethan Pump | Jack Hager | Storage Stations
Cleve’s Creek | Rick Harris | Cleve's Creek Project Proposal

As can be seen, this was a tour which benefited all the participants in terms of increasing their knowledge about and understanding of water-related matters as they pertain to the Colorado River System in Colorado.
Introduction

"I think we receive about 60" of precipitation a year." (9th grader in Greeley)

"You're kidding me. You mean there's really water underground?" (Homeowner in Weld County)

"It's too bad people in Colorado don't have a better understanding of water resources in our state." (Water board member from Hudson)

These perceptions are not unique to residents in northern Colorado. How often have you talked to a neighbor regarding a water topic, and have been amazed by their lack of knowledge? Typically, your neighbor has probably lived in Colorado less than five years, and grew up in Pennsylvania or Nebraska, or some other foreign place.

"Why are there so many ditches with water around here?" (New neighbor from Iowa)

Many of our residents, sad to say, don't have a clue regarding where their drinking water comes from, or why they should be careful how much fertilizer they apply to their lawns. And it's not because of lack of interest or concern. It's due to lack of effort on our part, the water community. For years we have operated in a vacuum, taking care of our own water problems and fighting our water wars while the public sat on the sideline and quietly paid the bill. That situation is no more.

Colorado's citizens are becoming more and more involved in water issues. But to be effective, they need to become knowledgeable of our complicated system of water law, water delivery systems and water management. To do this, effective water education programs need to be accessible to residents across the state. The Central Colorado Water Conservancy District has started efforts in this area, and would like to share some successful examples:

Children's Water Festival

The concept of water festivals was started by Susan Seacrest and the Nebraska Groundwater Foundation in 1989. Through her efforts, tens of thousands of Nebraska school children have become more aware and better informed regarding groundwater facts and issues in their state. Central's goal is similar for Colorado, but the focus is on both surface water and groundwater.

The Central Colorado Water Conservancy District held the first Children's Water Festival in Colorado in 1991. It was held at Aims Community College in Greeley, and approximately 1,500 fourth and fifth graders (with their teachers and parents) attended the one-day event. Invitations for the festival were mailed on January 2nd and by January 9th our 1,500 student capacity was reached. Nearly 1,000 additional students had to be turned away the first year, and interest continues to remain very high.

Approximately 30 different water-related classroom activities await students at a water festival. Schools receive pre-arranged schedules prior to the festival, and move from one presentation to another at 20 minute intervals. Each class stays at the festival 2-1/2 to 3 hours. Presentations include water history, water law, water art, water music, water and dance, and have titles like "Water Pioneers", and Hydrologist for a Day. Kids and adults have learned about water use in agriculture, how to protect water quality, and how to allocate water during a drought. They also write news articles, stand inside giant bubbles, pan for gold and watch organisms move under a microscope.

Students have attended from schools in Greeley, Evans, Brighton, Prospect Valley, Hudson, Kersey, Fort Morgan, Brush, Pierce, Eaton, Windsor, Johnstown, LaSalle, and Gilcrest. Aims Community College provides the use of their facilities at no cost. They also help with set-up, parking, advertising, and cleanup (which is minimal).

Who helps with the presentations? Presenters include water professionals like Alan Berryman and Dick Stencil, Division Engineer and Deputy State Engineer, John Schorschlig from the Colorado Department of Health, Ray Liesman, Division One Water Referree, and KUSA Channel 9 Weatherman Mike Nelson. Agencies include the U.S. Geological Survey, Colorado Division of Wildlife, Bureau of Reclamation, Environmental Protection Agency, University of Northern Colorado, Colorado State University, Lower South Platte, Northern Colorado, and St. Vrain & Left Hand Water Conservation Districts, Groundwater Appropriations of the South Platte, Inc. (GASP), Cities of Greeley, Denver, and Aurora, Denver Public Schools, Project WET, West Greeley Soil Conservation District, Colorado Corn Administrative Committee, and many others. The presenters are responsible for the success of water festivals because they "tune in" to the interests of the kids and keep activities interesting and hands-on.

