Guest Editorial

THE CASE FOR THE COLORADO WATER CONGRESS

PRESENTATION AT COLORADO WATER CONGRESS ANNUAL CONVENTION JANUARY 25, 2002

by Daniel R. Birch

Good Morning. My name is Dan Birch and for the last year I have served as President of the Water Congress. I wanted to take a few minutes before lunch to report on a couple of important business matters.

I am very concerned that many of us attend the meetings of the Water Congress but perhaps do not have an understanding of the importance of the many things the Water Congress does "behind the scenes" to support the water community. These are things that no other organization such as CCI, CML, or the Farm Bureau does and certainly nothing that any water provider can do alone. Let me mention a couple examples to illustrate my point: the Colorado River Endangered Fish Recovery Program and initiatives.

First, initiatives. Over the course of the last 10 or so years, the initiative process has been used liberally by interest groups to further their agenda and many of these initiatives would have had dire consequences for water providers. I am thinking of the 1996 Public Trust Ballot Initiative which would have caused all water rights to be junior to the public trust. Or consider the various efforts at tax reduction which literally would have lead to the destruction of every water conservation and water conservancy district in the state. The Water Congress has worked largely behind the scenes, determinedly and tirelessly, to keep these initiatives off the ballot or to defeat issues if they do make it to ballot.

In 1983, the Water Congress began its efforts regarding the Colorado River Endangered Species Recovery Program. Through a special program supported by a number of water providers, the Congress has worked largely behind the scenes to support the water community and initiatives would have had dire consequences for water providers. I am thinking of the 1996 Public Trust Ballot Initiative which would have caused all water rights to be junior to the public trust. Or consider the various efforts at tax reduction which literally would have lead to the destruction of every water conservation and water conservancy district in the state.

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CWC OFFICERS

SENATOR LEWIS H. ENTZ

Senator Lewis H. Entz is currently serving as the President of the Colorado Water Congress for the year 2002. He is completing his term in office that was vacated by Senator Gigi Dennis and is up for reelection this year. He also served on the Board of Directors for the Colorado Water Conservation Board. Lewis has many distinguished years in the Colorado House of Representatives, serving as Chair on Agriculture, Livestock & Natural Resources Committee, and on the Local Government Committee. Lewis is now concentrating on the family business of farming in the San Luis Valley and is an active member of Action 22. Prior to his years in the Colorado Legislature, Lewis had served as an Alamosa County Commissioner, and on the San Luis Valley Council of Governments, Alamosa Airport Board of Control, Alamosa County Alternative Placement Commission, Community Federal Aviation Agency Advisory Committee and the County Transit, Scenic Railroald as well as many other committees of public service. Lewis is a licensed pilot and was inducted into the Colorado Aviation Hall of Fame in 1992. He is also an Honorary Life Member in the Colorado Water Congress.

RON HELLBUSCH

Ron Hellbusch, Vice President, is Director of Public Works & Utilities for the City of Westminster. Ron started his local government career with the Westminster as Assistant City Manager and Water Development Coordinator. He served 16 years as City Manager of Brighton, before returning to the City of Westminster in his current position in 1984. Ron holds a BA Degree from Hastings College (Nebraska) and a Masters of Public Administration from Denver University. He served in the Colorado Air National Guard. Ron has been active with CWC as a board member since 1985 and a member of the Management and Budget Committee most of those years. Ron received the American Public Works Association’s national “Top Ten Award” in 1996 and served on various national APWA committees. He has also been active in the state chapter, serving as President of the APWA Colorado Chapter in 1993. He is responsible for directing Westminster’s long range water supply acquisition and development; water and waste water treatment systems; water and waste water capital improvements; and the city’s street and infrastructure improvements program.

DOUG KEMPER

Doug Kemper, of Aurora, was re-elected CWC Treasurer in January 2002. Doug is the Manager of Water Resources for the City of Aurora. He holds a B.A. in Environmental and Water Resources Engineering from Vanderbilt University and a M.S. in Civil Engineering/Water Resources from the University of Colorado. He is a registered Professional Engineer. He is in charge of raw water operations, water resources planning, and water development. He is now in his tenth year with the city. Prior to working with Aurora, he worked five years as a consulting engineer chiefly with Rocky Mountain Consultants, Inc. He is currently serving his seventh 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.

NEIL JAQUET

Neil Jaquet is the Director of Water Resources and Real Estate at the Coors Brewing Company in Golden, Colorado. He holds several advanced degrees in geology, water resources and business from the University of Wisconsin and the University of Denver. His professional interests include the Colorado Water Congress, Upper Clear Creek Foundation, National Association of Corporate Real Estate Executives and several ditch company boards of directors.

