Guest Editorial

**Buying Water Rights For Instream Flows**

- An Opportunity to Resolve Environmental Conflicts

by Colorado Attorney General Ken Salazar

The current budget surplus gives the Bush administration a unique opportunity to achieve the instream flow protection sought for our federal public lands without using the confrontational tactics that have threatened to upset decades of pre-existing water uses and the local economies that those uses support. The end result of these approaches has enriched water lawyers and engineers, but little protection of the resource has been achieved. Indeed, the United States has unsuccessfully spent over $70,000,000 in the last three decades in an effort to protect instream flows with little success. All of that could change if the Bush administration would aggressively use the Land and Water Conservation Fund to help states purchase or lease senior water rights from private sellers and dedicate those rights to instream flows.

The members of the Colorado Water Congresses are only too familiar with the attempts by various federal agencies to impose by-pass flows during the re-permitting or re-licensing of structures impounding on, diverting from, or passing through federal lands. This approach has endangered the yield of many municipal and irrigation water suppliers, years and even decades after those water users first began their diversions. Though the State understands and supports the water needs of our public lands, the federal government's by-pass flow approach is unfair and must change if meaningful protection for our public lands is to be achieved.

Continued on Page 4

---

**A Colorado River Compromise**

by Sue McClurg

Permission to reprint the following article, "A Colorado River Compromise", from the November/December 2000 issue of *Western Water* has been granted by the Water Education Foundation. For further information contact the Water Education Foundation at 717 K Street, Suite 317, Sacramento, CA 95814; (916)444-6240 or www.watereducation.org.

When one thinks of Colorado River water allocations, conflict comes first to mind. But compromise as much as conflict shaped division of this river's vital water resources, with conflict often serving as the catalyst for a compromise.

As one of the first states to develop in the vast and arid Southwest region, California's growth -- and its corresponding need for Colorado River water -- has driven much of the debate over how to allocate the waters of the Colorado River. It was controversy over California's share of water from the proposed Boulder (Hoover) Dam in the 1920s that led, in large part, to the historic Colorado River Compact of 1922 -- the agreement that divided the river's water between the Upper and Lower basins.

Some 75 years later, California's reliance on Colorado River water above and beyond its base of 4.4 million acre-feet apportionment sparked a new conflict. Growth in Arizona and Nevada, its Lower Basin neighbors, reduced the amount of unused water for California. With the Lower Basin at its full entitlement, the continuing demands for water generated unease in the Upper Basin. Favorable hydrologic conditions and the fact that the Upper Basin states (Colorado, Utah, Wyoming and New Mexico) are not using their full entitlement have threatened to upset decades of pre-existing water uses and the local economies that those uses support. The end result of these approaches has enriched water lawyers and engineers, but little protection of the resource has been achieved. Indeed, the United States has unsuccessfully spent over $70,000,000 in the last three decades in an effort to protect instream flows with little success. All of that could change if the Bush administration would aggressively use the Land and Water Conservation Fund to help states purchase or lease senior water rights from private sellers and dedicate those rights to instream flows.

The members of the Colorado Water Congresses are only too familiar with the attempts by various federal agencies to impose by-pass flows during the re-permitting or re-licensing of structures impounding on, diverting from, or passing through federal lands. This approach has endangered the yield of many municipal and irrigation water suppliers, years and even decades after those water users first began their diversions. Though the State understands and supports the water needs of our public lands, the federal government's by-pass flow approach is unfair and must change if meaningful protection for our public lands is to be achieved.

Continued on Page 4

---

**Colorado Water Congress**

**Summer Convention**

Sheraton Steamboat Resort

August 23 & 24, 2001
**Ronald A. Hellbush, Steamboat Springs**

Ronald A. Hellbush is an attorney and legal consultant with extensive experience in water law and policy. He has been involved in numerous natural resource based clients in Colorado. He was a political consultant for numerous natural resource based clients in Colorado. In addition, Ms. Kimball served as the legislative assistant to Senator James A. McClure (R-ID) in Washington D.C. and served on the Senate Environment and Public Works Committee. Ms. Kimball serves on the Board of the Colorado Mining Association and is part of that organization's leadership. She also serves on the board of the Colorado Water Congress, the Colorado Coalition for New Energy Technology and Colorado Preservation Inc. Ms. Kimball holds two Master's degrees; one in Business Administration from the University of Montana. Her B.A. is from the University of Idaho.