In addition to the presentations, a Water Wizards competition is held each year at the water festival. Students compete in a water trivia contest with questions about water in Colorado. Questions include: "How much average annual precipitation is received in Greeley?" (12" - 14") "What do you call the void created by pumping of groundwater?" (Cone of depression.) The Water Wizard activity has proven to be the most successful event of the festival. Questions are sent to schools four to six weeks prior to the event, and classes have in-school competitions to select the four student competitors that will represent their school at the festival.

John VanSviver, with the State Engineer's Office in Denver, serves as "Mr. Wizard", complete in a wizard's costume. Ken Salazar, Director of the Department of Natural Resources, served as the moderator of the Water Wizards competition in 1993.

In 1991 there was only one Children's Water Festival held in Colorado. However, in 1994 there will be thirteen festivals, including events in Greeley, Sterling, Fort Collins, Loveland, Boulder, Evergreen, Grand Junction, Cortez, Delta, Montrose, Buena Vista, Northglenn and Aurora. To date nearly 20,000 students have attended a children's water festival in Colorado and several thousand more have been on waiting lists. Central has encouraged other groups to host their own water festivals and encourages them to utilize local presenters to emphasize local water topics. The water festival concept has spread to Utah, South Dakota, Wyoming, North Dakota, and New Mexico, and we have received inquiries from Virginia, Texas, Oregon, Michigan, Minnesota, California, Montana, New York, Indiana and Alaska. It's a wonderful phenomenon.

Central's 1994 festival will be held on Tuesday, March 29th, at Aims Community College in Greeley. Contact Festival Coordinator Pat Riffe at 825-4874 for further information, and consider hosting a water festival in your area. We'll be pleased to help you get started.

Groundwater Monitoring Wells

In November 1991, Central in cooperation with R & R Well and Pump, Inc. of Greeley, Enviro Drilling Pumps, Inc. of Denver, Colorado State University and Leddell Brothers Construction, Inc. of Eaton installed Colorado's first school groundwater monitoring well at Eaton Elementary School. The project's time, labor, permitting fee, and equipment were all donated. The well was drilled to a depth of 40 feet, and was cased with two-inch PVC pipe. It is located on the playground, and was installed to increase student's awareness regarding groundwater and its importance to the area.

Eaton Elementary teacher Bruce Burrin helped organize the project. The purpose, he said, is to familiarize students with the commodity of the future. They have been measuring the groundwater level in the well weekly, and each student takes a turn loosening the bolts on the Continued on Page 9
by Tom Cech, Executive Director
Central Colorado Water Conservancy District • Greeley

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monitoring well cover and handling the tape measure. Burton said, "It will give them a first-hand experience with groundwater and provide an awareness for them. Any time you can get kids to experience something first-hand, it makes it more meaningful for them. It becomes part of their daily life.

Central has taken samples from the well to test for nitrates and pesticides, and will analyze water samples collected by the students. Jeff Harbert, with the New Castle Water Company, has assisted the school with taking groundwater level measurements, and has donated measuring equipment to the school.

In May of 1992, two additional groundwater monitoring wells were drilled at schools in Greeley, this time with the help of Lesh Drilling of Ault. Once again, all costs of drilling and materials were provided free of charge. Wells were drilled at John Evans Jr. High and Maplewood Middle Schools in Greeley. The John Evans Jr. well was drilled to a depth of 135 feet, while the Maplewood site found groundwater at 49 feet. Science teachers Ronnie Kendall and Rick Ayers coordinated work at John Evans Jr. High while principal Maureen Botham and math teacher Mike Willis were in charge at Maplewood. Students were invited to watch the drilling process, and were fascinated by the last sampling events.

All three schools now have hand builders to collect water samples. The John Evans group is a member of the Colorado Division of Wildlife "RiverWatch Network" and have in-house water quality testing capabilities. The other two schools will bring their samples to Central's lab for analysis. The Central Colorado Water Conservancy District will also collect samples from the monitoring wells to compare them with the student results.

Why should school children collect groundwater information? Colorado's students need to become aware of water in their state. Too many students and their parents are unaware of the concept of groundwater, whether they drink surface or groundwater, or how their activities on the land surface affect groundwater quality. School monitoring wells are a wonderful tool to teach our kids about our precious groundwater resource. What more effective way to educate students than with a hands-on experience.