DAN BIRCH

Dan Birch was President of the Colorado Water Congress for the year 2001 and is now Immediate Past President. He has served on the Colorado Water Congress board of directors since 1997. Dan is the Project Development Manager with the Colorado River Water Conservation District in Glenwood Springs. Formerly, he was the manager of the Mount Werner Water District in Steamboat Springs and had worked for over eleven years in directing the water and wastewater utilities in Steamboat Springs. Prior to that, he was with the Boulder Utilities and a Denver area consulting firm. Dan presently serves as water referee for the Division 6 Water Court. He is also a director of the Upper Yampa Water Conservancy District and was a director of the Colorado River Water Conservation District. Dan completed his undergraduate work and his master’s degree in civil engineering at the University of Colorado. He is a registered professional engineer in the state of Colorado.

RICHARD D. “DICK” MACRAVEY

Richard D. "Dick" MacRaeve, 71, is in his twenty-third year as Secretary and Executive Director of the Colorado Water Congress. MacRaeve is no stranger to Colorado. He served three years as Executive Director of 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 '28 Water Quality Management Planning effort. In 1979, MacRaeve 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, MacRaeve was appointed by the Legislative Leadership and served as one of the 48 members of COLORADO VISION 2000. In 1989, the Legislative Leadership appointed MacRaeve to the 16-member Legislative Council Subcommittee on Long Range Planning for the State Government. During 1969-71, MacRaeve 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. MacRaeve 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 member). In 1999, MacRaeve was named the nineteenth recipient of the "Wayne N. Aspinall Water Leader of the Year Award." MacRaeve and his wife, Mary, are the parents of six adult children and several grandchildren. MacRaeve has a Bachelor of Science degree from the University of Wisconsin - Madison and a Master of Science degree (public administration) from the University of Colorado - Boulder. During the Korean conflict, he served with the U.S. Navy.
Continued from Page 1
to become complacent. If you have concerns, we want to hear from you. This pertains not only to dues but also to any other aspect of the organization.

The fact of the matter is that we need a vital and growing membership to succeed and we cannot do that if we are not meeting your needs. Let us know how the Water Congress helps you, what works, what does not work. How can we do things better? We expect there will be dramatic changes in the water business in the future. What should the Water Congress do in response to that changing landscape? More importantly, what role should the Water Congress play in shaping that future landscape?

If you have any suggestions, questions, comments, or concerns, I urge you to contact me, any other Board member, or Dick.

**CWC BENEFITS TO MEMBERS**

1. CWC entered into National Wildlife Federation v. Marsh in 1983. This effort by NWF would have required fish screens at all head-gates. The case was in the Federal District Court in the District of Columbia. This case required CWC to raise $38,000 to fight this effort and CWC was successful. Your question is what would the installation and maintenance of such a requirement have cost you?

2. In 1983, CWC started an effort regarding endangered species on the Colorado River. This effort has cost more than three million dollars. Since the program began, a total of 627 water projects depicting approximately 1.7 million acre-feet of water have achieved compliance with the Endangered Species Act, with the Recovery Program activities serving as mitigation for impacts to endangered fish species. This includes 382 small projects depicting less than 100 acre-feet per year. These projects have been approved by any party to the Endangered Species Act. No lawsuits have been filed by any party on ESA compliance under the program. If I individual had to accomplish this on their own, their cost would be $5,000 to $10,000; and furthermore, larger entities would be looking at $50,000 to $100,000. A similar endangered species effort on the Plateau is now in place.

3. CWC was successful in obtaining the Federal Appellate Court to vacate Judge Kane’s wilderness water rights decision. This was a key case on the reserve rights issue. Cost CWC $386,000.

4. CWC worked actively in opposition to proposed constitutional amendment 12 by Doug Bruce. This amendment would have had havoc with government entities and private enterprises dealing with those entities.

5. CWC vigorously opposed the Public Trust Ballot Initiative in 1996. This would have meant that all water rights would have been junior to the public trust. This effort by CWC cost $83,000.

6. CWC has continuously opposed legislative and constitutional efforts to require election of Water Conservation District Board members.

7. CWC has actively participated to oppose efforts by Doug Bruce to cut taxes that are the revenue base of Water Conservation Districts, Water Conservancy Districts, Water & Sanitation Districts, other Special Districts, Municipalities, and Counties. Such efforts were in Amendment Twenty-One in 2000 and similar efforts are on-going in 2001-2002. Essentially, these efforts would have led to the elimination of these organizations.

8. It would seem clear that the 101 bills that CWC has been successful in killing means that water users have been able to save many thousands of dollars — you be the judge.

**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 Coch has the prime responsibility for the continual improvement of CWC’s web page.

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The mission of the Colorado Water Congress is to promote the wise management and stewardship of the State’s water resources for the benefit of Colorado’s present and future generations.

In support of this mission, the CWC:

- Provides a forum for the wise management and stewardship of the State’s water resources for the benefit of Colorado’s present and future generations.

- Advocates policies to conserve and improve water reliability.

- Provides education and information on water issues affecting Colorado; and

- Promotes a broad base of membership.