**RICHARD D. "DICK" MacRAVEY**

Richard D. "Dick" MacRavey, 70, is in his twenty-second 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. During his tenure with the Larimer-Weld COG, he was responsible for developing and guiding the early stages of the Larimer-Weld "208" Water Quality Management Plan for the State of Colorado.

In 1970, MacRavey served as Chairman of the Colorado Good Government Committee for the passage of the State Constitutional Amendments One (Governor's Cabinet), Two (State Civil Service Reorganization) and Three (Local Government Modernization). The three amendments were approved overwhelmingly by the people of Colorado. During 1988, MacRavey was appointed by the Legislative Leadership to the Larimer-Weld "208" Water Quality Management Plan for the State of Colorado.

In 1989, the Legislative Leadership appointed MacRavey to the 16-member Legislative Council Subcommittee on Long-Range Planning for the State Government. In 1990, MacRavey 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. MacRavey is a member of the American Society of Association Executives, Colorado Society of Association Executives, Colorado Water Congress, American Water Works Association and the International City Management Association (cooperating member). In 1999, MacRavey was named the twentieth recipient of the "Wayne N. Aspinall Water Leader of the Year Award". MacRavey and his wife, Mary, are the parents of six adult children and four grandchildren. MacRavey has a Bachelor of Science Degree from Montana State University 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.
Save Our Constitution

By J. Evan Goulding

The framers of the U.S. Constitution envisioned a stable core document establishing the framework for our democracy, enshrining the rights and freedoms of individuals. They envisioned that it would be defined and implemented by statutes, and amended with great difficulty, only when circumstances demanded a core solution. This philosophy has served our country extremely well.

Initiatives to change Colorado's Constitution have proliferated in recent years.

As states were formed, they were also based upon core documents called constitutions, but the process of amendment varies significantly. Interestingly, while constitutional issues were being considered during the founding of many of the western states, the general perception was that the legislatures were controlled by railroads, mining and logging companies, and thus unresponsive to the people. Procedures were developed to allow citizens to petition for changes, as a safeguard against the domination of “special interests.” In fact, many of the earliest initiated amendments to laws and constitutions were enacted to impose taxes on the properties of such special interests as railroads and loggers, which legislatures were unwilling to do.

Currently 18 states allow initiatives proposing constitutional amendments, while 21 states allow changes or additions to statutes by initiative and election. Colorado is one which allows both statutory changes and constitutional amendments by the petition route.

In some of those states that do not currently allow the initiative process, there are organized efforts under way to add this lawmaking tool to the people’s arsenal. Capitalizing on a rising tide of dissatisfaction with both major political parties, a general distrust of big government, and the promise of lower taxes and less bureaucracy, these efforts frequently pass.

The City Club of Portland, in one of the most comprehensive studies on the initiative and referendum process, notes that "it provides a way to propose and vote on constitutional amendments and statutes, including those the legislative assembly has been unable or unwilling to refer or enact." In Colorado as well, the lack of confidence in elected officials to make laws that reflect the will of the people has increased dramatically in the last thirty years. Not by accident, this coincides with the increased use of the initiative process nationwide.

As in other states, initiatives have proliferated in Colorado in recent years. Several factors have made Colorado an easy target for single agenda individuals and out-of-state interest groups, as well as very sincere and well-meaning citizen groups who feel that this is their only route to affect the process. The petition phenomenon has sparked a cottage industry of those who seek to bypass or overcome legislative inaction.

Many of us who are veterans of many campaigns fighting off some initiated measures have, however, come to the conclusion that Colorado's initiative process should be changed. Like our founding fathers, we think that the law of our land should discourage the use of constitutional amendments to legislate proposals that do not rise to the level of seriousness and long-term impact to be incorporated into the state's constitution.

None of us begrudge the right of citizens to seek redress through initiated petitions, but changing the constitution should be reserved only for issues of constitutional gravity.

Let me highlight some points of critical concern:

Colorado's initiative process is the least restrictive of any in the nation, and money, no matter where it comes from, can buy a lot. It is remarkably easy to get an issue on the ballot with money, and remarkably difficult without. Once an issue is on the ballot, the constitution can be amended by a simple majority of those voting. I believe that this disrespects the seminal importance of the constitution.

