Guest Editorial

by Senator Hank Brown

The following remarks were delivered at the Fortieth Annual Convention of the Colorado Water Congress on January 29, 1998.

We are blessed as a state with people who came from all over the nation. We’re one of the most cosmopolitan states, if you will, of any in America.

But one of the things that is unique is folks bring their background and reservoir of knowledge from where they came from. They do not always acquire new knowledge when they arrive. That’s not always bad. It’s part of what makes Colorado interesting.

When it comes to water, however, it can be a dreadful problem. Folks who come from California, or from Georgia or from Illinois bring their knowledge of water with them. Instead of finding a state with 35 or 40 inches a year of rainfall, they come to a state that has as low as eight inches a year in parts of the Grand Valley, near 14 inches a year where I live in Greeley, ranging up to 16, even 18 inches a year in some of the great wheat country in the northeast. Colorado receives a small fraction of the moisture that many other parts of the country enjoy.

Our new citizens often bring with them a knowledge of water that’s based on where they came from. That is, cities that draw their water out of rivers, not from mountain streams. Urban areas that have a whole different dynamic in obtaining minimum delivery or safe delivery of drinking water.

I was always fascinated with that wonderful engraving above the entrance to the Norland Library on CU’s campus. It’s from a Roman scholar. He may have copied it from a Greek, but it goes something like this: “He who knows only his own generation remains always a child.”

The truth of the saying is indelibly reflected in the history of mankind. Those who don’t know their history lack...
ERIC WILKINSON

Eric Wilkinson, 47, of Fort Collins, was elected CWC President in 1998. Eric was appointed General Manager of the Northern Colorado Water Conservancy District on January 14, 1999.

Eric has worked for the District since 1987 as a water resources engineer with various responsibilities. From 1991 to 1994 he was a Supervisory Water Resources Engineer managing the Water Rights Section of the Engineering Services Branch. From 1984 to 1987 Eric worked for the City of Greeley Water Resources Section as a Water Resources Engineer. From 1973 to 1984 he was employed by the Colorado Division of Water Resources, Office of the State Engineer in the Dams Safety Branch. In 1972 Eric served as the Deputy Water Commissioner for the Cache La Poudre River.

Eric was born and raised in the Fort Collins area where he currently resides. He attended Colorado State University and graduated in 1973 with a Bachelor of Science Degree in Civil Engineering. He is a registered professional engineer in Colorado, is a member of ASCE, and holds various positions on boards and advisory committees. He is married and has three children.

JOHN PORTER

John Porter is in his nineteenth year as Secretary and Executive Director of the Colorado Water Congress. John was born in Montezuma County, at Lewis, Colorado (a community named after his maternal grandfather) on November 4, 1933. He received his education at Lewis Elementary and Montezuma-Cortez High Schools. He graduated from Colorado A&M College in 1955.

He has been married to Nancy Hicks (Porter) for 43 years. He has two daughters, and two grandchildren, Laura and Andy Spam of Gunnison.

John has been in the water business since childhood — as a father's helper/farmer, father's partner/farmer, farm corporation manager/irrigator, Board of Director for Montezuma Valley Irrigation Company, South West Water Conservation Board and Colorado Water Resources & Power Development Authority and finally as General Manager of the Dolores Water Conservancy District for the past 15 years. As the new Dolores Project came "on line" he guided DWCD's growth from a staff of one (himself) to its present 28 members. John was elected Vice President of the Colorado Water Congress Board of Directors in January, 1998.

DOUG KEMPER

Doug Kemper, 42, of Aurora, was elected CWC Treasurer in January 1998. Doug is the Manager of Water Resources for the City of Aurora. He is in charge of raw water operations, water resources planning, and one of the largest agricultural reenervation projects in the nation. He is now in his twelfth year with the city. Prior to working with the city, he worked five years as a consulting engineer chiefly with Rocky Mountain Consultants, Inc.

He is currently serving his sixth term on the Board of Directors of the Colorado Water Congress and has been active on most of this organization's special and standing committees.

Doug has a Master's Degree from the University of Colorado in Civil Engineering/Water Resources and a Bachelor's Degree from Vanderbilt University in Environmental and Water Resources Engineering. He is a registered Professional Engineer.

KIT KIMBALL

Kit Capels Kimball was re-elected CWC Assistant Treasurer at the January 1998 convention. Ms. Kimball has over 20 years of experience in the natural resource/public policy arena. She managed at one time the governmental affairs program for Amex Inc., a large international resource development company, both in Washington, D.C. and at the state level.

Also, Ms. Kimball was the principal in Kimball and Associates, a natural resources consulting firm. In addition, Ms. Kimball served as the environmental legislative assistant to U.S. Senator James McClure (R-ID) in Washington, D.C. She was also Vice President of a Washington, D.C. consulting firm where she represented The Western Regional Council, an organization of western Fortune 500 companies.

Ms. Kimball has served in numerous roles for the Colorado Mining Association and is past Chairman of that organization. She also serves on the Board of the Colorado Water Congress.

PETER NICHOLS

Peter Nichols, 49, of Carbondale, is Immediate Past President. Peter is a management consultant whose practice emphasizes strategic planning and the management of water resources. He also directs professional development courses for the Colorado Water Congress. Peter was previously General Manager of Ute Creek's oil shale operations in western Colorado.

A former Colorado legislative staffer, Nichols has been active on the local, state, regional and federal political scenes. He has served on numerous governmental task forces and is currently Chair of the Colorado Water Quality Control Commission. Peter is serving his fifth term on the CWC Board of Directors and was active on the State Affairs Committee in the past.

Nichols holds a Masters Degree in administration from the University of Colorado and a Bachelors degree in political science and biology from the Colorado College.

He lives in a house he built on the Roaring Fork River near Carbondale.

RICHARD D. "DICK" MacRAVEY

Richard D. "Dick" MacRavey, 67, is in his nineteenth year as Secretary and Executive Director of the Colorado Water Congress. MacRavey is no stranger to Colorado. He served three years as Executive Director to the Larimer-Weld COG and seven years as Executive Director of the Colorado Municipal League.