**Calendar of COMING EVENTS**

| August 22 - 23, 2002 | CWC SUMMER CONVENTION — Manor Vail Resort, 595 East Vail Valley Drive, Vail, CO. |
| September 9 - 10, 2002 | COLORADO WATER LAW SEMINAR — CWC Conference Room, 1580 Logan Street, Suite 400, Denver, CO. |
| January 23 - 24, 2003 | CWC 45TH ANNUAL CONVENTION — Holiday Inn Northglenn, I-25 & 120th Avenue, Northglenn, CO. |
| August 21 - 22, 2003 | CWC SUMMER CONVENTION — Steamboat Grand Resort Hotel & Conference Center, 2500 Mt. Werner Circle, Steamboat Springs, CO. |
| January 29 - 30, 2004 | CWC 46TH 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) 837-0812, fax (303) 837-1607, e-mail: macravey@cowatercongress.org or check our website at www.cowatercongress.org.

**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 2003 Wayne N. Aspinall Water Leader of the Year Award.
2. Ed Boresen, W.D. Farr, John R. Fetcher, Frank Mileniczi and Bart Woodward Scholarship (for an active member of the agricultural community) for 2002 — Colorado Water Law Seminar.
4. Bill Hornby (for either a journalism student or a reporter of a news media organization) Journalism Scholarship for 2002 — 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 2002 — Colorado Water Law Seminar.

The Wayne N. Aspinall Award nomination form is due at the CWC offices by August 3, 2002. The scholarship nominations are due at the CWC offices by July 2, 2002.

If you are interested in any of the above forms, please fax or write: Colorado Water Congress, 1580 Logan St., Suite 400, Denver, CO 80203, phone (303) 837-0812, fax (303) 837-1607, or visit our website.
monitored the case because of the endangered species issues involving the Platte River in Nebraska, issues which could also affect our interests on the South Platte River. I am pleased that Colorado's Special Master has released to regional authorities the rights to a settlement reached between Nebraska and Wyoming and amended the equitable apportionment decree accordingly.

5. Animas-La Plata Project. Now that legislation authorizing the construction of the downsized Animas-La Plata Project has been enacted into law, the next task is to negotiate an agreement with the Applicant and with the affected compact proponents, the Colorado Water Resources and Power Development Authority, and other parties to amend the 1986 cost sharing and escrow fund agreements to conform to the reduced project. It is my understanding that $16 million was appropriated for the project this year, and excavation work may begin this coming summer.

6. Quantification of reserved water rights for Black Canyon of the Gunnison National Park. In the early 90's, while I was Executive Director of DNR, the CWCB and The Nature Conservancy completed a trail blazing transaction in which TNC acquired a large conditional water right from F&M, donated that right to CWCB and that water right was used to protect the 300 cfs base flow of the Black Canyon of the Gunnison. Through Arapahoe County's annually challenged transaction in water court, the water was never taken to trial, and the entire transaction was negated in a spirit of compromise with the goal being to protect one of America’s most special watercourses. That is the good side of Colorado water law. The bad side is what happened next in the Black Canyon.

The Park Service had long had established its right to water through the TNC transaction that the water right that had been postponded to a later date. Even though the 300 cfs TNC donation protected the base flow through the canyon, we learned this year that the Park Service wanted to claim that water for the entire basin. Instead of the negotiated process used so successfully in the TNC donation, the Park Service filed a water court application that seeks flows as high as 11,000 cfs during certain years. The Colorado Water Conservation Board, State Engineer, and Division of Wildlife are among the over 380 objectors to this application. The Park Service has requested that the objectors agree to a settlement and file a statement of their intentions. The state and some other objectors notified the Park Service that the conditions we would require for agreeing to stay. We are waiting for the Park Service’s response.

Much more than what is released is needed to keep the Aspinall power plants at the upstream end of the canyon every day. With that much water available, it should be possible to make a deal to use all or a portion of that water to preserve the canyon. If the Park Service really wants to show good faith and demonstrate its willingness to follow the example of The Nature Conservancy, it should get serious about negotiating flows that are consistent with operation at the Aspinall Project.

7. Great Sand Dunes National Park. On September 8, 2001, I filed a motion for summary judgment in the long-called and multi-million dollar lawsuit seeking the development of the Great Sand Dunes National Park. As you know, President Clinton signed the Great Sand Dunes National Park and Preserve Act on November 22, 2000. I am informed that The Nature Conservancy has signed a purchase contract to acquire the Buca Ranch on an interim basis, with the understanding that the United States will acquire the Buca for the national park after the Transaction. The intent is to provide a national park and an adjacent area for the protective of the national wetland where San Luis Valley.

8. United States v. Elephant Butte Irrigation District. This case dealt with the water rights and operation of the Rio Grande Project, including Elephant Butte Reservoir, which is instrumental in determining Colorado’s entitlements. The State Engineer, having considered the compact and decree entitlements. My office will continue to vigorously pursue the rights to water for Colorado and its people.

