THE ANIMAS-LA PLATA PROJECT:
A NEW BEGINNING
by Frank E. (Sam) Maynes and Janice C. Sheftel

In 1996, Colorado Governor Roy Romer expressed concern about the Animas-La Plata Project ("A-LP Project") after hearing opinions that the A-LP Project was costly and had environmental problems, despite a prior history of major Colorado support for the Project. As a result, the much publicized Romer/Schoettler Process was initiated in October, 1996, and concluded a year later. The process resulted in two proposals: 1) the proponents' "Animas-La Plata Reconciliation Plan" or "A-LP Lite" and 2) the opponents' Conceptual Alternative. A-LP Lite reflects, as does the history of the A-LP Project, an approach of good faith bargaining and a willingness to settle seemingly unsolvable political and environmental challenges to the Project.

Colorado Governor Roy Romer and Lt. Governor Gail Schoettler issued a joint statement on November 18, 1997, in support of A-LP Lite. "This proposal saves nearly $400 million... and is less environmentally damaging than the original project," Romer and Schoettler said. "Most importantly, it satisfies the state's obligations to deliver water to the Ute Tribes."

To understand the present status of the A-LP Project, it is essential to review the Project's history; a history of overcoming hurdles through reasonable compromise based on good faith negotiations. Those hurdles have included: a) selection of a viable

Continued on Page 10

Financing the Future:
The California Experience
by Jim Costa, California State Senator and Chairman of Californians for Safe, Clean Reliable Water

It is indeed a pleasure for me to be here. I come to Colorado on a frequent basis. I have folks that I have worked with here in the past. I have people who invite me to their home; and sometimes it's nice to get away from your own neck of the woods.

But I was called to see whether or not I would be willing to share some thoughts with you. It was in regards to California's experience and how it might apply to Colorado. I really jumped at the opportunity. I did so because like many of you, as I look around this room, you as members of the Colorado Water Congress, understand the history, the importance and the role that water plays in Colorado as in the West. Most of you, I suspect, are familiar with the quote of the 19th century humorist and reporter who I am fond of quoting who, when observing the west, came away with the thought that "Whiskey is made for drinking and water is made for fighting." And that is Mark Twain. Mark Twain, I think, got it right the first time. And your experiences in Colorado, I know because of people that I've worked with here in your state in the past, are not so dissimilar from our experiences. So if I can in the next 15 or 20 minutes, let you know what we did in the last two years, and maybe in some ways, it might be helpful in illustrating how you might be able to address your long term water needs here in Colorado.

With the two previous speakers, Evan Vlachos talking about "The Future, the 21st Century, Are We Ready For It?" and Mayor Bob Isaac suggesting what it really takes to provide lead-

Continued on Page 2

40th Annual Convention
COLORADO WATER CONGRESS
Holiday Inn - Northglenn
January 29 & 30, 1998
The lessons to learn from our experience... we were able in 1995 and 1996, to bring decades old water wars to an end by bringing together the agriculture, urban, business and environmental interests.

Continued on Page 12

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Publications

NEWSLETTER

COLUMNS

Comments, opinions expressed by the authors are not necessarily those of the Officers, Members, and/or Staff of the Colorado Water Congress.

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Stephen L. R. McNichols was one of Colorado's greatest leaders. He was Governor from 1957 to 1963. His accomplishments were considerable. He exemplified the very best in being a leader. He played a significant role in water issues and the formation of the Colorado Water Congress. The article on the early history of CWC written by John B. Barnard, Jr. in this issue of Colorado Water Rights leaves no doubt as to Governor McNichols' contribution. All of us are better for that contribution.

The Early History of the Colorado Water Congress 1957-58

by John B. Barnard, Jr.

The Colorado Water Congress is a voluntary non-profit organization. Its formal organization took place July 17, 1958, in Durango, Colorado. However, its history begins at a much earlier date, and is the history of a new approach in the State of Colorado to the solution of its water problems.