In 1970 MacRavey served as a Chairman of the Colorado Good Government Committee for the promotion of the State Constitutional Amendments One (Governor's Cabinet), Two (State Civil Service Reorganization) and Three (Local Government Modernization). All three amendments were approved overwhelmingly by the people of Colorado. During 1988, MacRavey was appointed by the Legislative Leadership and served as one of the 48 members of COLORADO VISION 2000. In 1980, the Legislative Leadership appointed MacRavey to the 16-member Legislative Council Subcommittees on Long-Range Planning for the State Government.

During 1969-71 MacRavey served on the National League of Cities Board of Directors. He served as a member of the Board for the Colorado Water PAC and the Colorado Water Education Foundation. MacRavey is a member of the American Society of Association Executives, Colorado Society of Association Executives, Colorado Water Congress, American Water Works Association and International City Management Association (cooperating members).

MacRavey and his wife, Mary, are the parents of six adult children and two step-grandchildren. MacRavey has a Bachelor of Science degree from the University of Wisconsin - Madison and a Master of Science degree (in public administration) from the University of Colorado - Boulder. During the Korean conflict, he served with the U.S. Navy.

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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including sustainable use, local responsibility, social equity, and respect for existing rights.

The draft was released last October. The public comment period ended December 5. A final report is expected to be written, I think, even as we speak.

I wouldn't be surprised to hear a statement to say that the report has stirred a tidal wave of concern among the water community. In its comments on the Colorado River, the U.S. Congress cited an array of concerns, including the draft report's endorsement of the need for restoration of aquatic ecosystems at the expense of existing infrastructure.

CWC protested the proposed creation of an unnecessary, unworkable, and fiscal impracticable bureaucracy. And they questioned the federal presumption of existing water rights in the state appropriation system. Outside the water community, though, the report has made barely a ripple.

We will then hear a five-minute rebuttal from each speaker. Again Perry will go first. And then it's your turn.

We will have 20 minutes of questions from the audience, which both speakers will address. So I'll ask you to be very economical in phrasing your questions, and make them questions.

Then, finally, we'll have seven and a half minutes of closing remarks from each speaker. And here we return to the question of who we are and where we're going.

Our drop-dead time to wrap this up is twelve o'clock. Dick MacRaevey tells me that I have to keep that, and I just hope that Perry and David are as afraid of me as I am of them.

So here we go.

WILLIAM PERRY PENDLEY: Thank you very much.

The commission's report puts me in mind of the story of a little boy who solicited the help of an older gentleman to help him find a quarter he had lost under a light post. After several minutes of fruitless searching, the man finally said, "No, I lost it over yonder in the weeds, but the light's better here."

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So here we go.

believes that that means the Forest Service may restrict private property that affects federal property. No wonder the BLM says that it will not disagree with regard to the prohibition in the Constitution against interference with contracts.

Well, we see it in the report. “Go with user pays, regardless of the impact on private property rights or existing contracts that have been in place for decades.”

But I think we should use it more. What policy does that serve? How foolish is that?

Or what about naming the Dehl Sands flower-loving fruit fly in California as an endangered species? We’re making tough life-and-death decisions in this country today with regard to real living human beings. I think we can ask the questions that come out when we should put a fly on the endangered species list.

Or what about the Dworskshak Dam up in Clearwater County, Idaho, a dam that was established by an act of Congress to send water for navigation, transportation, and also power generation. All these Congressional purposes have been abandoned by the federal government’s demand that the water be flushed down the river to serve endangered species.

Now, there are questions about whether or not, in fact, releasing that water even serves the needs of endangered species. But what about a more fundamental question? What happens when Congress specifically adopts a piece of legislation and gets trumped by a general piece of legislation, which is the Endangered Species Act?

These are the types of things that the commission could have examined and chose not to.

The problem for the commission with the Dworskshak Dam and what is happening up there is what’s going on is consistent with what the commission would like to have done. I think the problem is that the commission has lost a lack of concern for property rights, for example, with regard to in-stream flows, calling for in-stream flows, regardless of property rights. Takings, of course, as many of you have commented, is not addressed in the report.

Let me tell you where this administration is coming from on this issue of property rights. We represent a woman by the name of Kathy Stopek-Trail in the state of Michigan who owns a cabin on a lake. Under Michigan law she can use the entire surface of the lake since she has a cabin on the lake.

The southern part of that lake was designated as a wilderness by Congress, but certain provisions were put in the law to protect her rights, including a provision protecting “valid existing rights.”

She tried to use her property. The Forest Service kept her from using her lake. And so we are in court. The Forest Service’s position is that 175 years of legal history in Michigan is irrelevant; the Forest Service will decide what a property right is on that lake.

With regard to valid existing rights, the Attorney General’s attorneys before the Sixth Circuit Court of Appeals argued that Congress abandoned the phrase “valid existing rights” it did not know what that phrase meant.

And, finally, with regard to the Property Clause that says Congress passing all needful rules and regulations respecting federal property, the Justice Department

William Perry Pendley, president and chief legal officer of the Mountain States Legal Foundation

The irony here, of course, is while the administration is over in Kyoto, Japan, saying, “We’ve all got to cut down on these carbon-based fuels,” meanwhile back here they’re killing hydroelectric facilities.

William Perry Pendley

Dick told me I would be up to speed by this time, and I suppose I am. The first thing that I got was this formidable commission report. It came shrink-wrapped in cellophane. And, I confess that I left it sitting there on my desk for quite a while because it was so formidable.

Then I began to receive copies, a barrage of criticism of the report – I’m on the mailing list of a lot of organizations. The Western States Economic Council, the Colorado Water Congress, of course, the Council on State Governments-West, the Sierra Club. And every body was outrageously critical of this report. I received copies of letters that were written by Senator Morse and others. Individuals like Dave Miller sent me criticisms.