It is as easy to amend the constitution by initiative as it is to make a statutory amendment. The process is the same, and many of the citizens of Colorado don’t understand the difference. Proponents, however, are keenly aware that a constitutional amendment can be changed only with extreme difficulty, while the courts or the legislature can begin immediately to amend an initiated statute. Initiatives are being proposed as constitutional amendments chiefly because they are harder to change, not because they belong in the constitution.

This is akin to jamming a square peg in a round hole just because it is harder to remove, not because it belongs there. There is no requirement for geographic distribution in the collection of signatures. A small group of petition circulators working supermarket parking lots in Denver can get an issue on the ballot which might dramatically affect the people in the San Luis Valley or in ranching country or in the resort areas of the mountains, while no one in those areas is ever asked to approve or disapprove the proposition.

Once a title is set, there is no further opportunity for debate, compromise, or amendment to-proposal. Such proposals tend to be poorly drafted, containing inconsistent provisions, unanticipated fiscal impacts, or other unintended consequences. The TABOR Amendment, adopted by a large majority in 1992, for instance, required over fifty lawsuits, most of which went to the Colorado Supreme Court, to develop the understanding and interpretations necessary to live with the complex measure.

Ballot issues proposed by single agenda individuals or special interest groups frequently are intended to limit government, or to reallocate resources or relationships between segments of society. Because the frequency and devastating impacts affect the business and economic community, agriculture, tourism and the public, the burden falls to those sectors and their associations to raise unbelievable amounts of money to fund costly and repetitive campaigns.

In the most recent election, for example, many businesses were so concerned about the negative impacts of Amendment 24 that they made huge contributions to the campaign against it, and before the ink had dried on their checks, they were being asked to put out more money to defeat Amendment 21. And while this was going on, Amendment 23 was quietly moving toward passage.

As a result, Colorado's constitution is the 9th largest in the country, over (46,000 words), over ten times larger than the United States Constitution. Many “non-constitutional” provisions have been embedded in the Colorado constitution. Would anyone argue that a prohibition against steel traps is a constitutional issue? Or that pollution standards for confined animal feeding operations affect the core governance of the state?

The efforts that have been made to make changes in the past point out several things:

1. Legislative efforts are unlikely to be successful. Attitudes are too diverse, and too few legislators are willing to go against vocal advocates of special interest constitutional legislation.

2. To succeed in changing the system in any meaningful way will require a focused, intense and determined effort.

3. The effort must have strong support from business; agriculture and rural Colorado; academic leaders; community and civic leaders; the press and media; and any others who can support the effort.

4. Any proposal for change must be developed through broad based public input, and must have broad based public support.

5. There will be significant opposition to whatever is put forth. This effort will succeed only with a strong and effective educational campaign leading up to the election.

As many of us were catching our breath following the campaigns against Amendments 24 and 21, we shared a widespread sense of frustration with having to go through this every other year, and a desire to do something about it. Recognizing the need to strike while the feeling is strong, we began putting together a plan. Our objective is to see changes enacted by the voters on November 5, 2002.

A Statewide Effort...

A concentrated effort is underway at this time to form a statewide coalition to develop a plan and mount a major campaign. It will require intense educational efforts to convince the public that the system can be changed without damaging citizens' right to petition, but we think it is worth the effort.

Permission to reprint this article has been granted by the Special District Association of Colorado.
Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1

Continued from Page 1
I Workshops

Right: Supreme Court Justice Nancy Rice delivered the Luncheon address at the Ethics Workshop.

Left: Denver Attorney Neil O'Toole provided an exciting presentation on Buckley v. ACLF at the Initiative Process Workshop.

Left: The audience at the Workshop on "Water Development: Past, Present & Future." (In the foreground is W.D. Farr, one of Colorado's great water leaders.)


Left: Northern Water Conservancy District Board members attending the NWRA 2000 Convention in San Diego.

Right: Jim Lochhead led the discussion at the Workshop on "What You Should Know About the Nine Interstate Compacts that Colorado is a Signatory." (In the background is David Robbins.)

Participants at the Federal Environmental Laws Workshop were attentive.

The leadoff panel on Endangered Species included Margot Zallen, Attorney in the U.S. Solicitor's Office, Henry Maddox of the U.S. Fish and Wildlife, Greg Walcher, DNR Executive Director and Chips Barry, Denver Water Manager.
Colorado Water Congress
43rd Annual Convention

A surprise guest speaker was Congressman Scott McInnis.