Water Mini-Page

Last year, the Central Colorado Water Conservancy District, with the help of Aims Community College and the Greeley Tribune, started publishing a "Children's Water Mini-Page" for local students and their parents. The articles are geared toward 6th graders and focus on water in Weld County. Topics include historical articles, water conservation, and water on the brain. The Tribune recommends books to read, weather, and much more. The articles are reviewed by Dr. Donn Adams, Professor Emeritus of the University of Northern Colorado, and are then given to the Aims Community College Design Department for layout. Students and faculty at Aims prepare a camera-ready design board for the newspaper. Aims donates this service to the District. The Greeley Tribune then prints and inserts the mini-page into 25,000 copies of the daily newspaper at no charge.

Pre-12 Water Curriculum Project

In 1991, the Central Colorado Water Conservancy District received a $60,000 Section 319 grant from the Colorado Water Quality Control Commission to develop water curriculum materials for Preschoolers through 12th grade in the area. The materials will be for use in Central's District and Subdistrict initially, and then for use state wide. The purpose of the water curriculum materials is to educate our youth regarding water quality and water quality in Colorado. The curriculum will be developed based on three key elements. These include manuscript to be taught at different grade levels, computer software to supplement the manuscript, and a chemical/biological demonstration program which will be used by schools on a rotating basis.

CCWCD/UNC Water Education Center

All of the water education activities described above provide access for students and teachers to learn about water in a wide variety of situations. However, it is becoming very clear that teachers need easier access to water education materials, experts, and other resources. Teachers are very interested in Colorado's water resources. This is evidenced by the huge waiting lists we have each year for water festivals around the state.

We've been exploring ways to become more accessible to our local teachers and librarians. The Central Colorado Water Conservancy District, the University of Northern Colorado, and others are now working together to develop a local water education center. The purpose of this center will be to provide water education services to local teachers and librarians on a daily basis.

Services will include a resource library with films, videos, books, maps, and more. Teacher and librarian training workshops for our water curriculum materials mentioned earlier and further development of the groundwater monitoring well program. In addition, the Teacher Resource Room at the annual children's water festival will be organized by the Water Education Center. More activities will be added as the Water Education Center becomes more established.

Ray Tschirhart of the University High School in Greeley is Director of the CCWCD/UNC Water Education Center. He is being assisted by Mark McCaffrey of UNC and Ed Wolfer of the CCWCD. The first effort has been to open office space at the University of Northern Colorado, and to develop a teacher librarian needs survey.

If this concept works, we hope to expand it to other colleges and universities around the state including Adams State, Western State, Fort Lewis, Southern Colorado, Mesa, Metro and Colorado State. Local water education centers around the state would provide an invaluable service to our K-12 teachers and librarians. Local support is vital to address the water education needs of our educators across Colorado.

Conclusions

Water education activities in Colorado have increased at a rapid rate. Local programs are being developed and water agencies are becoming more and more involved in water education programs in their area. This is a major change from just three short years ago. Financial support has also become available. The Central Colorado Water Conservancy District has been very successful in obtaining grants and in kind assistance to start most of our programs. Large budgets are not required to start a water education program. What is needed is commitment, hard work and enthusiasm.

A caveat: Do not use water education programs as a tool to promote political or project-oriented agendas. Kids and adults will see right through an educational program that is geared to promote a specific agenda. We need to be honest and fair and comprehensive with our water education activities. Let our citizens draw their own conclusions. Through our efforts the future views of Colorado's water resources will be more honest, accurate information about Colorado's water resources.

Should you work on water education activities in your organization? Absolutely! The water community can no longer bypass the general public when it comes to water issues. In the future, Colorado's citizens will be asked to make extremely important decisions about water in our state. We must continue efforts to develop broad-based water education programs so that decisions are based on fact, not misinformation and emotion. Colorado's future depends on it.

Chappo Fennewald of Central City shows how to pump for gold as Central Colorado Water Conservancy District President Bob Walker and students look on.