In Washington, D.C., in 1957, Governor Steve McNichols of Colorado headed a delegation of officials and other representatives of Colorado, presenting testimony in support of a bill which would authorize the construction of a large reclamation project in Colorado. At the same hearing, evidence was presented on behalf of an affected area of Colorado in support of amendments to the legislation which would, in the opinion of this latter group of officials, more adequately protect this particular area. However, the amendments were such that there was a completely different approach to the project on the part of the officials representing the State than the approach of the official representatives of the affected area. The presentation of this divided front was extremely disturbing to Governor McNichols. He felt that it was his responsibility to carry out the wishes of the people of the State in regard to obtaining authorization of water projects in Colorado, and that he could not do so adequately under these circumstances.

At this point, it should be emphasized that the obtaining of authorization and appropriations for reclamation projects is a difficult problem. Even the most desirable project has substantial opposition from the eastern United States. Some of this opposition is based purely on selfish economics — the attitude that any development of the west means the development of an economy which will compete with the eastern economy. Some of the opposition is from people who believe the west should be reserved as a vast national recreation area — and that the west has no value for any other purpose. Some of the opposition results from a widely held, and erroneous, belief that reclamation projects mean growing crops to compete with crops where there is a burdensome surplus. This opposition always exists, and it is possible to obtain authorization for projects when we are able to gather together the support of all the friends of reclamation and unite what influence is possessed by the members of the Colorado Congressional delegation. When Colorado itself is divided in its approach, the difficult task of getting projects becomes nearly impossible. Governor McNichols, on the occasion referred to above, felt this, and felt that his efforts as Governor were being considerably frustrated by this divided approach.

In order to try to carry out his responsibility as Governor, he suggested that the water users of Colorado ought to get together and let the State government know what they want. Then, the State government would be in a position to battle for the things the water users want.

The Governor suggested, in order to find out what the people wanted him to do, that there should be called a meeting of all the water users of the State of Colorado, and instruction given to the State government as to what the water users of the State wanted. This general feeling among those who had dealt with the subject for a long while was that such a meeting would only result in a complete breakdown of friendly relations, by virtue of the bumbling of...
of Colorado. Each area was to have one member. No item contended, the platform would be nothing more than a résumé of the State's water problems and solutions. The platform was to be composed of representatives from 19 areas of the State of Colorado, each area designated by the Committee. The Rules Committee was assigned the task of working with the Committee on a recommended position for the Colorado Water Congress. At the same meeting in Durango, the new Colorado Water Congress was created. The first annual convention of the Colorado Water Congress was held in the spring of 1957, with the attendance of about 100 people. This was the beginning of the Colorado Water Congress story. In all instances, the Water Conservation Board, Mr. Felix L. Sparks, Counsel for the Colorado Water Conservation Board, and Mr. Felix L. Sparks were present at these meetings to tell the story.

Even the most desirable project has substantial opposition from the eastern United States. It is based purely on selfish economics—the attitude that any development of the west means the development of an economy which will compete with the eastern economy. Some of the opposition is from people who believe the west should be reserved as a vast national recreation area and that the west has no value for any other purpose.

During this period, several counties, private enterprises, municipalities, and the State of Colorado itself, have given financial and moral support to the Colorado Water Congress. We are a long way from that. Yet, we think that we can afford not to solve them—the future of the State of Colorado is at stake. We cannot afford not to solve them—the future of Colorado is at stake.

As has been said before, the magnitude of the task is almost staggering. Yet, the magnitude of the failure to do the task is equally staggering. The more rapidly we can carry on the program of the Colorado Water Congress, the more we will be able to act so as to prevent the future to which we are being forced. We have been told that the problem of water is a problem of the whole world. We are a long way from that. Yet, we think that we need to gain support from a broad representative group. To do this, we must show that we have a strong water program. This can never happen if we don't have a strong water program. We are a long way from that. Yet, we think that we need to gain support from a broad representative group.
The Presidents of the Colorado Water Congress

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<td>1958-1959</td>
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<td>Neil Jaquet</td>
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<td>Peter Nichols</td>
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CWC Honorary Life Members

