Guest Editorial

Dry, Wet — One or the Other
by Governor Bill Owens

It was author John Steinbeck in East of Eden who said, "And it never failed that during the dry years the people forgot about the rich years, and during the wet years they lost all memory of the dry years. It has always been like that." John Steinbeck was right. It seems that, particularly in recent years, Coloradans have experienced this problem: one too much rain or not enough rain. And all too often it seems that people are not prepared for either.

There are over 65,000 homes, 15,000 businesses and a quarter of a million people who presently live within 100-year flood plains in Colorado. We need to do everything we can to prepare for the disasters that we know will happen.

Recently some of the foremost experts in the country met in Colorado at a conference on flood and drought preparedness to share the latest best practices concerning flooding and drought. But no amount of lecturing or statistics can truly prepare us for those sorts of tragedies. They can’t prepare a person for the loss of a business or a farm or a loved one in a flood, or the loss of a business or farm during a drought. I’ve seen it first hand.

I saw it when I was in Southeastern Colorado after the floods Colorado suffered this spring. I have seen it in Fort Collins. I have seen not only the devastation caused by floods, but also the grit and determination as communities joined to pull themselves back together after these tragedies — good people getting on with their lives. Coloradans don’t expect handouts, but they do expect us to plan for the future so that we can be better prepared for what we know will happen.

In an average year, somewhere in Colorado, we suffer from a 100-year flood. Over the last 150 years, floods have caused damage worth over $4 billion and have cost more than 300 lives all over the state — from Denver to Kiowa and from the Western Slope to the South Platte. We have seen flooding severe enough to warrant a presidential disaster declaration four times in the last 20 years. Over the last two years, there

Continued on Page 9

Colorado Water: Our Past — Our Future
by Ken Salazar
Colorado Attorney General

Water truly is the lifeblood of Colorado. Those who settled our wonderful state recognized the fundamental principle that without water survival simply was not possible in the arid west.

I grew up on a family ranch thirty miles west of the monument in San Luis, Colorado, marking the location of the oldest water right in Colorado with a priority of 1852. For nearly 150 years my family has irrigated lands near Manassa, Colorado, from a ditch with a priority right of 1857. I know firsthand the importance of water and how those of us who live on the margins of water availability recognize that just one more irrigation is a season can either make or break a farm. I applaud the Colorado Water Congress and its current and past leadership for never letting the state forget how important water is to our community.

As Colorado Attorney General, I see my role and that of my office as a very simple one: (1) protecting Colorado’s interests against the real and continued threats from downstream states; (2) protecting Colorado’s water rights from unwanted federal interventions; (3) protecting vested water rights through participation in administrative and legal proceedings in the state; and (4) helping in whatever way we can to resolve some of the contentious issues that divide Colorado on water.

I’d like to provide an update on a few of our efforts in the Attorney General’s Office and comment briefly on current and future commemorations regarding water in Colorado.

PROTECTING COLORADO FROM THREATS FROM DOWNSTREAM STATES

A. Kansas v. Colorado. In 1995 Special Master Arthur Littleworth and the U.S. Supreme Court found that Colorado was liable to Kansas for violations of the Arkansas River Compact due to post-compact wells. We are now in the remedy and compliance phase of the case and are continuing to work closely with Special Assistant Attorneys General David Robbins and Dennis Montgomery. The trial of the damages portion of the case began in November of 1999 and concluded on January 28, 2000. Kansas and

Continued on Page 7

Colorado Water Congress
Summer Convention
Manor Vail Lodge, Vail, Colorado
August 24 & 25, 2000
JOHN PORTER