I read the criticisms first, and I found it difficult to believe that anything could be as horrid as, hereof redemeing qualities, as lacking in any utility whatsoever as this report that I had heard described. So I took it off my desk, still shrink-wrapped, put it in a file drawer, let anyone see it on my desk and think that I had some association with it.

Finally I took it out and read it. I had no trouble finding things that I disagreed with. There were some unwise recommendations, some silly recommendations, that really distracted my attention from the main part of the report.

But I was looking for ways to corroborate the basis that I had come to the report with, based on criticisms from a wide variety of people.

So I did the research. I thought, I found it to be generally temperate, reasonably well written, a background report that was pretty good on the state of the West today. There is some very interesting material in there on population growth, demographics, how we use our western water ways and water supply systems face.

There was special emphasis on the federal role. That was their commission, I guess, from the Congress. They did a pretty good job for Senator Morse and others, didn’t include many with expertise or experience in water.

I thought that the administration never wanted to have this commission proceed in the first place. I had heard about that through the grapevine and the press. The Department of Interior held up the funds, they held up the charter, they tried to keep this thing from going forward, and gave only limited support to it.

It was somewhat tempting to sympathize with a commission that was a bastion born into a family that wanted to deny and efface the administration’s parentage and to hold it up as an example of horridness.

But this was Senator Hartfield’s baby, and he wouldn’t let it die of neglect. It was something the administration had conceived. But, when he retired there was hope on some people’s part, that, with him going away, it would go away. He didn’t let that happen. He had friends and colleagues still in the Congress, and they made sure that Secretary Babbitt couldn’t ignore the babbling baby on the doorstep.

Finally the Western Water Policy Review Commission was appointed after fits and starts and all sorts of stalls. The commission was assembled with a few names on it recognizable to us who spend our careers up our ears in water that we really had no background. A few weren’t even very interested.

Given this rocky start, though, it’s wonderful anything to do. But it did.

In making our evaluation of the report, should we take account of these handicaps? I don’t think so. We wouldn’t give Chrysler any slack if they explained to us that the workers had the flu the day they put car together, or that they had just received layoff notices. Sympathy, but no slack.

So let’s look at this report and the criticisms of it.

David Getches

David Getches: Thank you, Sue. But, I’m not going to thank you, Dick, at this point. I wondered aloud to Dick, when he called me in mid-September, about how I would do this; to be the defender of a process and a report that I then knew very little about. My only involvement in the process was to give a short speech to the commission at its meeting on Indian water

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Colorado Water Rights
We're making tough life-and-death decisions in this country today with regard to real living human beings. I think we can ask the question about whether or not we should put a fly on the endangered species list. David Getches.

Colorado Water Rights

Under "Social Equity" it emphasizes the difficulty that rural communities feel when they're seeped of their water by moves to urban states. "Organizing Around Hydrologic Systems." This principle says that we should strive to protect the state and federal water programs and make the management more efficient and effective.

Hmmm! That's not too outrageous.

Then it talks about "measuring objectives, sound science, and adaptive management," things that we're adopting into our water management systems throughout the West.

"Participatory Decision Making." What could be bad about this principle? It says "national, regional, and local resource decision making must be open to involvement and meaningful participation by affected governments and both interested and affected stakeholders."

Ho hum! We've all admitted that.

"Innovative Funding." This section talks about utilizing public and private funds, partnering, nonprofits, volunteer efforts, user fees, and other means.

We now go to rebuttal. Five minutes each. Again, Perry goes first.

WILLIAM PERRY PENDELEY: Well, I talked about what the administration has been doing for five years, and I talked about what Babbitt has said, and what other administration people have said, because, again, I don't think you can look at a report like this in isolation. You have to look at it in context.

So you bet, David is right. There's a lot of wonderful sounding phrases in this. But we all heard such wonderful sounding phrases before. You know, such wonderful phrases like "ecosystem management." That sounds really cool. But it doesn't go out and balance the needs of all creatures, big and small, including human beings, and make it a wonderful place.

What does it mean when the rubber hit the road? What does it mean when the rubber hit the road? What does it mean when the rubber hit the road?

SUE O'BRIEN: Thank you, David Getches.

We go now to rebuttal. Five minutes each. Again, Perry goes first.

PERRY PENDELEY: Improving decision making, reducing conflict.

This one is "Management of Water and Water Facilities." It says we need new storage, but that we should emphasize smaller projects. It cites Animas-La Plata as the kind of thing we should do and the Pathfinder Reservoir in Wyoming. It stresses water conservation, use and recycling. Rural domestic water supplies are emphasized.

It talks about water marketing and transfers and use. River basins and watersheds. Well, this isn't a radical concept. It traces back to John Wesley Powell, basing our water governance and governance generally along watershed lines.

So the commission gets off to a good start here. It notes the tremendous increase in the number of local watershed initiatives and groups, the great energy and creativity they bring to resolving resource problems.

We've seen this throughout Colorado on the Yampa, the South Platte agreement, watersheds large and small. It talks about federal, state, and tribal partnerships.

What does it mean? When Babbitt went up and testified, there is little recognition of this in the Clean Water Act. There is no statutory mandate and tell us how we ought to reorganize the federal negotiating team. Number 4 gets a C-minus. This is how I get to the C-minus; an F is hardly disagree with that. Fulfilling trust responsibilities. Increasing the budget. There is no new money in the current budget.

Improving the federal negotiating team process. What process? This administration hasn't done anything at all to settle water rights. They've had twelve or thirteen in the previous two administrations.

Clarifying the marketing Indian water policy. That's right. The Secretary put on that at Las Vegas in December. So I give it an A. This is a reformulation of what.

"3. Resources management and restoration." This is a long section. They cite some serious problems. It's hard to disagree with the problems. They talk about the problem of shifting burdens, which means getting aquifer ecosystems to non-federal parties and say we need to do something about that. I don't think anyone could disagree that too much burden is put on non-federal parties for these burdens.