- Ralph W. Adkins, 1992
- Dean Amstutz, 2007
- Fred L. Anderson, 1994
- *Wayne N. Aspinall
- J. R. Barkley, 1992
- Tilton "Tilly" Bishop, 1996
- Bill Cleary, 1995
- Lewis H. Eltz, 1997
- W. D. Frat, 1996
- John R. Fetcher, 1993
- Robert W. Fischer, 1992
- Jean Johnson, 1998
- Fred V. Kroeger, 1993
- *Stephen L. D. McNichols, 1992
- Thomas E. Norton, 1996
- Jeannie G. Reeder, 1997
- John Sayre, 1992
- Gordon Scheer, 1992
- Larry D. Simpson, 1995
- Felix "Larry" Sparks, 1994
- Dave Waldenbarg, 1998

ASPINALL AWARD NOMINATIONS & WATER LAW SCHOLARSHIPS

If interested, the following forms for your completions and return to the Colorado Water Congress office are available:

1. Nomination form for the 1999 Wayne N. Aspinall Water Leader of the Year Award;
2. Ed Boresen, W. D. Frat and John R. Fetcher Scholarship (for an active member of the agricultural community) for 1998 — Colorado Water Law Seminar;
3. Glenn G. Saunders and John U. Carlson (for either a law student or an associate of a Colorado law firm) Legal Scholarship for 1998 — Colorado Water Law Seminar;
4. Bill Hornby (for either a journalism student or a reporter of a news media organization) Journalist Scholarship for 1998 — Colorado Water Law Seminar;
5. Larry D. Simpson, Ralph Adkins and John R. Fetcher (for either an engineering student or a non-partner of an engineering firm) Engineering Scholarship for 1998 — Colorado Water Law Seminar;

The Wayne N. Aspinall Award nomination form is due at the CWC offices by August 1, 1998. The scholarship nominations are due at the CWC offices by July 1, 1998. If you are interested in any of the above forms, please fax or write: Colorado Water Congress, 1390 Logan St., Suite 312, Denver, CO 80203, (phone) 303-837-0812, (fax) 303-837-1607.
Colorado Water Congress
Summer Convention in Steamboat Springs

Knott County rancher John Fetcher reacts with astonishment after learning that the power plant at the Stagecoach Reservoir will be named in his honor, a tribute to years of work on water rights issues in the Yampa Valley.

The brass plaque with the name — John R. Fetcher Power Plant.

The John Fetcher tribute as reported by Steamboat Today.

John Fetcher (R) accepting brass plaque from Steamboat Springs attorney Tom Sharp.

The Friday Luncheon head table was a distinguished group (L to R) CWC Vice President Eric Wilkinson, State Senator Don Ament, State Senator Tibbits “Tibby” Bishop, Congressman Scott McInnis, State Representative Jack Taylor and State Representative Lewis Entz.

One of several head tables at the Thursday evening general session audience.

Left: Attractive Thursday morning general session audience.

Below: The CWC Education Committee had their meeting in relaxed surroundings.

Below: Summer Convention Luncheons were well attended.

Two very proud granddaughters surround John Fetcher.

Thursday luncheon head table of (L to R) CWC President Peter Nichols, Senate President Tom Norton, Representative Russell George and CWC Vice President Eric Wilkinson.
Supreme Court Justice Greg Hobbs reviews the history of Colorado Water Law.

Justice Rebecca Love Kourlis addressing the "Legal Ethics in Water & Environmental Law" Workshop.

W. H. "Buzz" Fawcett, Legislative Director and Counsel for U.S. Senator Dirk Kempthorne reviews S.1180.

Left: Attendees at the "Legal Ethics in Water & Environmental Law" Workshop.

Above: The Endangered Species Conference drew a crowd including a number of Legislators.

Left: State Senator Don Ament, presiding officer at the Endangered Species Conference, discusses a point with a delegate.