CWC Immediate Past President John Porter was born in Montezuma County, at Lewis, Colorado (a community later named after his maternal grandfather) on November 4, 1913. He received a B.S. degree from Lewis Elementary and Montezuma-Cortez High Schools. He graduated from Colorado A&M College in 1939. He has been married to Nancy Hicks (Porter) for 44 years. He has two daughters, and two grandchildren, Laura and Andy Spann of Gunnerson. He has been in the water business since childhood - as a father's helper/fertilizer, father's partner/partner, farm corporation manager/manager, Board of Director for Montezuma Valley Irrigation Company, Southwest Water Conservation Board and Colorado Water Resources & Power Development Authority and finally as General Manager of the Dolores Water Conservancy District for the past 17 years. As the new Dolores Project came "on line" he guided DWC's growth from a staff of 1 (himself) to its present 23 members. John received the 20th Wayne N. Aspinwall Water Leader of the Year Award in January, 2000.

RICHARD D. "DICK" MacRAVEY

Richard D. "Dick" MacRae, 69, is in his twenty-first year as Secretary and Executive Director of the Colorado Water Congress. MacRae is a stegger in Colorado. He served three years as Executive Director to the Larimer-Weld COG and seven years as Executive Director of the Colorado Municipal League. During his tenure with the Larimer-Weld COG, he was responsible for developing and purchasing the early stages of the Larimer-Weld "10X" Water Quality Management Planning effort. In 1970, MacRae served as 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, MacRae was appointed by the Legislative Leadership and served as one of the 48 members of COLORADO VISION 2000. In 1986, the Legislative Leadership appointed MacRae to the 16-member Legislative Council Subcommitte on Long Range Planning for the State Government.

During 1969-71, MacRae served on the National League of Cities Board of Directors. He served as a member of the Boards for the Colorado Water PAC and the Colorado Water Education Foundation. MacRae is a member of the American Society of Association Executives, Colorado Society of Association Executives, Colorado Water Works Association and International City Management Association (cooperating member). In 1999, MacRae was named the nineteenth recipient of the "Wayne N. Aspinwall Water Leader of the Year Award". MacRae and his wife, Marla, are the parents of six adult children and four grandchildren. MacRae 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.
in a recent mail-back survey of Parker area residents, more than 80 percent agreed that “It is important to protect our groundwater and extend the life of the aquifer.”

Like many of Colorado’s large water agencies, PWSD has taken numerous steps to manage limited resources. Its advanced sanitation treatment and reuse program provides an example of how a local government can cut demand on groundwater, which is a nonrenewable resource. The program leads to more water being returned to the parent aquifer, allowing reuse of treated wastewater through a system of “exchange,” in which treated water is released into Cherry Creek, and water is then drawn back into the Parker system through shallow tributary wells along Cherry Creek.

New Reservoir Plans for Future

Beyond Parker Water’s local efforts, solving the area’s water problems requires cooperation with agencies both in the Denver Basin and throughout the state. Colorado’s water history may be steeped with local, independent decision-makers and fierce competition to secure rights and transport water, but the new century requires cooperation. Limited supplies, high costs, the challenge of basin transfers and environmental considerations require that water agencies work together.

The reservoir has gained strong public support from local residents and officials. As the Denver Post said: “The reservoir is a good idea and there is really no ‘catch’ to easing the demand on groundwater, which is a nonrenewable water supply.”

New Century Requires Cooperation

The study will begin by defining supply, demand and environmental considerations. The reservoir was designed to supply 50,000 acre-feet of water per year (the linchpin of that success).

The reservoir will be the focus of three phases of study: the first phase will focus on supplies and demand with a second phase looking at basin transfers and environmental considerations. A third phase will focus on strategies to extend supplies within the basin, such as conjunctive use projects with South Platte River water. Finally, a third phase will study the potential importation of Colorado River water.

While Douglas County’s growth and lack of dependable surface supplies are severe problems, they are not unique: Water issues impact Front Range communities from El Paso to Fort Collins.

PWSD and several water agencies and local governments have begun a vital dialogue on statewide water issues in order to raise the awareness of the problems, involve law-makers and the executive administration, build a broad coalition and examine a full range of options. This effort will take time and, of course, require participation from water interests across the state. But it represents a new start in water resource discussions at the beginning of the decade.