Dr. Donn Adams of the University of Northern Colorado is the Project Manager, and has been leading the effort for the past two years. Through his guidance and direction, writing teams have been assembled and other support staff is under contract. The writing teams are made up of teachers and other education professionals from around the area, and are grouped as Preschool - 3rd grade (Pre - 3), 4th - 6th grade, 7th - 9th grades, and 10th - 12th grades. Members of the Pre - 3 Writing Team are: Bruce Barron, Eaton Elementary School; Sharon Benjamin, Longmont Junior High School; Janet Kark, Kranz Elementary School in Fort Collins; and Dr. Phil Wishon, University of Northern Colorado. Member of the 4th - 6th Writing Team are: Deborah Jordan, Eaton Elementary School and Linda Johnson, Kremness Elementary School. Members of the 7th - 9th Writing Team are: Bonnie Kendal and Rick Ayers, John Evans Jr. High School in Evans; and Larry Spehn, Eaton Middle School. Members of the 10th - 12th Writing Team are Ray Tschirhart, Arvada Engel, and Jeanne Lipman, University High School in Greeley. Their mission is to develop activities for students in Preschool through 12th grade regarding water quality and water quality in the South Platte Basin. Topics such as water history, water law and water quality will be covered. Math and science will be utilized, but the fields of art, music, literature, geography, and history will also be developed. Curriculum materials will have a definite Colorado focus. Existing curriculum programs from other states have been reviewed to eliminate "reinvention of the wheel."

A statewide manuscript review network has been established to review draft manuscripts, and final publication is set for September 1994. Field testing is currently being conducted and teacher training workshops will begin next year.
ENDANGERED SPECIES ACT UPDATE:  
New Agreement for Section 7 Consultations 
in the Upper Colorado River Basin

by TOM PITTS, P.E.

When the Recovery Program was negotiated by water users in the 1980’s, no one anticipated the potential scope of activities subject to Section 7 consultation, now including grazing permits. The value of the Recovery Program to water users is in its application of the Endangered Species Act expands. When water users view the chaos occurring over Section 7 consultations in other areas of the country, including the Pacific Northwest, the California Delta, and potentially the South Platte River Basin, the importance of the “Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin” becomes evident. Major conflicts that are occurring in other areas of the country are being avoided in the Upper Colorado River Basin, while water development proceeds.

It is important that the federal permitting agencies and U.S. Fish and Wildlife Service abide by the agreement for Section 7 consultations in the Upper Colorado River Basin. If water users believe that those procedures are not being complied with, please contact Tom Pitts, Tom Pitts & Associates, Consulting Engineers, 535 North Garfield Avenue, Loveland, Colorado 80537 (303-667-8690).

Tom Pitts, principal of Tom Pitts & Associates, Consulting Engineers, Loveland, Colorado, serves as Project Coordinator for the Colorado Water Congress Special Project on Threatened or Endangered Species. He represents Upper Basin water users in Colorado, Wyoming, and Utah on the Recovery Program.

BACKGROUND

The Recovery Implementation Program was initiated by agreement of the Secretary of the Interior, the Governors of Colorado, Wyoming, and Utah, and the Administrator, Western Area Power Administration in January, 1988. The Upper Basin Recovery Program applies to the Yampa, White, Colorado, and Gunnison rivers and their tributaries, but not to the San Juan Basin, which is covered by a separate Recovery Program. This Program is designed to offset water depletions to the four endangered fish species in the Upper Colorado River Basin (Colorado squawfish, razorback sucker, humpback chub, and bonytail chub). The actions go through consultation well in advance of the time they actually will deplete water.

EXISTING DEPLETIONS

Existing depletions, also referred to as historic depletions, are those that were in place prior to January 21, 1988, the date when the cooperative agreement for the Recovery Program was executed. Depletions are defined as the annual average depletion of the project or action under consultation. The average annual depletion is the annual diversion minus the annual return flow, averaged over the life of the project.

The Recovery Program is intended to provide the offsetting measures (reasonable and prudent alternatives) for any impacts of existing depletions on the four endangered fish species. As long as the Recovery Program is doing this, there will be no depletion charge on existing depletions. If the depletion from the existing project is increased so that it exceeds the depletion that was in place as of January 21, 1988, a depletion charge may be applied, but only on the increased amount of the depletion over and above the January 21, 1988 level.