9. Colorado River. In 2001, my office continued to monitor developments on the Colorado River, such as implementation of the California 4.3 plan and interim surplus criteria. As noted in my previous report, Colorado and New Mexico are working to enter into a compact with New Mexico for administration of the water rights in both states. Unlike most of our interstate water compacts, the Costilla Creek Compact and the San Juan river basin. These programs are necessary to harmonious development and to address the water needs of all individuals. The Costilla Creek Compact gives only general instructions to the states and their water projects and federal agencies and to enable Colorado to develop its water resources consistent with its compact and decree entitlements. My office will continue to work closely with the Department of Natural Resources to implement these programs.

10. Tamarack Project. The AG’s office continues to be actively involved in the Tamarack Project. The AG’s office is participating under the three-state agreement concerning the endangered species on the Platte River (whooping crane, pal stadium, least tern, piping plover). This problem is very complex and requires Colorado to vigorously protect our compact entitlements, the vested water users on the lower South Platte, while meeting the environmental objectives of the three-state agreement.

B. Within the State of Colorado.

1. Superstition’s Ranch, aka SPCUP. The State Engineer joined a consortium of Front Range water users (Denver, Thornton, Englewood, Centennial W&S), Park County interests and the Federal Government in successfully opposing the SPCUP (“South Park Commercial Use Project”) in the upper South Platte River basin in South Park. This case sought a storage right that would have been located in an underground aquifer approximately 112 square miles in area that belongs not owned by the Applicant. The Applicant proposed to pump ground water into a cavern in the rock, divert surface water into the aquifer for storage and later withdrawal. The City of Aurora contracted to purchase water from the Aurora's water projects.

On June 1, 2001, the Water Court issued an Order Dismissing the Application, permanently and irrevocably. The Court found that the groundwater model offered by Applicant was unreliable, and therefore the Applicant could not meet its initial burden. The Court also took issue with Applicant's questions and the correctness of its analysis. The Court determined that substantial portions of the Applicant’s case were frivolous and/or groundless, thus entailing the objections to reimbursement of their attorneys' fees. An appeal to the Court of Appeals has been filed with the Colorado Supreme Court.

2. Water Bank embarking. In an innovative attempt to promote the agricultural viability of the upper South Platte River Basin, the General Assembly passed H.B. 1.13S-15, the
Lawmakers sign agreement to extend Recovery Program through 2013

interior Secretary Gale Norton, on December 6, 2001, joined Colorado Governor Bill Owens, Wyoming Governor Jim Geringer, and Western Area Power Administration Administrator Mike Hackaskylo to renew their commitment to a nationally recognized program that recovers endangered species while allowing water development to continue in accordance with state law.

Norton, Owens, Geringer, and Hackaskylo signed an extended cooperative agreement for the Upper Colorado River Endangered Fish Recovery Program at a ceremony at the Colorado State Capitol. Utah Governor Mike Leavitt will sign the agreement during the next week.

Today's action extends the Recovery Program through 2013, ensuring the continued cooperative work to recover the endangered humpback chub, botostall, Colorado pikeminnow and razorback sucker while allowing for future water development for agricultural, hydroelectric and municipal uses in the Upper Colorado River Basin. The original cooperative agreement ends in 2003.

"Today's signing ceremony signified how far we've come in successfully implementing cooperative programs for conservation," said Norton, who was Colorado's Attorney General in 1988 when the Recovery Program's original cooperative agreement was signed. "When this program began 12 years ago, it was the first of its kind. Never before had such a mix of state and federal organizations come together formally to work side-by-side with private water and power developers and environmental organizations."

"It is the result of cooperation of all parties involved," said Owens.

"Today, the Recovery Program is a model of cooperation with federal and state agencies, environmental groups and water and power user organizations in Colorado, Utah and Wyoming. Its purpose is to recover endangered fish while allowing development of water resources for human uses."

"The agreement is an example of how cooperation between states and the federal government solves difficult natural resource problems in the West," said Governor Jim Geringer of Wyoming. "We have not only offset the impact of development, but we are also helping with the recovery of endangered species."

"I'm very pleased that Western's customers, publicly-owned electric utilities represented by organizations such as the Colorado River Energy Distributors Association, support funding of this program through the use of power revenues in accordance with the authorizing legislation," said Mike Hackaskylo, administrator of the Western Area Power Administration.

As a result of the cooperative effort, biologists are seeing signs of recovery in both the humpback chub and Colorado pikeminnow populations. Overall habitat for native fish in the river has improved and water development for agricultural, municipal and hydroelectric projects has been able to continue.

"The program's early years consisted of extensive research into the habitat and life requirements of the fish species," said Dr. Robert Muth, the program's director. "We are now at a juncture where recommended management actions are improving the quality of river habitat. This is reflected in growing populations of humpback chub and Colorado pikeminnow. The extension of the program will allow us to continue efforts to recover these fish as well as the razorback sucker and bonytail."

A great deal of credit is due Colorado DNR Director Greg Walcher for his leadership and statesmanship in the effort to secure the extension of this valuable program.

Salazar: Current Events, cont.