Parker Water and Sanitation District believes planning and prudent investments can help secure reliable water supplies for future needs, and that working together is the linchpin of that success.

PARKER

ASPINALL AWARD NOMINATIONS & WATER LAW SCHOLARSHIPS

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

1. Nomination form for the 2001 Wayne N. Aspinall Water Leader of the Year Award.
2. Ed Boreen, W.D. Farr, John R. Fitcher, Frank Millerski and Bart Woodward Scholarship (for an active member of the agricultural community) for 2000 – Colorado Water Law Seminar.
4. Bill Hombly (for either a journalism student or a reporter, of a news media organization) Journalism Scholarship for 2000 – Colorado Water Law Seminar.
5. Larry D. Simpson, Ralph Atkinson and John R. Fitcher (for either an engineering student or a non-partner of an engineering firm) Engineering Scholarship for 2000 – Colorado Water Law Seminar.

The Wayne N. Aspinall Award nomination form is due at the CWC offices by August 4, 2000. The Scholarship nominations are due at the CWC offices by July 7, 2000. If you are interested in any of the above forms, please fax or write: Colorado Water Congress, 1590 South Steele Street, Suite 400, Denver, CO 80202, phone (303) 837-0812, fax (303) 837-1607.
A New Millennium of Miracles or ???

Colorado Water Congress
42nd Annual Convention

Governor Bill Owens delivered the Thursday luncheon address.

Attorney General Ken Salazar was the Opening General Session Keynote.


The Wayne H. Aspiller Leadership Award speaker was Congressman Scott McInerny.

The session on "Men & Women in the Meeting Room" was heated and spirited.

The "Rubber Ducks" were having the time of their lives. (l to r): Douglas County Commissioner Jim Sullivan and Parker & S Frank Jasper.

That "Ducks" even managed to plop on top of someone's head.

Ag Commissioner Don Ansell presents Senator Dave Waterberg with his very own stuffed 'rubber ducks' mouse.

Below: One of the many informal gatherings at the reception.

Below: This workshop was overflowing.

Below: The Thursday luncheon was packed.
CWC 2000
CONVENTION EXHIBITORS

ECI
Colorado River Water Conservation District

Hix Insurance Associates, Inc.

Colorado Water Conservation Board

Knight, Piesold and Company

RiskPlan, Inc.

Obermeyer Hydro, Inc.

Wright Water Engineers, Inc.

GEI Consultants, Inc.

URS Greiner Woodward Clyde

York Insurance Associates, Inc.
Continued from Page 1

Colorado is very far apart on the issue of damage for past well depletions, in large part because Kansas is seeking to recover prejigagement interest. The Special Master expects to issue his draft report on damages for summer, with a final report to the Supreme Court in time for them to hear argu- ments during their October 2000 Term. Later this year the Special Master will hear evidence on Colorado’s compact compliance during 1997, 1998, and 1999, and on future com- pliance. I am particularly proud of Colorado’s efforts to bring this matter in a very short time.

B. Nebraska vs. Kansas. Nebraska filed an original action against Nebraska in the U.S. Supreme Court in 1998, alleging that Nebraska had violated the Republican River Compact by consuming all the water that was allowed under the compact. Nebraska filed a motion to dismiss claiming that no groundwater was allocated- ed by the compact, that the compact includes all subsurface and Ogallala Aquifer groundwater, that Kansas has not alleged a compact violation by Colorado, however, that Kansas’s position, the case could indirectly assert Ogallala Aquifer water users in Colorado. On January 4, 2000, Special Master Vincent McIntyre heard arguments from Colorado and the United States on Nebraska’s motion to dismiss. Nebraska’s position is that the compact includes all subsurface, but not Ogallala, groundwater, and that therefore Nebraska’s motion should be granted. Nebraska’s position is more limited than Kansas’s position that the compact also includes “all groundwater that would become part of the steam flow in the Basin if undepleted by the activities of man” and that therefore Nebraska’s motion should be granted. Nebraska’s position is that Kansas’s position contrary to the recommendation.