Denver Post reporter Al Minick interviewed CWC Executive Director Dick MacRae.

Denver News Media Consultant Neal Brown led a workshop on “Selling Yourself to the News Media.”

The “mystery speaker” was greeted by “Hello to the Chief” – the speaker was President Teddy Rosene (aka Chips Barry).

Attorney General Ken Salazar addresses the Thursday Luncheon.


The reception was a popular event.

The General Sessions were standing room only.

Workshops were very well attended.

The Luncheons – were well attended.
CWC 2001
CONVENTION EXHIBITORS

Colorado River Water Conservation District

Brown & Caldwell

Colorado Water Conservation Board

Hix Insurance Associates, Inc.

Parsons Engineering

URS Greiner Woodward Clyde

GEI Consultants, Inc.

Knight, Piesold and Company

Wright Water Engineers, Inc.

Colorado Water Rights
If there is not enough mainstream water to meet the Lower Basin’s 7.5 million acre-feet annual appropriation, the Secretary can declare a shortage, in which case California could receive less than 4.4 million acre-feet. To date, no Secretary has declared a shortage.

The 2001 AOP

With the surplus declarations of the last four years, California has been able to use up to 5.2 million acre-feet a year – some 800,000 acre-feet beyond its basic appropriation. For southern California’s urban interests, the ability to use this water is critical because under the state’s seven-party agreement, MWD is last in line. Without surplus flows, MWD’s Colorado River Aqueduct (delivery capacity 1.3 million acre-feet) would only be half full.

In May, Bureau officials began holding workshops on the AOP for 2001. In general, the goal is for the Interior Secretary to sign the AOP no later than Oct. 1 of the previous year (i.e., Oct. 1, 2000 for the 2001 calendar year) to provide the Lower Basin states and Mexico sufficient time to complete their water orders for the ensuing year (i.e., water orders for 2001 would be submitted in November or December 2000). Babbitt did not sign the 2001 AOP until mid-January.

The delay was caused, in part, because of focus on the draft Interim Surplus Criteria. Of most concern to the other basin states and certain stakeholder groups was that the Secretary’s intent to declare a surplus for 2001 was not set as a prerequisite for language in the interim surplus guidelines and, conversely, that the language in the two documents did not contradict one another.

But the primary reasons for the delay were concerns about hydrologic conditions within the basin and uncertainty in the California negotiations. With unregulated runoff into Lake Powell during water year 2000 only 62 percent of average, there was considerable debate over whether Babbitt could – or should – declare a surplus on the Lower Colorado River.

Environmental groups argued that given the hydrologic conditions, no surplus should be declared. In a mid-off surpluses are diverted by MWD.

Before MWD’s Colorado River Aqueduct, Arizona was 56 percent and Nevada 4 percent.

The Boulder Canyon Project Act, in conjunction with the decree, established the Secretary of the Interior’s authorities over much of the Lower Colorado River. (In contrast, Upper Basin water allocations are overseen by a four-state commission authorized by the 1948 Upper Colorado River Basin Compact.)

The Secretary has the authority to determine on an annual basis whether normal, surplus or shortage conditions exist on the Lower Colorado River. In a normal year, 7.5 million acre-feet are made available to the basin. If Colorado River water is diverted in excess of the basin’s basic appropriation, a surplus occurs when there is more than 7.5 million acre-feet of mainstream water available to meet the demands of Arizona, California and Nevada, collectively, and the Secretary has the authority to determine when normal, surplus or shortage conditions exist on the Lower Colorado River. In the 1990s, Babbitt declared the first formal surplus under the AOP for the last half of 1996. Surpluses also were declared in 1997, 1998, 1999 and 2000.

November letter from six environmental groups – including the Pacific Institute and Southwest Rivers – to top Bureau officials, conservationists wrote, “Making a surplus declaration based largely on demand from users in the Lower Basin, when hydrologic conditions give no clear indication of excess mainstream water, creates a bad precedent that could reduce California’s incentive to implement conservation measures and lead to long-term reliance on the Upper Basin.”