They support research. They do get into water quality standards and the report has taken a special beating for this from its critics for being too heavy-handed and federal-oriented. But when I looked at this I saw that, "The quality of western presents issues that are often different from those in the eastern United States. There is life recognition of this in the Clean Water Act and the programs of the ESA." So it talks about western ephemeral streams. This is something we've been humping on for years, and it gets recognition here. It's a problem that would be recognized.

The section on nonpoint source pollution calls for new and substantial commitments and points out that we haven't solved the problem completely yet.

SUE O'BRIEN: You have one minute.

DAVID GETCHES: Okay. Well, let me give these things grades then. I'll give a B-plus to this. It's comprehensive, but too much of a grab bag.

The next one is "Management of Water and Water Facilities." It says we need new storage, but that we should emphasize smaller projects. It cites Animas-La Plata as the kind of thing we should do and the Pathfinder Reservoir in Wyoming. It stresses water conservation, use and recycling. Rural domestic water supplies are emphasized.

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Then comes the Achilles' heel. They recommend river basin commissions. And not only that, they do go into detail. As I see it, Perry, they get into details which make me certain that this is a bad idea. They've walked into the Ford boardroom and said, "We've got an idea for a new nameplate. We'll call it Edsel." This is what failed in the 1960s. And they've redesigned it to make it worse.

So let's grade this. I'm going to grade each of these things from my perspective. I'll give this recommendation a C-minus. This is how I get to the C-minus; an F for the river basin commission idea and an A for focusing us on watersheds. That's a good idea, something that is working in the West. But it's working from the bottom up. This recommendation puts a cap on it and says we're going to run the watershed from the top. It's wrong-headed.

2. Addressing obligations to the tribes. We can hardly disagree with that. Fulfilling trust responsibilities. Increasing the budget. There is no new money in the current budget.

"Improving the federal negotiating team process." What process? This administration hasn't done anything at all to settle water rights. They've had twelve or thirteen in the previous two administrations.

Clarifying the marketing Indian water policy. That's right. The Secretary put on that at Las Vegas in December. So I give it an A. This is a reformulation of what in the previous two administrations.

The section on nonpoint source pollution calls for new and substantial commitments and points out that we haven't solved the problem completely.
Colorado Water Congress
40th Annual Convention

"Here is a land where life is written in water."
— The late Thomas Hornsby Ferril

CANDIDATES FOR GOVERNOR

The legislative breakfast provided some insights on Capitol activities (l to r): Senate President Tom Norton, former Senate President Fred Anderson (moderator), Senate Democrats, Representative Lewis Fink, Senator Jona Johnson, Senate President Pro Tem Thomas "Tito" Bishay, Representative Janice Brewer, Senator Gigi Owens and Representative Matt Outlaw.

L to R: Golden businessmen Terry Walker; Senate Minority Leader Michael F. Foxxx; Senate Treasurer Bill Owen and Moderator Fred Brown, The Denver Post Political Editor.

L to R: Lieutenant Governor Gail S. Schmidt, Speaker of the House Chuck Terry, Senate President Tom Norton and President of the Governor's Office, John Peter (now CWC Vice President).

Three AgAssail-Award recipients provide historical perspectives on water issues (l to r): John Slaye of Denver, W. R. Furr of Greeley and John B. Fitchett of Steamboat Springs.

Through the "Looking Glasses at 6:00 p.m." (l to r) Neil Jaquet from Golden and Dan Beck from Steamboat Springs.

The Water Education roundtable led by Tom Cash of Greeley was most informative.

The AgAssail Luncheon head table was particularly favored with nine AgAssail Award recipients. The speaker—Dr. Carolee, President and Chief Executive Officer of CACl— is seated in the left.

Thursday Luncheon head table included (l to r): President Ernie Williamson; Speaker Bill Commissar Erik Meehan; DNR Director Jim Lockhead; CWC President Peter Nichols and CWCB President Patty Wells.

SOME SMILEY FACES:

Dave Smith of Minervy
Fred Kroeger of Durango
Jim Lockhead, DNR Director

And word is Animal—Leo Pfeil (l to r): Chairman Clement Freni, Sam Wyness and Scott McElroy.

Those important informal discussions... (l to r): John Fitchett, Ray Rogovich, Fred Anderson and Bill Beck.

The Endangered Species workshop had a full house.
CWC 1998
CONVENTION EXHIBITORS

Woodward-Clyde Water Consultants

Hix Insurance Associates, Inc.

McLaughlin Water Engineers, Ltd

GEI Consultants, Inc.

Risk Plan, Inc.

City of Aurora

Wright Water Engineers, Inc.

Colorado Water Conservation Board

COLORADO DIVISION OF WILDLIFE

photo not available

Colorado Water Rights
COLORADO WATER CONGRESS
COLORADO WATER LAW SEMINAR

September 14 - 15, 1998
CWC Conference Room
1390 Logan Street, Suite 312 – Denver, CO 80203

MONDAY, SEPTEMBER 14, 1998

7:45 a.m.  REGISTRATION

Presiding, Eric Wilkinson, CWC Vice President

8:00 a.m.  The History of Colorado Water Law — Honorable Gregory J. Hobb, Jr., Justice, Supreme Court, State of Colorado

11:00 a.m. Water Distribution Organizations (Mutual Ditch Companies, Carrier Ditch Companies, Special Districts and Municipal Systems) — Mary Mead Hammond, Carlson, Hammond & Paddock, Denver

11:45 a.m. The Water Court System and Procedure — Mary Mead Hammond, Carlson, Hammond & Paddock, Denver

12:15 p.m. LUNCH — Water Law — A Historical Perspective — Fred E. Anderson, Former President, Colorado State Senate (address from 12:45 p.m. to 1:15 p.m.)