C. Wyoming vs. Nebraska. In 1986, we were dragged into the case by an order from the Nebraska and Wyoming Supreme Court that the Republican River Compact restricts a compacting State’s consumption of groundwater to the extent the consumptive depletes stream flow in the Republican River Compact. We are now preparing our exceptions to the recommendation.

D. The Rio Grande. Five cases have implications for Colorado’s allocation of water from the Rio Grande. The cases include the quit title action over the Rio Grande Project and its facilities, and four cases raising issues related to endan- gered species including the silvery minnow and the willow flycatcher.

In 1997, United States v. Elephant Butte Irrigation District was filed by the U.S. in New Mexico federal district court to vacate the Elephant Butte and the Costilla Reservoirs for the irrigation of land in New Mexico and Colorado and to award Colorado compensation, a victory. Various counterclaims filed that two right to the project of operation. Project storage is the linchpin of Colorado’s strategy to get the Supreme Court to understand that the Rio Grande Compact. Colorado moved to intervene in the suit in order to protect our interests under the compact. If interven- tion is denied, Colorado will continue to monitor the suit and participate in this case. If the court denies our motion, we will monitor the case and seek to participate as amicus curiae.

In State of New Mexico, et al. v. Bruce Buffett, et al. the State of New Mexico federal district court to declare that the U.S. Fish and Wildlife Service’s decision to designate habi- tat the silvery minnow without producing an EIS. The decision was overturned on appeal, and is now before the U.S. Court of Appeals. The case is a significant victory for our efforts to prevent an undue burden on silvery minnow efforts to gain the legal recognition they deserve.

Continued on Page 8
and the San Juan river basins. These programs are necessary to avoid repeated conflicts between the proponents of individual water projects and federal agencies, and to enable Colorado to develop its water resources consistent with its compact and decreed environmental limits. My office will continue to work closely with the Department of Natural Resources to implement these programs. As an example, the AG's office continues to be actively involved in the implementation of the Tamarack exchange project and other components of providing water to satisfy Colorado's obligation under the three-state agreement concerning the endangered species on the Platte River.

PROTECTING COLORADO'S INTERESTS AND VESTED WATER RIGHTS IN COLORADO COURTS.

My office has a current caseload of nearly 1,000 water cases in which the State and its agencies participate. Our water attorneys represent the State Engineer and Division Engineers as objects in cases raising issues concerning administration of water rights. Many state agencies are water users with decreed water rights — for example the Division of Wildlife, the Division of Parks and Outdoor Recreation, and the Department of Corrections — and our attorneys represent these agencies in connection with both water right applications and statement of opposition to protect their rights. Similarly, our attorneys represent the Colorado Water Conservation Board as applicant and as objector in connection with the CWCB's appropriations under the instream flow program. Here are just a couple of examples of what we've been doing:

A. Union Park. The State filed a brief on behalf of the State and Division Engineers in the Colorado Supreme Court in support of the water court's denial of this application on water availability grounds. Arapahoe County had asked the water court to disregard the 1.1 million acre foot Aspinald Unit water rights when determining water availability. The water court refused to do so and rejected Arapahoe's argument based on the Law of the River. Oral argument was held on March 1, 2000.

B. Sportmen's Ranch. This case is set for an eight-week trial beginning July 10, 2000, in Fairplay, Colorado. The Applicant claims a storage right in the underground South Park aquifers, an area of about 112 square miles that is largely unappropriated land owned by the Applicant. This case may make important case law concerning underground storing and the difference between underground storage and recharge. In a related case that may be joined to the main case, Park County and the private citizen argue that a water user must get permission from a surface owner in order to store water underground beneath their land. Our attorneys represent the State and Division Engineers, the Division of Wildlife, and the CWCB as objects in this case.