Initially, said Michael Cohen, a research associate at the Pacific Institute, California pushed for a full surplus declaration for 2001, in which agricultural water users would receive 150,000 acre-feet, a departure from the amount needed to keep MWD’s aqueduct full. The Upper Basin states, he said, objected to this proposal. At the final AOP workshop consultation held Dec. 1, the Upper Basin states said they would only accept a surplus declaration if the state’s water right for 2001 could be enforced. In response, California proposed that the Secretary extend the AOP, giving the Upper Basin states time to complete their entitlements.

Without surplus flows, MWD’s Colorado River Aqueduct (delivery capacity 1.3 million acre-feet) would only be half full.

In May, Bureau officials began holding workshops on the AOP for 2001. In general, the goal is for the Interior Secretary to sign the AOP no later than Oct. 1 of the previous year (i.e., Oct. 1, 2000 for the 2001 calendar year) to provide the Lower Basin states and Mexico sufficient time to complete their water orders for the ensuing year (i.e., water orders for 2001 would be submitted in November or December 2000). Babbitt did not sign the 2001 AOP until mid-January.

The delay was caused, in part, because of focus on the draft Interim Surplus Criteria. Of most concern to the other basin states and certain stakeholder groups was that the Secretary’s intent to declare a surplus for 2001 was not set as a prerequisite for language in the interim surplus guidelines and, conversely, that the language in the two documents did not contradict one another.

But the primary reasons for the delay were concerns about hydrologic conditions within the basin and uncertainty in the California negotiations. With unregulated runoff into Lake Powell during water year 2000 only 62 percent of average, there was considerable debate over whether Babbitt could – or should – declare a surplus on the Lower Colorado River.

Environmental groups argued that given the hydrologic conditions, no surplus should be declared. In a mid-year period. Everybody is depending on hydrology – hydrology no one is assuered of. That’s the nature of the water supply business.”

- Jim Lockhead, attorney

There are no assurances during this 15-year period. California has limited access to Colorado River water. Much of the water is diverted by MWD.

Before MWD's Colorado River Aqueduct, Arizona was 56 percent and Nevada 4 percent.

The Boulder Canyon Project Act, in conjunction with the decree, established the Secretary of the Interior’s authorities over much of the Lower Colorado River. (In contrast, Upper Basin water allocations are overseen by a four-state commission authorized by the 1948 Upper Colorado River Basin Compact.)

The Secretary has the authority to determine on an annual basis whether normal, surplus or shortage conditions exist on the Lower Colorado River. In a normal year, 7.5 million acre-feet are made available to the basin. If Colorado River water is diverted in excess of the basin’s basic appropriation, a surplus occurs when there is more than 7.5 million acre-feet of mainstream water available to meet the demands of Arizona, California and Nevada, collectively, and the Secretary has the authority to determine when normal, surplus or shortage conditions exist on the Lower Colorado River. In the 1990s, Babbitt declared the first formal surplus under the AOP for the last half of 1996. Surpluses also were declared in 1997, 1998, 1999 and 2000.

November letter from six environmental groups – including the Pacific Institute and Southwest Rivers – to top Bureau officials, conservationists wrote, "Making a surplus declaration based largely on demand from users in the Lower Basin, when hydrologic conditions give no clear indication of excess mainstream water, creates a bad precedent that could reduce California's incentive to implement conservation measures and lead to long-term reliance on the Upper Basin." Initially, said Michael Cohen, a research associate at the Pacific Institute, California pushed for a full surplus declaration for 2001, in which agricultural water users would receive 150,000 acre-feet, a departure from the amount needed to keep MWD's aqueduct full. The Upper Basin states, he said, objected to this proposal. At the final AOP workshop consultation held Dec. 1, the Upper Basin states said they would only accept a surplus declaration if the state's water right for 2001 could be enforced. In response, California proposed that the Secretary extend the AOP, giving the Upper Basin states time to complete their entitlements.

Without surplus flows, MWD's Colorado River Aqueduct (delivery capacity 1.3 million acre-feet) would only be half full.

In May, Bureau officials began holding workshops on the AOP for 2001. In general, the goal is for the Interior Secretary to sign the AOP no later than Oct. 1 of the previous year (i.e., Oct. 1, 2000 for the 2001 calendar year) to provide the Lower Basin states and Mexico sufficient time to complete their water orders for the ensuing year (i.e., water orders for 2001 would be submitted in November or December 2000). Babbitt did not sign the 2001 AOP until mid-January.