1:30 p.m. The Relationship Between the Federal Government and Colorado Water Law — Sara Duncan, Manager of Intergovernmental Affairs, Denver Water Department, Denver

2:15 p.m. The Impact on Colorado of Interstate Compacts — Hal Simpson, State Engineer, State of Colorado

3:00 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

3:45 p.m. Water Conservancy Districts: Responsibilities and Roles in Water Matters — Eric Wilkinson, Manager, Northern Colorado Water Conservancy District, Loveland

4:30 p.m. Engineering Aspects of Water Rights — Gregg Ten Eyck, President, Leonard Rice Consulting Water Engineers, Inc., Denver

5:30 p.m. Recess until 7:45 a.m., TUESDAY, SEPTEMBER 15TH

TUESDAY, SEPTEMBER 15, 1998

Presiding — Kit Kimball, CWC Assistant Treasurer

7:45 a.m. Overview of Colorado Ground Water Law — Gilbert Y. Marchand, 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 Resources & Power Development Authority

9:30 a.m. The Colorado Water Conservation Board: Its Responsibilities and Role in Water Matters — Peter Evans, Acting 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

11:15 a.m. The Colorado River, the Colorado River Water Conservation District, and Western Colorado Water Projects — David C. Halford, General Counsel, Colorado River Water Conservation District, Glenwood Springs

12:15 p.m. LUNCH — Significant Water Quality Issues — Jerry Raisch, Vranesh & Raisch, LLC, Boulder (address from 12:30 to 1:00 p.m.)

1:15 p.m. Federal & State Water Quality Laws — Tad Foster, Attorney at Law, Colorado Springs; and Tom Pitts, Water Consultant, Loveland

2:45 p.m. The Colorado Water Quality Control Division: Its Responsibilities and Role in Water Matters — David Holm, Director, Colorado Water Quality Control Division, Denver

3:15 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

4:00 p.m. ADJOURNMENT

State of Colorado Supreme Court Board of Continuing Legal & Judicial Education has awarded this seminar eighteen (18) CLE credits.
CWC 1998 Summer Convention Program

WEDNESDAY, AUGUST 26, 1998

7:15 p.m.  CWC Board of Directors' Meeting

THURSDAY, AUGUST 27, 1998

B. 8:00 a.m.  REGISTRATION OPENS

B. 8:30 a.m.  OPENING GENERAL SESSION

Presiding – Eric Wilkinson, CWC President

Twelve Keynoters on Water Issues

The first twelve (12) individuals who request to serve as a keynoter will be given that opportunity. Each of these individuals, however, must submit their paid conference registration in advance and the title of their speech by no later than July 24, 1998. It should also be understood that each keynote address will be limited to five (5) minutes in length.

9:30 a.m.  COFFEE BREAK

9:45 a.m.  A Panel Discussion of "A Divided or A United Water Community — What Do We Want?" Panelists are: John Porter, Manager, Dolores Water Conservancy District, Cortez; Ray Wright, President, Rio Grande Water Conservation District, Monte Vista; and Eric Wilkinson, Manager, Northern Colorado Water Conservancy District, Loveland.

10:45 a.m.  A Panel Discussion of the "1999 Legislative Session." Panelists are: Senator Don Ament (R – Littleton); (invited) Representative Russell George (R – Rifle); Representative Carl Miller (D – Leadville); and Representative Matt Smith (R – Grand Junction).

12:00 Noon  LUNCHEON


An address by Frank "Sam" Maynes, Maynes, Bradford, Shipps & Shieffel, Durango, on "The Use of Fictional Facts and Compact Threats."

1:45 p.m.  PENDING WATER ISSUES

Presiding – John Porter, CWC Vice President

1:45 p.m.  "Endangered Species and the Feds" — Tom Pitts, Water Consultant, Loveland.

2:00 p.m.  "HB98-1006 — Endangered Species Funding" — Julie McKenna, Trout & Raley, P.C., Denver.


2:30 p.m.  "Some Ideas on By-Pass Flows" — Sara Duncan, Intergovernmental Affairs Coordinator, Denver Water, Denver.


3:00 p.m.  BREAK

3:15 p.m.  "SB96–74 (Groundwater Study) — Is There an End in Sight?" — Mike Shimmin, Vnmeesh and Raisch, L.L.C., Boulder.

3:30 p.m.  "Funding State Water Quality — What's Fair?" — Gene Megyesy, Dufford and Brown, P.C., Denver.

3:45 p.m.  "Sharing the Pies of Pain" — David C. Hallford, General Counsel, Colorado River Water Conservation District.

4:00 p.m.  "The Uses of the Colorado Water Conservation Board Construction Funds" — A dialogue lead by Peter Evans, Acting Director of CWCB with emphasis on audience participation.

4:30 p.m.  Other Events to be Announced.

FRIDAY, AUGUST 28, 1998

8:30 a.m.  GENERAL SESSION

8:30 a.m.  "The State Engineer" — Hal Simpson, Colorado State Engineer, Denver.

9:00 a.m.  "The Colorado Water Conservation Board" — Peter Evans, Acting Director Colorado Water Conservation Board, Denver.


10:00 a.m.  COFFEE BREAK

10:15 a.m.  "The Colorado Division of Wildlife" — John Mumma, Director, Colorado Division of Wildlife, Denver.

10:45 a.m.  "The Colorado Division of Water Quality" — David Holm, Director, Colorado Division of Water Quality, Denver.

11:15 a.m.  "The Colorado Department of Natural Resources" — Dan McAuliffe, Esq., DNR Assistant Director and Douglas M. Robotham, DNR Assistant Director (Water Policy)

12:00 Noon  LUNCHEON

Presiding – Eric Wilkinson, CWC President


1:30 p.m.  CWC Business Meeting

• President's Report
• CWC Strategic Plan Report
• NWRA Report
• Treasurer's Report
• Vote on Honorary Life Member(s)
• Consideration of 1998 Mid-Year CWC Resolutions/Policies

2:00 p.m.  Adjournment

Continued from Page 5

the problem with this hydrological system thing is that almost anything we do involves an impact on hydrology, and also that things are considered to be biocriteria monitoring, to which people have objected.

Also, with regard to participatory decision making, something people have proposed in the past is the fact that they’re calling for a limitation of so-called scientific community, when public participation is not likely.