The Endangered Species Conference held on Friday, November 14, 1997 had an impressive list of Sponsoring Organizations:

- American Consulting Engineers Council of Colorado
- Associated General Contractors of Colorado
- Colorado Association of Commerce and Industry
- Colorado Association of Home Builders
- Colorado Association of Municipal Utilities
- Colorado Association of Realtors
- Colorado Association of Wheat Growers
- Colorado Cattlemen’s Association
- Colorado Contractors Association, Inc.
- Colorado Counties, Inc.
- Colorado Farm Bureau
- Colorado Mining Association
- Colorado Motorcycle Dealers Association
- Colorado Municipal League
- Colorado Off-Highway Vehicle Coalition
- Colorado Ready Mixed Concrete Association
- Colorado River Outfitters Association
- Colorado Rock Products Association
- Colorado Snowmobile Association
- Colorado Timber Industry Association
- Colorado Water Congress
- Colorado Water Utility Council
- Intermountain Forest Industry Association
- Public Lands Multiple-Use Coalition
- Rocky Mountain Farmers Union
- Rocky Mountain Oil & Gas Association - Colorado
- Special District Association of Colorado
- United Sportsmen’s Council of Colorado

One delegate wanted to make sure he was reported as awake.


The Water Congress conference room was packed.
TOURS BY THE LEGISLATURE’S INTERIM COMMITTEE ON LAND & WATER RESOURCES

Northeast Colorado and the San Luis Valley

Six hundred plus miles in the bus through N.E. Colorado.

At a potato plant in Center.

Out in a field in the San Luis Valley learning about carrot production from Mike Entz.

The Interim Committee received a briefing at the Bureau of Reclamation offices in Alamosa.

A witness appears before the Committee in Alamosa.

A witness appears before the Committee in Alamosa.

At the Tamarack demonstration project location listening to a presentation by Jan Altenhofen of NCWCD.

An evening public hearing near Sterling with fifteen Legislators at the head table.

A briefing by NCWCD Manager Eric Wilkinson at the Ament homestead.

Colorado Water Rights
environmental organizations were invited to participate in or renegotiation of their reserved water rights claims on both the Tribes' Reservations. Settlement of the Indian water rights claims filed by the United States and pending Division 7 Water Courts decisions on the seven rivers which flow through Colorado and New Mexico, and Colorado and New Mexico non-Indian Project beneficiaries executed the Colorado Ute Indian Water Rights Final Settlement Agreement on October 30, 1997 (the "Settlement Agreement").

The original priority dates were carved out of historic Ute home lands in western Colorado in 1868. Pursuant to the U.S. Constitution, 207 U.S. 564 (1905), the two Ute Tribes have reserved water rights claims with an 1868 priority date on the seven rivers which flow through their reservations. Since the Colorado Utes' reserved water rights were carved out of historic Ute homelands, the two Ute Tribes have reserved water rights claims with an 1868 priority date on the seven rivers which flow through their reservations. Since the Colorado Utes' reserved water rights claims are the most senior on all other water sources, the San Juan and Dolores Basins in Colorado, the resolution of the Utes' reserved water rights claims was critical to all water users in the southwestern Colorado.

Settlement of Colorado Ute Tribes' Reserved Water Rights Claims

L en 1885, Governor Lamm, at the urging of Colorado Attorney General Daniel Woodward, requested negotiation of the two Colorado Ute Indian Tribes' reserved water rights claims filed by the United States and pending Division 7 Water Courts decisions on the seven rivers which flow through Colorado and New Mexico, and Colorado and New Mexico non-Indian Project beneficiaries executed the Colorado Ute Indian Water Rights Final Settlement Agreement on December 10, 1996 (the "Settlement Agreement").

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The Colorado Water Resource & Power Development Authority is to provide a fund of up to $40 million to support the Project. The Colorado Water Conservation Board provided $6 million for a domestic water pipeline to the Ute Mountain Ute Tribe, and $55 million for the construction of Ridgway Basin Reservoir.

The Southwestern Water Conservation District of Colorado (“SWCD”) has always challenged the process of public involvement from 1974 to 1976, which created four major plans. In total, approximately 100 Project alternatives were examined. The A-LP Project involved an Alternative Team consisting of representatives of all of the entities potentially interested in receiving water from the Project. This Alternative Team included the Southwestern Water Commission, the San Juan and Southern Ute Indian Tribes, the Colorado Ute and Indian Tribes, Reclamation to conduct an “appraisal/reconnaissance level study” of alternatives to the A-LP Project.