Continued from Page 4

Arkansas River Pilot Water Banking Act. The Act authorizes the establishment of a pilot water bank to facilitate leases, exchanges or loans of legally stored water to meet water users' temporary immediate needs. The water bank, which gives water rights owners the option to not use their stored water but rather to deposit it into the water bank and offer it for lease to a willing buyer. My staff is working closely with the State Engineer and the public on developing rules to implement the water bank, as required by the Act. The State Engineer will hold a rulemaking hearing in May and the rules will be effective July 1, 2002. I have high hopes that this pilot program will be a success and provide a model for agricultural water users with another tool to help them stay in business.

3. Division 3 rulemaking. The State Engineer and the Colorado Water Conservation Board continue to study the confined aquifer system in Water Division 3 as the basis for rules that H.B. 96-1011 requires the State Engineer to have in place by July 1, 2003. H.B. 98-1011 amended the water statutes to provide that applications for new withdrawals of ground water in Div. 3 that will affect the rate of movement or movement of water in a portion of a confined aquifer may be permitted under a judicially approved plan for augmentation, and in compliance with the State Engineer's rules. The rules will recognize that unappropriated water in an aquifer made available for use by augmentation by the relocation or consumption by nonintrusive native vegetation. The rules will permit the development of the water resources of Div. 3 in a way that will protect the state's ability to meet its interstate compact obligations and to prevent injury to senior appropriators.

4. Recreation In-channel Diversions. During the past year, recreational in-channel diversions were in the spotlight. (a) City of Golden Boat Chute case. The Div. 1 Water Court granted the City of Golden's application for up to 1,000 cfs in Clear Creek for the City's whitewater course, including uses in winter and at night. The CWCB and the State Engineer had opposed the application, arguing that Golden did not control the water within the course, and that Golden's appropriation exceeded the minimum amount necessary to create whitewater features, resulting in waste. The State is appealing the water court decision, with several entities participating as amicus curiae on behalf of the CWCB and the State Engineer. The State will focus on the issues of control, duty of water for recreational uses and whether the water court awarded the City of Golden a decree for an amount of water in excess of the minimum amount necessary for its claimed uses.

(b) S.B.01-216 and the CWCB's Recreational In-channel Diversion ("RICD") Rules. In part due to the issues raised in the Golden case, last year the General Assembly passed S.B. 01-216, which amended the definition of beneficial use to include diversions by local government entities for recreational in-channel diversion ("RICD") purposes. The bill also requires applicants for RICDs to submit a copy of their application to the CWCB, and requires the CWCB to make findings of fact and a final recommendation to the water court as to whether the application should be granted, granted with conditions, or denied. The bill sets forth factors that the CWCB must consider in making its findings and directs the CWCB to adopt rules to implement the bill. The CWCB adopted those rules, effective Dec. 31, 2001, after receiving significant public input both informal- and at a public role-making hearing. The rules provide guidance to applicants as to what type of information would help the CWCB in making its findings and recommendation. The factors that the CWCB must consider include:

• whether the adjudication and administration of the RICD would impair Colorado's ability to fully develop and beneficially use it compact entitlements;
• whether exercise of the RICD would materially injure instream flow water rights;
• the appropriate reach of stream required for the intended use and whether there is access for recreational use;
• whether the adjudication and administration of the RICD would promote maximum utilization of waters of the state.

Two municipalities have filed RICD applications since the effective date of the rules and have met with CWCB staff to initiate the process.

5. The Empire Lodge decision. In December, the Colorado Supreme Court issued its decision in the Empire Lodge case, holding the Empire Lodge, a homeowners association, lacked standing in water court to claim injury from the alleged enlargement of a water right when its own water right was based upon a substitute supply plan approved by the State Engineer. Some parties broadly read this decision to invalidate substitute supply plans. The State Engineer and my office are working closely with water users on the South Platte River to amend the South Platte Rules to address the issue of substitute supply plans.

Based on a Keynote Speech given at the Colorado Water Congress 44th Annual Convention, January 24, 2002.
INVOCATION
APRIL 29, 2002
COLORADO WATER CONGRESS
January 25, 2002
Lord,
We interplay in your fields.
Sow seeds faithfully, some
what feebly.
All spaces connect us, vast
space we seek.
Up to where wonder overtakes
our nights.
Singing fish wriggled in
meandering
Ribbons dancing through
our hearts.
Lord,
May we honor those among
us who
Argue strongly for the
strength of
Understanding, who have
understood.
Their limits and do not crave
a passage
Through, who substitute the
opportunity
They have for the opportun
they pass along.
Lord,
Help us turn our advocacy to
the good
Of community, to look past
what we
Think others are doing to us
To what we can do together
on this
Earth, in this time we have
to treasure.
Bless this good company.
Amen
Justice Greg Hobbs
Colorado Water Congress Annual Convention
January 25, 2002
CWC 2002
CONVENTION EXHIBITORS

GEI Consultants, Inc.
Upper Colorado River Endangered Fish Recovery Program

Hix Insurance Associates, Inc.

Riskplan, Inc.
Knight Piesold and Co.