When the Recovery Program was adopted, water users believed that existing depletions were exempt from the depletion charge, but this was not explicitly stated in the initial Recovery Program. As a result of this matter and other issues needing clarification, Recovery Program participants recently completed 18 months of difficult, time-consuming negotiations on specific procedures for conducting Section 7 consultations under the Recovery Program. The negotiations reaffirmed that there will be no depletion charges on existing depletions. A summary of the main points of the procedures for Section 7 consultations is provided below.

ACTIONS SUBJECT TO SECTION 7 CONSULTATION

If a federal agency action (permit, license, loan, etc.) might result in an adverse effect on endangered fish species, Section 7 consultation will be initiated.

The U.S. Fish and Wildlife Service (USFWS) has held that water depletions in the Upper Colorado River Basin have adversely affected endangered species, any project or activity causing a depletion impact. Whether existing or new, may be subject to Section 7 consultation, if a federal action allows the depletion to take place. However, existing and new depletions are treated differently.

We fully expect that the USFWS will find that there has been sufficient progress under the Program to offset existing depletions. If the USFWS finds that the Program has not made sufficient progress to offset the impact of the existing depletion, USFWS will identify actions the Recovery Program must take to offset the impact. The project sponsor or permittee is not required to carry out these actions, and is not required to pay a depletion charge.

NEW DEPLETIONS

New projects that will affect the species are also subject to Section 7 consultation. New depletions are subject to the one-time depletion charge. The USFWS will review the accomplishments of the Recovery Program and determine if those depletions, along with the depletion charge, are adequate to offset the depletion impact on the four endangered fish species. If USFWS finds that progress has been adequate, the Service will issue a “no jeopardy” biological opinion to project sponsors and offset the depletion charge. Other measures are the responsibility of the Recovery Program.

However, the Recovery Program, if it is found to be deficient, must complete activities identified by the USFWS prior to initiation of the new depletion. Generally, this will not be a problem as new, large depletions go through consultation well in advance of the time they actually will deplete water.

When the Recovery Program was negotiated by water users in the 1980’s, no one anticipated the potential scope of activities subject to Section 7 consultation, now including grazing permits. The value of the Recovery Program to water users is in its application of the Endangered Species Act expands. When water users view the chaos occurring over Section 7 consultations in other areas of the country, including the Pacific Northwest, the California Delta, and potentially the South Platte River Basin, the importance of the “Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin” becomes evident. Major conflicts that are occurring in other areas of the country are being avoided in the Upper Colorado River Basin, while water development proceeds.

It is important that the federal permitting agencies and U.S. Fish and Wildlife Service abide by the agreement for Section 7 consultations in the Upper Colorado River Basin. If water users believe that those procedures are not being complied with, please contact Tom Pitts, Tom Pitts & Associates, Consulting Engineers, 535 North Garfield Avenue, Loveland, Colorado 80537 (303-667-8690).
COLORADO WATER CONGRESS
1994 CONVENTION PROGRAM

36th Annual Convention
January 20 & 21, 1994
I-25 & 120th Avenue
Northglenn, Colorado

Wednesday, January 19, 1994

6:30 a.m. Colorado Water Conservation Board Meeting
7:30 p.m. CWC Board of Directors’ Meeting

Thursday, January 20, 1994

7:30 a.m. Registration Opens
8:00 a.m. Colorado Water Conservation Board Meeting
8:30 a.m. Three Concurrent Workshops
   2. “Engineering & Management Developments”
   3. “Legal Issues and Developments”
10:45 a.m. GENERAL SESSION I — Speakers are: Attorney General Gale Norton, State of Colorado; Tom Donnelly, Executive Vice President, National Water Resources Association, Washington, D.C.; and Ken Salazar, Executive Director, Colorado Department of Natural Resources.

Friday, January 21, 1994

7:00 a.m. LEGISLATIVE BREAKFAST — Six Legislators will address the delegates; they are: Senators Don Ament, Tilman Bishop, Joan Johnson and Tom Norton, and Representatives Bill Jerke and Jeannie Reeser.