The Tribes’ swift response to Commissioner Martinez expressed concern over the failure of the Department to fulfill its trust responsibilities to the two Colorado Ute Indian Tribes. “What has the Secretary of the Interior done to help us implement the promises made to us more than 10 years ago?”

In December, 1987, voters within the A-LP District approved a ballot measure that would allow the Secretary of the Interior to proceed “without delay” to construct part of the Animas-La Plata Project. The Secretary has done nothing to move forward on the Colorado Ute Indian Tribes. In our case, the Secretary, at last, paid lip service to his obligation to carry out the terms of the 1985 settlement agreement by signing the Southern Ute Indian Tribal Chairman, Clem J. Fontenot.

The proposed action by Reclamation threatens to further delay implementation of the settlement agreement. Despite the Secretary’s memoral environmental impact on the Colorado Ute Tribes, neither the Secretary nor his representatives even contacted, never mind consulted with, the Tribes before writing to the EPA to ask for “without delay” construction of the Project. The Secretary dated November 3, 1992, the Tribes called the Reclamation study of alternatives “mislabeled,” stating that the Tribes had “nothing to lose” by the alternative study and that the A-LP Project subjected to Reclamation conducting another study. Another study is exactly the course of action requested by the Tribes. The Court of Appeals, on August 9, 1993, from the perspective of the two Colorado Ute Indian Tribes, the conduct of the Secretary of the Interior and Reclamation, as well as the EPA, all of whom have a trust relationship to the Indian Tribes, is not only misguided but also a breach of trust.

As of mid-November, 1997, the proponents of the A-LP Project are preparing legislation which would implement the settlement agreement. The legislation will prevent the Secretary of the Interior from continuing to “wiggie” out of his obligations to the two Colorado Ute Indian Tribes, and will recognize that the settlement and environmental concerns of the Tribes have been reasonable and properly addressed. The opposition of Reclamation and the EPA to the A-LP Project is fundamentally political, having little to do with active environmental or economic concerns. By the time this article is published, while moving forward with legislation, the two Colorado Ute Indian Tribes, the Southern Ute Indian Tribes, and the Secretary of the Interior, to Reclamation and the EPA to ensure that federal officials comply with the federeal agencies’ fiduciary obligations to the Tribes and move forward promptly with the construction of the A-LP project.

The authors, Frank E. (Sam) Maynes and Janice C. Sheftel are members of Maynes, Bradford, Shipps & Sheftel, Attorneys at Law, Durango, Colorado.
of 1996 to leverage federal dollars. And we know budget by the year 2002 and zero based budgeting, Notwithstanding these developments, we
ances as we structure this whole package.
there was real opportunity because of the elections went back to Washington in 1995 a number of times with the down payment, is the way I like to put it, achieving eight billion dollars. New water that is
dioxide, that deals with flood control, that deals with water quality, that deals with groundwater recharge systems. But at the same time, new water that is developed, you might ask me how do you
more than as much as two billion plus in federal dollars which makes the total package somewhere in the neighborhood of 2 - 3 billion dollars which gets us
over half way there if we’re talking about the low number and about half way if we’re talking about the high number. That deals with environmental mitigation, that deals with flood control, that deals with water quality, that deals with groundwater recharge systems. But at the same time, new water that is developed, you might ask me how do you achieve eight billion dollars. New water that is
designed in it is mitigate, which would have to be paid for by the beneficiaries of that new water sup-
ply. So the coalition for a financing package is going to involve a number of participants.
What Proposition 204 has done, is provide us with the down payment, is the way I like to put it, on addressing California’s long term water needs. A down payment, and real money to spend on envi-
ronmental restoration measures that have been such a critical source of contention and divisiveness in past efforts. But these are all linked together, so you should think we are not naive that the environ-
ment community understands that... That the almost 500 million dollars plus that was set aside for mitigation for past damages for habitat, fish-
ery, water quality, etc. cannot be moving forward unless the entirety of the plan moves forward. So one of my key concerns was to keep everybody at
the table and not let anyone leave. One of the keys how difficult getting federal dollars is these days
and I would say to take an analogy from the Rockies here, we’re doing and how we were moving forward. And they kept put-
ing us on the back and saying “Good job, Costa, keep it up. And if the state gets its act together and puts some real money on the table, we’ll be there.” Now a lot of these folks were my friends, I’d served with them in the legislature, but now they’re back in Washington; and I could tell when I was looking at them, their eyes would say “There ain’t no way Costa’s going to put this thing together. It just isn’t going to happen. Nothing’s happened in California on
Provision 204 - the Safe, Clean, Reliable Waters Supply Act - provides the foundation for a comprehensive and lasting solution to California’s water supply needs.
Proposal 204 is a truly balanced water solution that is good for our economy and good for our environment and good for all Californians.