I agree with David as to Section 3 in the report. It is too heavy-handed. I mean, if we’re sitting here in the comfort of this situation, just in the abstract saying it’s too heavy-handed, what will happen when it is implemented? I’ve just seen too many of these reports be used as justification for policies that have a terrible impact. And we say, “Gee, where was that?” Well, it’s right in the report.

That’s why I think the report needs to go back to the drawing board and do what was asked in the beginning and David admits that they didn’t do this — which is to determine what federal laws and regulations and implementation by agencies are hurting us here and being nonproductive in our efforts to root the needs of the West.

SUE O’BRIEN: Thank you, sir. David Getches for five minutes.

DAVID GETCHES: Thank you, Sue. Well, Perry tells us that we need to put this report on hold, and I think there’s some really well-meaning people, and that it doesn’t really matter what it says; that nice words don’t mean what they say, because of the evil people who are their sponsors. In other words, so that we shouldn’t believe any of it. He talks about a “sinister purpose” behind the report.

Now, first of all, the history of this is that this administration has fought this report, and not to have a damn report, not to have even a Commission. And I’ll bet anyone here that the administration will do all they can to ignore it. That’s going to be the future of this report.

If you want to have a future for this report, don’t send it back to be redone. If you believe that there’s a sinister purpose and the commission members were in league with the administration to come up with nice-sounding things which will be Trojan horses for some kind of federal control of western water; then they’re going to do that again if you send the report back to the same commission.

There are two things you can do. One is assume that what’s very likely to happen with this is what happens with most reports of most federal commissions — and that is that they serve primarily as “shelf art.” Whether they gathered compliments or gathered singing criticism shortly after their release, most of them gather only dust.

And that’s probably what will happen to this report. But assuming that something can come of it, it will come of it because people who understand this area read the report and glean from it what is positive, that view the glass as not half empty or, worse yet, absolutely bone dry and absent of any kind of worthwhile utility whatsoever.

If you seize on some of the positive aspects of this, read it for what it’s worth, reject what’s bad, and run with some of these ideas, perhaps using some of the things that we do agree with here.

In the end, critics, including Perry, have not made their case that this report is so decidedly negative in its potential impacts that it has visceral antipathy to agriculture, and is essentially useless.

But it does have some ideas in it that any thoughtful reader knows who western water is going to agree with. How do I make such a presumptuous statement? Because these ideas aren’t new or revolutionary. We can find some of the same ideas said in other contexts.

For instance, in the 1973 National Water Commission report. And most of them are in lock step with the Park City principles that were developed by the Western States Water Council and the Western Governors Association in the early 1990s. There’s language almost identical to a 1992 resolution of the Western Governors Association which adopts many of these same recommendations.

The Water Quality 2000 Report, which was put out in the early ’90s says, and this is put into the same conclusions. The ideas about watershed governance are straight out of this report.

It’s is not riveting stuff. We could find a lot to agree with here. The centerpiece idea, I agree, is one that’s flawed in its presentation. The idea, as I said, is great, watershed governance. And we ought to give all this report the credit it deserves.

We should also make a return to the National Water Commission of the 60s.

Overall, that’s my impression. I don’t think it’s a great report. I think it’s a good report. I think it has things in it that we can learn from, and we ought to get on with that and try to find ways that we can build on what is positive.

SUE O’BRIEN: Thank you, sir.

Continued from Page 1 understanding.

There’s a wonderful quote more recent in its origin that says, “The only thing we learn from history is that we don’t learn from history.” It’s unfortunately true in many ways. Yet I’ve convinced the mark of good public policy and thoughtful leadership, comes when leaders are able to draw on a knowledge of human nature and of history. To use history to consider the future in a productive and creative way.

What is amazing is that the ability to understand our past and to project the understanding into the future is so rare. You would think that applying vision and understanding to the future would be widely admired and greatly emulated. And yet, at times, it’s not.

Let me just give you an example.

I think for a moment about the marvelous attributes to an urban area of open space, parks, and green areas. In Denver the name of Cranmer comes to mind. Mayor Speer also had a vision for the future. They, along with nature, helped make the Denver metro area one of the most beautiful urban areas in the world. They did it using a little forethought and vision.

You know, if you build an area without parkways, it’s tough to go in a put them in afterwards. But the Sixth Avenue Parkway and the 17th Avenue Parkway and City Park in Denver give a character to the city that would be difficult to recapture if Denver developed without them.

If you look at London, you find very little open space. You have a park where King Henry used to hunt deer. You have an open space on what was the edge of town where King Henry used to take his mistresses. If King Henry didn’t have avocational interests, they would have very little open spaces in London at all.

We honor Lincoln, not just because of his many personal attributes, but because he understood how important it was for both America and the world that our country be united. He placed that vision and commitment above all others.

Colorado has had many visionaries who have contributed to this state and made it a special place. Not the least of those are the ones that are honored by this Water Congress.

People who had a vision to understand what Colorado was like and what it could be. People who thought of more than just today, but thought of the future, and made a contribution to our state that few will ever equal.

It’s the name of a Wayne Aspinall or a Bill Farr or a dozen others who have contributed much of their life and their energies, they’ve made a lasting contribution to Colorado.

Many of you in this room have had that kind of vision and commitment, and the state will benefit by it for many years to come.

I don’t know how many of you have read the journals of the early explorers. For those of you who want a quick review, I would recommend to you a wonderful little book put together by Bart Woodward.

Bart’s pamphlet talks about the evolution on the South Platte River. The observations in it have application to the whole state, not just the South Platte.

Some of you may remember the comments of the early explorers in describing Eastern Colorado. “It’s a great American desert.” “An area unfit for human habitation.”

Some of you folks from the West Slope have long thought that about the East Slope.

Sometimes we forget what things were like in the 1830s and 1840s and 1850s before we had water storage. We take water storage so much for granted that seldom do we or our newspapers give a lot of thought to what Colorado’s environment would be like without water storage.

“He who knows only his own generation remains a child.”

Imagine making public policy about water and not understanding the history of the state.

But, ladies and gentlemen, that’s exactly where we’re at and that’s exactly what is happening with the Forest Service and with others in the federal government right now.