Brown and Caldwell

Colorado River Water Conservation District

Bureau of Reclamation Western Colorado Area Office

Colorado Water Conservation Board
COLORADO WATER LAW SEMINAR

September 9 - 10, 2002
CWC Conference Room
1580 Logan Street, Suite 400 - Denver, Colorado 80203
COLORADO WATER CONGRESS

MONDAY, SEPTEMBER 9, 2002

7:45 a.m. REGISTRATION
Presiding — Senator Lewis H. Entz, CWC President

8:00 a.m. The History of Colorado Water Law — Hon. Gregory J. Hobbs, Jr., Justice, Supreme Court 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, LLC, Denver

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

12:15 p.m. LUNCH — The luncheon speaker will be Representative Diane Hoppe, Chair House Ag Committee (address from 12:45 p.m. to 1:15 p.m.)

1:30 p.m. The Colorado Division of Water Resources, Ground Water Commission, and the Office of the State Engineer: Responsibilities and Roles in Water Matters — Jack Byers, Assistant State Engineer, State of Colorado

2:15 p.m. The Impact on Colorado of Interstate Compacts — Ken Knox, Assistant State Engineer, State of Colorado

3:00 p.m. The Relationship Between the Federal Government and Colorado Water Law — Sara Duncan, Manager of Intergovernmental Affairs, Denver Water, Denver


4:30 p.m. Water Conservancy Districts: Responsibilities and Roles in Water Matters — Eric Wilkinson, Manager, Northern Colorado Water Conservancy District, Loveland

5:30 p.m. Recess until 7:45 a.m., TUESDAY, SEPTEMBER 10th

TUESDAY, SEPTEMBER 10, 2002

7:45 a.m. Overview of Colorado Ground Water Law — Michael Shimmin, Vranesh and Raisch, LLP, Boulder

8:45 a.m. The Colorado Water Resources & Power Development Authority: Its Responsibilities and Role in Water Matters — Dan Law, Executive Director, Colorado Water Resources & Power Development Authority

9:30 a.m. The Colorado Water Conservation Board: Its Responsibilities and Role in Water Matters — Rod Kuharich, Director, Colorado Water Conservation Board

10:15 a.m. Historical Overview of the Denver Water System — Hamlet J. “Chips” Barry III, Manager, Denver Water

11:15 a.m. The Colorado River, The Colorado River Water Conservation District, and Western Colorado Water Projects — Eric Kuhn, General Manager, Peter Fleming, General Counsel, or Jill McConaughy, Associate General Counsel, Colorado River Water Conservation District, Glenwood Springs

12:00 Noon LUNCH — The luncheon speaker will be Senator Jim Isgar, Chair of the Senate Ag Committee (address from 12:30 p.m. 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 Consult, Loveland

2:45 p.m. The Colorado Water Quality Control Division: Its Responsibilities and Role in Water Matters — Carl Norbeck, Manager of the Watershed Section, Colorado Water Quality Control Division

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

3:45 p.m. Water Education — Tom Cech, Manager, Central Colorado WCD

4:15 p.m. Ethics and Water Law — Steve Leonhardt, Fairfield & Woods P.C.

5:00 p.m. ADJOURNMENT
CWC 2002 SUMMER CONVENTION PROGRAM

WEDNESDAY, AUGUST 21, 2002

6:45 p.m. CWC Nominating Committee Meeting
7:00 p.m. CWC Board of Directors' Meeting

THURSDAY, AUGUST 22, 2002

8:00 a.m. REGISTRATION OPENS
8:30 a.m. OPENING GENERAL SESSION — Senator Lewis H. Entz, CWC President, Presiding
8:30 a.m. Six Keynoters on Water Issues
   The first six (6) 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, 2002. It should also be understood that each keynote address will be limited to five (5) minutes in length.
9:00 a.m. “The Past, Present & Future In the Legislature Process” — Senator Lewis H. Entz (R-Hooper), CWC President
   Presiding. A panel of 6 members of the Legislature: Senator Jack Taylor (R-Steamboat Springs), Senator Jim Iglesias (D-Hesperus), Representative Diane Hoppe (R-Sterling), Representative Carl Miller (D-Leadville), Representative Matt Smith (R-Grand Junction), and Representative Al White, (R-Winter Park)
10:30 a.m. COFFEE BREAK
10:45 a.m. GENERAL SESSION II — FUTURE DIRECTIONS OF THREE KEY DEPARTMENTS
10:45 a.m. Greg Walcher, Executive Director, Department of Natural Resources
11:15 a.m. Jane Norton, Executive Director, Department of Public Health & Environment
11:45 a.m. Don Ament, Commissioner, Department of Agriculture
12:15 p.m. LUNCHEON — Speaker to be Announced on the Subject, “Drought, Drought, Drought, and More Drought”.
1:45 p.m. GENERAL SESSION III —
1:45 p.m. The panel will Address the subject of “Instream Flows, Past, Present & Future.” The panelists will be former Senate President, Fred E. Anderson, Ray Christensen, Executive Vice President, Colorado Farm Bureau, Rod Kuharich, Director, Colorado Water Conservation Board, John R. Hill, Jr., Bratton & McCloy, LLC, Mark Pifher, Trout, Whitwer & Freeman, P.C., and other panelists to be announced.
5:00 p.m. RECESS until 9:00 a.m. Friday, August 23, 2002