8:45 a.m. GENERAL SESSION III — A debate on “Have the Feds Declared War on the West? The moderator will be David Robbins, Hill & Robbins. The debaters are Greg Hobbs, Hobbs, Trout & Raley, P.C. and Maggie Fox, Public Lands & Water Specialist, Sierra Club, Southwest Office.

12:15 p.m. THE WAYNE N. ASPINALL MEMORIAL LUNCHEON — Chuck Green, Editor of the Editorial Pages of the Denver Post will be the luncheon speaker. The fourth annual “Wayne N. Aspinall Water Leader of the Year Award” will be presented at this luncheon.

2:00 p.m. GENERAL SESSION III — A debate on “Have the Feds Declared War on the West? The moderator will be David Robbins, Hill & Robbins. The debaters are Greg Hobbs, Hobbs, Trout & Raley, P.C.

3:15 p.m. CWC Board of Directors’ Meeting

6:00 p.m. RECEPTION

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Colorado Water Congress Business Meeting
- Election of Board of Directors
- President’s Report
- Treasurer’s Report
- Consideration of 1994 Resolutions
- Possible Amendments to the CWC Articles of Incorporation

CWC Board of Directors’ Meeting
COLORADO WATER MAP

The Colorado Water Education Foundation (CWEP) has recently made available a Colorado Water Resource Map. The printing of this map was generously funded by Coors Pure Water 2000, a program to help preserve, enhance and restore America’s water resources. At a recent luncheon of the CWEP Board of Trustees, outgoing President Jim Harper, CSU Vice President for Research, presented Bill Coors, Coors Board Chairman, with the first copy of this map.

This full-colored, poster-sized map features an aerial depiction of the topography of the State, emphasizing Colorado’s rivers, lakes, dams, and diversion tunnels, drawn by local artist James Niehues. Several vignettes describe topics such as sources of Colorado water, seasonal and annual stream flow information, the many uses of water including recreation and agriculture. Comparison of Colorado’s water resources to other states, and depiction of various river basins and major groundwater basins. The Colorado Water Resource map is suitable for classroom use, and CWEP will produce an accompanying-person guide.

For further information in acquiring the map, it is suggested that you either write or call: Colorado Water Education Foundation, 21593 Hill Gail Way, Parker, CO 80134-7247. The telephone number is 303-840-2845 and the fax number is 303-840-2846.

SIMPSON RETIRES

Larry D. Simpson, General Manager for the Northern Colorado Water Conservancy district (NCWCD) and its Municipal Subdistrict, announced his retirement on October 15, after a twenty-three year tenure with the Districts. He served as General Manager for the past twelve years of the Districts. Simpson has accepted a position as Water Resources Management Consultant with the World Bank in Washington, D.C., effective November 8, 1997.

Simpson was also CWC Treasurer for thirteen of the last fourteen years and is credited with insuring CWC’s fiscal integrity. The only year that he was not Treasurer during that period was 1981 when he was CWC President. Simpson gave generously of his time, talent, experience, and leadership to CWC and played a significant role in CWC’s resurgence during the past fourteen years. “Simpson will be sorely missed,” according to Dick MacKinnon, CWC Executive Director.

Simpson joined the Northern District in 1971, coming from the Los Angeles County Flood Control District where he served as Assistant Chief of Operations for eleven years. Born in Walden and raised in Eaton, Simpson had always dreamed of returning to his native Colorado. When he was offered a position at the Northern District’s Planning Coordinator in 1971, he gladly accepted. Simpson was appointed Assistant Manager and Chief Engineer in 1975. He was hired to oversee the planning, design and construction of the Windy Gap Project, which he shepherded to completion in 1985.

Simpson served as Assistant Manager and Chief Engineer from 1975 - 1981. He then became the District’s fourth General Manager in 1982 following in the footsteps of J.M. Dille, Bob Barkley, and Earl Phillips.

Simpson’s new work will initially take him to Brazil. He will concentrate his efforts with the World Bank in South America and Asia.

Colorado Water Congress
1390 Logan Street, Room 312
Denver, CO 80203

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