The delay was caused, in part, because of focus on the draft Interim Surplus Criteria. Of most concern to the other basin states and certain stakeholder groups was that the Secretary's intent to declare a surplus for 2001 was not set as a prerequisite for language in the interim surplus guidelines and, conversely, that the language in the two documents did not contradict one another.

But the primary reasons for the delay were concerns about hydrologic conditions within the basin and uncertainty in the California negotiations. With unregulated runoff into Lake Powell during water year 2000 only 62 percent of average, there was considerable debate over whether Babbitt could - or should - declare a surplus on the Lower Colorado River.

Environmental groups argued that given the hydrologic conditions, no surplus should be declared. In a mid-year period. Everybody is depending on hydrology - hydrology no one is assured of. That's the nature of the water supply business." - Jim Lockhead, attorney

November letter from six environmental groups - including the Pacific Institute and Southwest Rivers - to top Bureau officials, conservationists wrote, "Making a surplus declaration based largely on demand from users in the Lower Basin, when hydrologic conditions give no clear indication of excess mainstream water, creates a bad precedent that could reduce California's incentive to implement conservation measures and lead to long-term reliance on the Upper Basin." Initially, said Michael Cohen, a research associate at the Pacific Institute, California pushed for a full surplus declaration for 2001, in which agricultural water users would receive 150,000 acre-feet, a departure from the amount needed to keep MWD's aqueduct full. The Upper Basin states, he said, objected to this proposal. At the final AOP workshop consultation held Dec. 1, the Upper Basin states said they would only accept a surplus declaration if the state's water right for 2001 could be enforced. In response, California proposed that the Secretary extend the AOP, giving the Upper Basin states time to complete their entitlements.

Without surplus flows, MWD's Colorado River Aqueduct (delivery capacity 1.3 million acre-feet) would only be half full.
Continued from Page 9

In July, the Bureau released a draft environmental impact statement (EIS) that identified four possible alternatives for implementation of Interim Surplus Criteria plus a "no action" alternative. The four alternatives examined the competing six-state and California alternatives, as well as flood control and shortage provision alternatives.

Initially, there was a great deal of difference between the six-state proposal and a California-only proposal on interbasin transfers, water rights settlement, and water management in the Colorado River Basin states.

"We, California, had certain needs and we clearly understood those needs, but I don't think we clearly understood the needs of the other states," Underwood said.

The Bureau was then asked to square out the subsequent negotiations, using the six-state proposal as the basis of the plan, deviating from it only where necessary. "The goal was to build trust and better communicate the viewpoints of the different parties," he said.

That's why the Colorado River system has been kept at maximum storage levels with releases strictly limited to drought conditions and water needs and flood control releases. This new operation plan will allow, under certain circumstances, for greater drawdown of Lake Mead (approximately 1,635 feet in 2016). This will provide a California surplus and will result in a greater probability of surplus flows, allowing the state to bank water for future use. According to the Bureau, the average reservoir releases of water in Lake Mead will be 1.18 million acre-feet less than without this agreement -- 4.6 percent of the reservoir's total capacity.

The plan is based on projections of runoff within the Colorado River basin, which was set at 100 percent probability of hydrologic surpluses from 2002 to 2006, with a gradual decrease from 98 percent probability in 2007 to 60 percent in 2016. For the period 2017 through 2050, the probability ranges between 27 and 15 percent.

"The AOPs in the 1970s reflect a concern that they would be dealing with shortages, not surpluses," Underwood said. "That was a totally different environment. In the early 1970s, California had a very different population and way of living. The current situation is that we are very knowledgeable about the river, we have a much better understanding of the river's flow and we understand the fact that drought is a major threat. The water system has been developed to deal with drought and we are already managing it, so it's not a crisis situation nowadays."
McClurg: A Colorado River Compromise; cont.

Continued from Page 10

There is enough water in the basin for everyone. It’s going to take ingenuity, water conservation and more banking and transfers.”

- Bruce Babbitt

SDCWA to have a way to transport the water from Imperial Valley to San Diego County for the entire life of the proposed transfer, 45 years, with an option to renew for another 30 years.