FRIDAY, AUGUST 23, 2002

9:00 a.m. GENERAL SESSION IV — Senator Lewis H. Entz, CWC President, Presiding
9:00 a.m. This Session will involve a panel addressing the subject of “Financing Water Projects.” Panelists will include Craig Pederson, Texas Water Development Board Administrator and others to be announced.
10:15 a.m. COFFEE BREAK
10:30 a.m. GENERAL SESSION V.
   The Panelists will Address the Various Present and Future Initiatives Issues (i.e., taxcut, initiative process changes, and public trust doctrine). Panelists will be Stephen H. Leonhardt, Fairfield and Woods, P.C. and Mark G. Grueskin, Isaacson, Rosenbaum, Woods & Levy, P.C.
12:15 p.m. LUNCHEON — Speaker to be Announced.
   “We Have Met the Enemy and It Is Us”
1:30 p.m. BUSINESS MEETING — Senator Lewis H. Entz, CWC President, Presiding
   • President’s Report
   • NWRA Report
   • Treasurer’s Report
   • Vote on Honorary Life Members
   • Consideration of 2002 Mid-Year CWC Resolutions/Policies
weak, indifferent and reckless atti­

dalities of inadequate security just to mention a few parts of the

tak a look at some of the challenges and future strategic pro­

the context of crime and terrorism to protect the critical asset of

the Old world had enough introspective preoccupations in the

and of the subsequent

There is some good web accessible security advice and

There is some good web accessible security advice and

guideance material available for people and organizations

To cut a longer story short, the true nature of the package was

We knew of a number of exposures and potential threats

rules and that practice died soon after the end of the conflict.

I spoke of ‘highs’ and when convenient to our argument, we invoke

We knew of a number of exposures and potential threats

The lagoon method

and of the subsequent

The Lagoon Method

During the eighties I attended a board level dinner in

The Lagoon Method

Colorado and similar attacks in Arizona, all random and unrepre

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sizable. The company saw an opportunity then because

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庭 who also has a chemistry background, and together we three posed the inevitable question — "How could we as terrorists successfully attack the water supply system?"

Well, it will be no surprise to re-word that and say it should be no surprise, to you, that we concluded that it would be very easy. The question of greater significance focused on how much harm could be inflicted, and yes that was more challenging. Our findings led to a list of methodologies and these represent the menu that a criminal, a vandal, a terrorist could use to select according to the objective. Thinking like the potential offender -

Do I want to do and can I shut down the city water supply in its entirety? If so, how for long — or who cares?

Do I want to cause enough trouble and expense to get even with my former employer?

How can I get a job with the city water department and help my plans plot the attack?

Do I just want to see some chaos that's more exciting than calling 911 and watching fire trucks?

Is it my intention to put a small number of people in danger?

Do I want to create terror to maximum effect with minimum risk?

Is it enough to make people sick or do I want more effect?

Even if I know the contaminants will be diluted and water particle detection sensors may set off an alarm, can I force the water department to go public and cause a sufficiently serious alert to create fear and panic in the population?

Do I want America to know that I can reach deep into its critical infrastructure and inflict serious damage?

What happens if I just read all this stuff, come up with a plan on paper and only make a threat by email, snail mail or telephone?

Last question

Why should I do this?

Answer:

Pick a criminal or political reason, then add:

Because I can.

Before I go further with this let me make a point as a non-scientist. I am aware that the science community is divided on the true effects of certain biological and chemical agents. I have read some extreme arguments about specific compounds, toxins and so forth. This is not a scientific debate. It is a threat analysis. It is all about perception and not about scientific accuracy. It is very much about the language of the media, and words such as destruction, extermination, PCBs, Divorce, radiation, and biological or chemical threat agents. It is about fear, panic and the reactions of ordinary folk. I have to say it is also about distrust, of government, of corporate America and of experts.

Today, if an expert panel came on TV to talk about the environment, and Erin Brockovich was sitting alongside a member of the EPA in an October 2000 interview between the US Environmental Protection Agency (EPA) and General Electric to pay to remove tons of PCBs from the bed of the Hudson River. The estimated cost of this largest ever dredging is $500 million, but could go much higher. The decision by the EPA involves the removal of 2.65 million cubic yards of sediment, enough to fill 40 football fields at a depth of 30 feet. Forty miles of the Hudson River are affected. This action results from the November 1999 decision by the courts that US Facilities can no longer transport PCBs from its plants in Port Edwards and Hudson Falls before the federal government banned PCBs in 1977. Environmentalist groups including those on the Fringes have paid close attention to these developments.