I thought I would share a quote with out of Bart’s book. He notes that John Fremont made five trips to Colorado, and he talks about the entries in his journal in 1842 where he documented that the river was from snow-fed streams of extremely high flows in May and June, after which by late July it was so low that it actually was nonexistent. That if water from the river was desired for drinking, you had to go dig for it.

Quote: “There was no running stream below Fort Morgan, Colorado.”

It’s important, not just for the area below Fort Morgan, but it’s important for the whole state, because, as you know, the natural flow of rivers in Colorado indicates about two-thirds of the flow comes in that recession whether you understand the subject you’re talking about and the history you’ve taken the time to read.

Think for a moment about the CBT project. My guess is to some extent the drought of the ’50s made a big difference in whether or not that project went forward. Put a different way, without the drought you may not have been able to generate the support CBT needed for approval.

The drought in ’54 and ’55 again generated tremendous support within the state of both political parties, both of philosophies, to support needed water storage.

The Flood of ’64 resulted in fostering support for the Chatfield Dam. Before the flood there was little support in spite of a lot of people who thought there was a need for flood control. Afterwards there was little dissonance. There’s something about clearing away a portion of downtown Denver that seemed convincing to people.

Well, some of this surprises any of you. I suspect for many of you it’s old news. But what I would think about is the current proposals of the Forest Service. More than a decade ago the Forest Service began to suggest that people whose water crossed Forest Service ground would have to forgo some of their water rights if they were to receive continued permission to cross Forest Service ground.

There’s some concern, because what they were literally talking about was taking people’s water rights without compensation.

The outcry was immediate from the agricultural sector and resulted in a law that Mike Straug passed. The law simply made it clear that there was no authorization to withdraw or deny permits for creating Forest Service riparian for the purposes of controlling agricultural water flow in the state.

At that time no one thought that anyone would ever deny permits to cities for drinking water. Can you imagine? Who would do a thing like that?

Of course, what happened is the Forest Service came along later and suggested that they would deny permits for drinking water to cross federal ground. It is a reality that many in this room have dealt with. Some small communities on the Western Slope have literally been forced to accept this extension. I don’t use that word lightly; it’s a precise description of what the Forest Service did.

They knew that conditioning the renewal of their permits for existing water rights was not authorized under legislation. They literally placed the people in a position of having to spend millions of dollars in attorneys fees to fight it.

But without any compensation, they didn’t give up and give away a third of their rights.

Some of those communities were forced to concede and do it. Other cities on the Front Range, negotiated with the Forest Service and conceded smaller amounts. Some of those communities have continued to fight, to be successful in terms of water rights.

The irony is this, and it’s the Forest Service did this in the name of the environment. They literally demanded the cities to forfeit some of their water rights in terms of storage. They say they did it to improve minimal stream flow in the state.

As one who sponsored Colorado’s minimum stream flow bill with Fred Anderson, I have a personal interest in this. What I think is an important area that deserves to be addressed.

I lack no enthusiasm for minimum stream flow. When I asked the Forest Service what period of the year they wished to increase minimum stream flow they didn’t know. When I asked them what rivers they...
The devastating part of it is that they have awesome power in terms of regulating the forest. One of the ironies is that Boulder was one of those cities that had perfected some of their water rights that cross Forest Service ground prior to the existence of the Forest Service itself. In terms of vested rights, it could not have been a stronger case.

Yet, the Forest Service insisted on proceeding with their policy.

What's the impact in the terms of the Forest Service policy? If you allow the Forest Service to go ahead they will reduce water storage by a third.

First of all the policy will reduce minimum stream flow, rather than increase it. Far from improving the environment, it hurts the environment.

Why? It reduces the storage capacity in the high mountain reservoirs dramatically. It will increase the spring flood flow, and it significantly reduces the amount of water available during dry periods of the year and during drought.

If you reduce the amount of water flow during dry seasons of the year or during drought periods, you reduce minimum stream flow at the very time the river is in danger.

The impact of the Forest Service action is to harm the environment and to take an asset, a vested water right, without compensation.

One of the things it does to cities is to impact their "safe delivery" water. Most of our cities ask themselves, "If we have a standard drought, what is our ability to deliver drinking water and vital water supplies to our constituents?"

Some cities may be fortunate and have three or four years where they can withstand the drought and still deliver minimal water supplies to their constituents. Other may be more in the period of two years. Some even less.

Some of the suburbs of Denver obviously are in an even more precarious position, because their contracts with the Denver Water Board and with other suppliers are ones that are not totally secure. It's quite clear that the Denver Water Board has to provide first priority in crisis situations to the people within their district.

But the bottom line is, if you're aware of Colorado history, if you've looked at what happens periodically in the state in terms of drought periods, you know that the ability to provide safe delivery during a drought period is vital. It's not as urgent during times of plenty, but it is incredibly important during drought periods.

My guess is there isn't anyone here who would say that we're never going to have a drought again.

The impact of the Forest Service policy would be to reduce the storage capacity by a third and dramatically reduce the period of safe delivery in a drought period. For many cities it may well take them from three years' delivery during a drought period to something a little over two years. That's a huge impact. It's a particularly big impact if the drought lasts more than two years.

As you all know, this subject was debated in Congress. We won a one-year moratorium passed into law that had strong bipartisan support and was signed into law. That moratorium called for an independent commission to be appointed by the members of both political parties to develop a solution.

The commission, called the Raillery Commission, has issued a report. The Commission involved water experts from around the country. Their majority report generally indicated that the practice of the Forest Service was neither legal nor good policy and urged that the Forest Service end the practice immediately of taking water rights.

A minority of the commission did not agree and did not sign off on the majority report. That report has been forwarded to Congress and to the executive branch and to the Forest Service.

What has happened is quite interesting. The Forest Service has not commented. They have not said they will follow the findings of the commission, and they've not said they won't follow the findings of the commission.

It is a mistake not to face this issue forthrightly. If the Forest Service intends to ignore the commission, they ought to say so, so that Congress can act with legislation.