C. Haystacks, Faits and Division Engineer. My office argued an interesting case before the Colorado Supreme Court in January involving the issue of whether a water right could be revived by diversion after it had been abandoned. The State and Division Engineer argued in support of the water court's finding that water rights could not be revived once abandoned, even if the abandoned rights were not listed on the abandonment list.

THE CORNERSTONES OF OUR PAST AND FUTURE.

A. Review of the Past. When I think about Colorado water, I think about five cornerstones about both our past and future.

1. Irrigated Agriculture. The Colorado myth is that the private market place to work out our water disputes and do not give that power to a state board or agency to impose a statewide policy on us. Combine this system with the fundamental cornerstones of Colorado water law that first in time is first in right and you have a system where all water users can count on the reliability of their water rights even when challenged by water users with more power, more money, or a more popular use. The problem of course is that we may kill each other with litigation costs.

For example, the City of Denver's current South Platte exchange case has completed its seventh week of trial and eight more weeks are scheduled. I recognize that the issues are complex, but nothing is that complex. Litigation about water is not a state of control. There once was a time when a water matter could get tried in a day, but now the typical trial is lasting a week, and two-week trials are not unusual. If we don't stop this "use, sue, sue" type of thinking, we will kill this system.

2. Interstate Compacts. The water leaders of the last hundred years were also foresighted enough to bargain hard with neighboring and downstream states to insure Colorado's ability to develop its fair share of our interstate streams at its own pace and according to our own laws and traditions.

3. Instream Flow Program. The instream flow program adopted by Colorado is a remarkable program. The 1973 creation of the instream flow program by the General Assembly put Colorado in the forefront of addressing important values for instream flow protection. In the years since its creation, the Colorado Water Conservation Board has protected instream flows in over 3,000 miles of stream in Colorado.

4. A Review of the Future. Each of these five cornerstones is important for as we enter the 21st century.

5. Irrigated Agriculture. Whether due to today's farm economy or the incredible growth pressure from the booming Front Range populations, irrigated agriculture today is an important threshold. As the water leaders of this state, the Colorado Water Congress holds the key to the survival of irrigated agriculture. These irrigated farms and ranches feed us, they provide us with open space, and they are the foundation for many of our communities.

I know there are solutions that will lessen the pressure to move water from agriculture. Through cooperation such as the type of approaches identified in the Metro Water Supply Investigation we can avoid more dry-up of irrigated agriculture.

6. Storage. Cooperation is also the key to building new water storage facilities and more fully utilizing existing reservoirs in this state. The City of Aurora provided us all with a fine example of leadership and cooperation in the recently concluded Homestake negotiation. The Williams Fork-Woolford Mountain compromise is another great example.

On the other side of the coin, it is no secret that I have personally opposed the Union Park project. I don't oppose that project just because it is a trans-mountain diversion. Trans mountain diversions have historically played an important role in water use in Colorado, and in appropriate circumstances I am sure they will in the future. I oppose Union Park because the reservoir would be huge, nearly three times the size of Dillon Reservoir, and would be hugely expensive. The Union Park proposal disregards the fundamental "first in time, first in right" doctrine and literally would steal the water for this reservoir from senior appropriators — if this can happen in Guffin County, it can happen in your county.

7. The Colorado System. Our system is unique in that it places the private market place to work out our water disputes and does not give that power to a state board or agency to impose a statewide policy on us. Combine this system with the fundamental cornerstones of Colorado water law that first in time is first in right and you have a system where all water users can count on the reliability of their water rights even when challenged by water users with more power, more money, or a more popular use. The problem of course is that we may kill each other with litigation costs.

Conclusions.

We have come a long way in water development since my ancestors came to Colorado and we have the right to be proud of our accomplishments. The next millennium's challenges must be met without sacrificing what we fought so hard to accomplish.

(End of a speech given at the Colorado Water Congress 42nd Annual Convention, January 27, 2000)