Proposition 204 will benefit all Californians by:

- Ensuring Safe Drinking Water. Proposition 204 ensures that families will have safe drinking water by preventing pollution in water supplies.
- Increasing and Ensuring Reliable Water Supplies. Proposition 204 will help develop new off-stream reservoirs and delivery systems to capture rainwater for use during droughts.
- Encouraging Water Conservation and Recycling. Proposition 204 provides the most out of our existing water supplies by funding local conservation and recycling projects.
- Preventing Water Pollution. Our streams, rivers, lakes, and coastal waters are threatened by pollution. Proposition 204 provides for the cleanup and protection of these precious resources.
- Protecting Fish and Wildlife. Proposition 204 helps protect critical fisheries, wildlife, wetlands and other natural habitats, including the San Francisco Bay/Sacramento-San Joaquin Delta.
- Restoring the Ecological Health of the Bay-Delta. The San Francisco Bay/Sacramento-San Joaquin Delta is a vital natural resource and the source of drinking water for 22 million residents. This measure will help protect the Delta environment and its water supply.
- Helping Our Economy and Jobs. Water is the lifeblood of California’s economy. Reliable water supplies will protect existing jobs and encourage new business opportunities.
- Protecting Against Earthquake Damage. Seismic experts believe our water delivery system could be seriously damaged by a major earthquake. Residents, businesses and farms could be without water for weeks or even months. Proposition 204 provides much-needed repairs and improvements to help prevent a catastrophic failure.
- Protecting Against Floods. Flooding has one lives and caused billions of dollars in property damage. With Proposition 204, long overdue local flood protection projects will be completed.

The appropriation is another. The lessons to learn from our experience are the follow-
ing. That historically, we were able in 1995 and 1996, to bring decades old water wars to an end by bringing together the agriculture, urban, business and environmental interests. Not only did we have the California State Chamber of Commerce; not only did we have the Farm Bureau; not only did we have the urban water agencies; but we had the Environmental Defense Fund; we had the Sierra Club; we had the Nature Conservancy; we had the Planning & Conservation League. All of them aligned because there was something there that they believed addressed their needs. And they really felt after two years of efforts, that we had made a commitment toward figuring out how to deal with each other’s needs. We also learned that if you’re going to develop a package, you’ve got to bring everybody to the table and you’ve got to keep them there. And that was the proof was in the pudding. The voters in November, while they voted down a number of other bond measures of a lesser proportion, passed Proposition 204 by 63%. Now in California, you got a 35% automatic “No” vote on any bond measure. I don’t care if it’s schools, motherhood or apple pie. But we got 65% of the voters to support this measure and I think it reflected the six regions of the state.

So that was our success, but we’re only half way there. I would say to take an analogy from the Rockies here, we’re on second base. I haven’t been to that new ball park yet but I hope to get there one of these days. We’re at second base because the plus is going to come out at the end of this year; we got financing to implement the plan; we’re still getting the federal monies; we still have to put the financing for the new water development as a part of the whole effort; and yes, we still have to keep all the groups that are a part of this coalition together. Because every time another issue comes up, whether it’s the Colorado River involving Arizona and Southern California, all these issues are either directly or indirectly related to one another. And I get calls once a week of people threatening to bolt and go home. So we’ve made a lot of progress in California in the last two years. But it’s going to probably take another two to three years before we complete this effort. And I’m pleased to report to you today that it can be done, if you realize the paradigm shifts, if you realize the mistakes of the past and are willing to bring everybody together AND NOT LET THEM LEAVE THE ROOM. That’s the lesson in this effort.