To simply doddle the issue, to refuse to indicate whether they will follow the commission's recommendations or not is irresponsible.

My hope is that in the months and perhaps years ahead we'll get a clear decision out of the Forest Service and we'll get a more farsighted approach in Congress to address the issue. If there is any doubt about the folly of reducing or eliminating water storage in Colorado the issue should be addressed.

I believe that to eliminate existing water storage is not only improper in terms of water rights, but it is environmentally folly of the highest order. It is the surest way I know to return Colorado to the description that some of the explorers found it in the first place, "a great American desert.

There are, indeed, some who think that returning to the past would be step forward environmentally. But, I suspect most Coloradans have some sense that part of the charm of Colorado is not just the people, but the scenic wonders and the wonderful vegetation that help make the state what it is.

It would be a sad thing from history's point of view if we dropped the torch that's been passed to us in terms of preparing our environment for the future.
1997 CWC MEMBERSHIP REPORT

This report is intended to bring the membership up-to-date with Colorado Water Congress activities for calendar year 1997. No organization, it should be noted, will have a meaningful impact on issues of concern, unless its membership is involved and asserting itself. Also, special thanks is expressed to the members of the General Assembly and the Executive Branch for they have listened to CWC's concerns and acted in a positive and helpful manner.

CWC notes the following in terms of highlights:

1. Ten of the eleven water bills introduced in the State Legislature and supported by CWC were enacted into law.
2. The one water bill opposed by CWC was killed.
3. Continued the major effort (as a CWC Special Project) to address the issues in the U.S. Fish & Wildlife Service, Platte River and Colorado River Threatened and Endangered Species endeavors.
4. Continues a Strategic Planning effort as to CWC’s role in the 21st century; and
5. Assisted in the Colorado Farm Bureau Future Water Resources effort; and
6. Participated in the Legislature’s interim studies of water and land resources and SB96-74.

* It should be noted that CWC’s efforts with constitutional amendment initiatives is consuming a considerable amount of time.
** It should be further noted that the special projects are funded by voluntary contributions used for that purpose only — no CWC general fund monies are used.

The new water laws and resolutions supported by CWC were:

1. HB 97-1113 — concerning industrial sewage disposal systems.
2. HB 97-1170 — concerning the continuation of the natural resources educational program in the Department of Natural Resources.
3. HB 97-1218 — concerning the Colorado Water Resources Research Institute.
4. HJR 97-1009 — concerning additions or modifications to the Drinking Water Project Eligibility List as defined in section 37-95-103 (4.8) and 37-95-107.8, Colorado Revised Statutes, as projects eligible for financial assistance from the Drinking Water Revolving Fund.
5. SB 97-008 — concerning the Colorado Water Conservation Board Construction Fund and making appropriations in connection therewith.
6. SB 97-048 — concerning the continuation of the authority of the Board of Parks and Outdoor Recreation to regulate the use of a portion of the Arkansas River.
7. SB 97-151 — concerning use of the Fish and Wildlife Resources account in the Colorado Water Conservation Board Construction Fund.
8. SB 97-004 — concerning additions or modifications to, and deletions from, the project eligibility list of wastewater treatment system projects eligible for financial assistance from the Water Pollution Control Revolving Fund and the Colorado Water Resources and Power Development Authority.

9. SJR 97-016 — commending the Colorado Farm Bureau for recognizing the importance for entities in this state to develop a long-term strategy for the development of water for future demands by the completion of the Colorado Farm Bureau Water Development Study.
10. SJR 97-043 — concerning the creation of an interim committee to study water and land resource issues.

None of the aforementioned events or bill enactments would have been possible without — as already pointed out — the dedicated involvement of CWC members. This involvement is translated into the following statistics as they relate to the number of CWC Board and Committees meetings.

Board of Directors — 1/29/97, 1/31/97, 6/24/97, 8/26/97 and 12/29/97.
CWC Official Business Meeting — 1/31/97 and 2/22/97.
State Affairs Subcommittee on Decrees for Change of Water Rights — 1/6/97, 1/26/97 and 2/19/97.
State Affairs Subcommittee on MOUs — 4/9/97 and 5/2/97.
Federal Affairs Subcommittee on Western Water Policy — 10/1/97, 10/31/97 and 12/4/97.
Federal Affairs Subcommittee on American Heritage Rivers Initiative — 8/6/97.
Federal Affairs Subcommittee on Preble’s Meadow Jumping Mouse — 6/30/97 and 7/14/97.
CWC Nominating Committee — 8/2/97.
CWC Aspinall Award Committee — 8/27/97.
CWC Endangered Species Colorado River Project Management Committee — 1/18/97, 1/29/97, 4/21/97, 5/22/97, 7/33/97, 8/19/97, 10/9/97, 11/23/97 and 12/29/97.
Education Committee — 5/8/97 and 8/21/97.
News Media Committee — 7/22/97 and 8/21/97.

CWC sponsored meetings were another dimension of membership involvement activity and these were:

4. CWC Workshop on What You Should Know About The Nine Interstate Compacts That Colorado Is A Signatory To.
5. CWC Conference on Endangered Species held on November 14, 1997.
7. CWC Workshop on Legal Ethics In Water & Environmental Law held on November 19, 1997.

There were a number of other actions that enhanced and assisted greatly in making CWC more effective. These actions were:

2. Named Ralph Jenkins the 17th recipient of the “Wayne N. Aspinall Water Leader of the Year Award” at the 1997 CWC Annual Convention.
4. Produced four Educational Videos; namely (a) Colorado Water History As Viewed By Aspinall Award Recipients; (b) Leadership by The Honorable Robert Isaac, Mayor of Colorado Springs; (c) The 21st Century Tomorrow: Are You Ready? by Dr. Evan Vlahos of Colorado State University; and (d) Financing the Future: The California Experience by California State Senator Jim Costa.

In regard to CWC’s written communication (newsletters), the following newsletters were published during 1997:


Again, we are, indeed, proud and honored to be associated with such an outstanding and dedicated group of people as the CWC membership.