However, SDCWA’s subsequent agreement with MWD to divert and exchange the water from Imperial Valley to San Diego County using MWD’s Colorado River Aqueduct is for only 30 years – leaving SDCWA with a 15-year gap. SDCWA is studying several means by which to close that gap, but in December, the urban water supplier and IID had to extend their transfer agreement and the U.S. Fish and Wildlife Service have just begun negotiations on environmental mitigation measures for the conservation/transfer program, including the program’s impact on the Salton Sea, which receives a substantial portion of its inflow from agricultural runoff. As farmers conserve water to transfer to San Diego and others, inflow into the Salton Sea will decline.

Negotiations are expected to take up to three months, delaying completion of the EIR/EIS on the transfer.

In addition, IID has placed a $15 million cap on the amount of money it will spend on mitigation measures. In newspaper reports, IID officials have indicated that if the mitigation costs prove to be too expensive or San Diego is unable to develop a transportation plan for the remaining years of the agreement, it could cancel the IID-SDCWA transfer agreement.

While much work remains the purview of Babbitt’s successor, most people do program, including the Secretary undoing this.”

“This is not a partisan issue,” Hayes said. “This is good river management. This has been negotiated with all the key parties and all the states. I don’t see a Secretary undoing this.”

Calendar of COMING EVENTS

August 23 - 24, 2001 - CWC SUMMER CONVENTION – Sheraton Steamboat Resort, Steamboat Springs, CO.

September 10 - 11, 2001 - COLORADO WATER LAW SEMINAR - CWC Conference Room, 1580 Logan Street, Suite 400, Denver, CO.

November 16, 2001 - ENDANGERED SPECIES WORKSHOP - CWC Conference Room, 1580 Logan Street, Suite 400, Denver, CO.

January 24 - 25, 2002 - CWC 44TH ANNUAL CONVENTION - Holiday Inn Northglenn, I-25 & 120th Avenue, Northglenn, CO.

For more information on these events or the latest information on other newly scheduled events, call the Colorado Water Congress at (303) 897-0812, fax (303) 897-1607, e-mail: macravey@gowatercongress.org, or check our website at www.cowatercongress.org.

CWC WEB PAGE

The Colorado Water Congress (CWC) now has a “Web Page.” This page can be accessed at www.cowatercongress.org. This CWC effort is in the process of continual development. Your suggestions are, of course, most welcome. The CWC Education Committee under the Chairmanship of Tom Cech has the prime responsibility for the continual improvement of CWC’s web page.

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.


3. Glenn G. Saunders and John U. Carlson (for either a law student or an associate of a law firm) Legal Scholarship for 2001 – Colorado Water Law Seminar.

4. Bill Hornby (for either a journalism student or a reporter of a news media organization) Journalist Scholarship for 2001 – 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 2001 – Colorado Water Law Seminar.


The Wayne N. Aspinall Award nomination form is due at the CWC offices by August 1, 2001. The scholarship nominations are due at the CWC offices by July 2, 2001. If you are interested in any of the above forms, please fax or write: Colorado Water Congress, 1580 Logan St., Suite 400, Denver, CO 80201, phone (303) 837-0812, fax (303) 837-1607.
This report is intended to bring the membership up-to-date with Colorado Water Congress activities for calendar year 2000. 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. Eighteen of the twenty-three water bills introduced in the State Legislature and supported by CWC were enacted into law.
2. The three water bills opposed by CWC were 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. Continued a Strategic Planning effort as to CWC’s role in the 21st century;
5. Participated in the Legislature’s special committee on water and land resources (SD9-74);
6. Participated in the efforts that were successful in defeating Amendment Twenty-Four (Growth);
7. Participated in a very active manner in the efforts that were successful in defeating Amendment Twenty-One (Tax Cut);

* 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 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 00-1290, concerning the extension of an increase in water quality control permit program fees, and, in connection therewith, adding an element to a reporting requirement concerning such program.
2. HB 00-1314, concerning authority for the division of wildlife to reintroduce in Colorado two endangered species that are listed under the federal “Endangered Species Act of 1973” and, in connection therewith, authorizing the reintroduction of the bony-tail and the black-footed ferret.
3. HB 00-1315, concerning standards for reclaimed domestic wastewater to be used for purposes other than drinking.
4. HB 00-1365, concerning Monument Lake Dam, and, in connection therewith, the clarification and transfer of ownership of the dam structure and water storage rights.
5. HB 00-1419, concerning the funding of Colorado Water Conservation Board projects, and making appropriations in connection therewith.
6. HJR 00-1429, concerning an increase in the amount of moneys in the species conservation trust fund, and making an appropriation in connection therewith.
7. HB 00-1431, concerning water and wastewater facility operators.
8. HB 00-1438, concerning repeal of the power of the Colorado Water Conservation Board regarding conditional commitments for instream flow uses in the Yampa River Basin.
9. HB 00-1466, concerning divisions within the Department of Natural Resources pertaining to the conservation of native vegetation.
10. HJR 00-1030, concerning support for the Aspinall Memorial Commission.
11. HJR 00-1031, concerning the species conservation eligibility list.
12. SB 00-033, concerning exemptions under the federal “Safe Drinking Water Act.”
13. SB 00-172, concerning the title setting process for state-wide initiatives, and, in connection therewith, eliminating the summary of the measure, and addressing motions for Ballot Title Board hearings.
14. SB 00-190, concerning methyl tertiary butyl ether.
15. SJR 00-003, concerning additions and modifications to the Water Pollution Control Revolving Fund eligibility list.
16. SJR 00-004, concerning additions and modifications to the Drinking Water Revolving Fund eligibility list.
17. SJR 00-006, concerning the long-term funding for endangered fish recovery programs designed to ensure the continued issuance of permits for water project construction, and, in connection therewith, leading to the enlisting of four native fish species.
18. SJR 00-011, concerning the redemption of the Great Sand Dunes National Monument as a national park.

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 — 1/26/00, 1/28/00, 4/24/00, 6/16/00, 8/23/00, 12/18/00;
- Management & Budget Committee — 2/25/00, 3/24/00, 7/27/00, 9/22/00, 10/27/00, 12/9/00;
- CWC Official Business Meeting — 1/28/00 and 8/25/00;
- State Affairs (Legislative) Committee — 1/10/00, 1/31/00, 2/7/00, 2/21/00, 3/8/00, 3/20/00, 4/5/00, 4/17/00, 5/31/00, 12/10/00;
- Federal Affairs Committee — 1/10/00, 2/7/00, 3/8/00, 4/4/00, 5/31/00;
- CWC Water Education Committee — 6/9/00, 8/14/00, 10/6/00;
- Special Committee on Amendment TWENTY-ONE (Tax Cut) — 6/21/00, 7/6/00, 8/22/00, 9/19/00, 10/2/00, 10/31/00;
- CWC Resolutions Committee — 6/19/00 and 12/8/00;
- CWC Endangered Species Colorado River Project Management Committee — 1/10/00, 2/7/00, 4/3/00, 5/11/00, 6/20/00, 8/8/00, 10/30/00, 12/4/00;
- CWC Endangered Species Platte River Project — 1/21/00, 2/24/00, 3/23/00, 4/27/00, 5/25/00, 6/29/00, 8/5/00, 9/14/00, 10/20/00, 11/16/00, 12/15/00;

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

1. CWC 42nd Annual Convention held January 27-28, 2000;
2. CWC Summer Convention held August 24-25, 2000;
3. CWC Water Law Seminar held September 11-12, 2000;
4. CWC Workshop on the initiative process held October 11, 2000;
5. CWC Conference on Endangered Species held November 14, 2000;
6. CWC Workshop on Federal Environmental Law held November 15, 2000;

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

1. Secured twenty new sustaining members, and nine new individual members during 2000;
2. Named John Porter the 20th recipient of the "Wayne N. Aspinall Water Leader of the Year Award" at the 2000 CWC Annual Convention;
3. Published Colorado Water Law Enacted in 2000 of Interest to Water Users (190 pages);

In regard to CWC’s written communication (newsletters), the following newsletters were published during 2000:

1. Colorado Water Rights — Spring 2000 (8 pages);
2. Water Legislative Report — 2/11/00, 3/24/00, 5/16/00, 6/8/00 and 8/11/00;
3. Water Intelligence Report — 12/30/99 – 1/6/00, 5/23/00, 10/20/00;
4. Water Action Alert — 7/7/00;
7. Environmental News — 2/00, 4/00, 11/00;
8. Water Report — weekly service provided by NWRA via e-mail;
9. Waterline Newsletter — a quarterly publication provided by NWRA.

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

Dick MacRavey
Executive Director

Colorado Water Rights
1580 Logan Street, Suite 400
Denver, Colorado 80203