Biohazard — A class of super-toxic chemicals chlorinated dioxins and furans, formed as a by-product of the manufacturing, molding or burning of organic chemicals and plastics that contain chlorine. A powerful holocaustic disease agents like anthrax and neurotropic virus The human body. Polyvinyl chloride (PVC) can be found in carbon black and monograph records, shampoo bottles, handbags, house siding; and plumbing pipes have generated dangerous toxins in manufacturing process and through incineration. Fly ash from incinerators containing PCBs and debris, found in quantity in factories on farms and in the climate of water, at water treatment storage sites.

Chemical cocktails containing a mix of PCBs and dioxins can be toxic on waste sites.

Liquid fuel — Flammable liquids evidently offer criminal opportunities for terrorists, but in the business of terrorizing the population (e.g. to the extent of the anthrax episode), some fuels are more misuse than others. A distinctive odor and taste coming from the foodstuff due to the presence of say petroleum (gasoline) would achieve some degree of fear and clearly cause. A more serious threat brings another huge dimension including water security and one where purely Colorado is largely exposed.

Scouring for weaponry

Among the plentiful supply of problem generating materials as potential water system contaminants we found many that are easily obtainable with little effort. Some of the recurring descriptions that fed the perception of a threat are:

Fertilizer — popular medium for improvised explosive device construction; especially effective when delivery is by air. Military aircraft that effectively becomes the bomb casing, shaped charge and debris. Potential use against above ground storage, dams, water treatment and pump stations.

Fertilizer — this time, bugs of fertilizer used to create poisonous alarm and impose expensive cleanup costs. Early stage detection is essential to prevent blooms from forming.

Polychlorinated Biphenyls (PCBs) — Toxic organic compounds plentiful supply of worldwide ban on their production since the late seventies. Widely used, very high volumes manufactured, originally for industrial applications, insulation, coolants and lubricants in transformers and other electrical equipment. Found on waste dumps mostly in pre-1978 equipment but also in container drums and carriers. Not adequately disposed of even by commercial waste services. Extremely toxic, suspected of causing several diseases, with cancer, skin disorders and infertility among the many attributed effects. Other highly reactive compounds like those in the blood of animals and human beings. Spilled in or river water and groundwater systems have led to advice of avoidance of fish and meat products originating from the locality. PCBs have even been sold to farmers in countries like Zambia. Odorless and colorless, a threat of their use or notice that they have been used could seriously undermine the integrity of the water system, especially when the attacker notifies the media and protests to the facilities management. Hardened terrorist and protest pressure groups have historically preferred media contact in their first resort, whereas hucksters are more inclined to call the target organization. But there are no guarantees these are not self-deluding.
Colorado Water Trust: Moving Forward
by Peter D. Nichols, Executive Director

The mission of the Colorado Water Trust is to acquire, and to assist others in acquiring, water rights or interests in conservation water rights, for:

- The long-term restoration and protection of Colorado’s water-dependent natural heritage and environmental diversity.
- The maintenance of ecologically beneficial open space and habitat provided by irrigated agriculture, and
- The protection of related water-based recreation and aesthetics.

The Trust will seek conservation water rights for cold and warm water fisheries, and for whole stream, lake, riparian, and wetlands systems, in both small headwater basins and larger order water bodies, in urban as well as rural settings.

The Trust will use market-based mechanisms to acquire rights through purchases from willing sellers and through donations from voluntary contributors, under the state’s current water and property laws. Working in coordination with governmental entities, land trusts, watershed groups, and other non-profit conservation organizations, the Trust will pursue and support the following activities:

- Acquisition of conservation water rights for instream flows and aquatic ecosystems. The Trust will work with the Colorado Water Conservation Board to provide technical assistance and funding needed on a state-wide basis to establish conservation water rights in coordination with, and to supplement the actions of, existing governmental entities and non-profit organizations.

Colorado Water Rights

espide normally abundant mountain snowfall, Colorado’s semi-arid climate makes water among the state’s most precious resources. Coloradans have long diverted the state’s rivers and streams to serve a variety of beneficial uses, such as municipal development and agricultural irrigation. The state’s flexible, market-based water rights system has met new demands for water as the state has grown. In 1973, Colorado became the first state to recognize instream flow water rights by statute, although this was done long after the full appropriation of most of the state’s river basins. Consequently, numerous rivers and streams, wetlands, and riparian areas regularly experience low water levels, threatening Colorado’s water-dependent natural heritage and environmental diversity. Against this reality, the public increasingly demands sufficient water to protect and restore Colorado’s rich natural legacy.

The Colorado Water Conservation Board — the only entity authorized under Colorado law to hold instream flow water rights — has successfully focused on protecting stream flows to preserve the natural environment to a reasonable degree. In addition to its stream and lake appropriation, water is available to municipalities. The CWCB has received significant donations of existing water rights for instream flow use, including municipal donations.

In short, a growing number of governmental entities and non-profit organizations are pursuing ways to ensure that some portion of Colorado’s appropriated water is available on a voluntary basis for conservation uses under current water and property laws. Despite their common objectives, these interests have operated largely on a piecemeal basis, independent of one another. In 2000, representatives of some of these governmental and non-profit interests, including the Colorado Water Conservation Board, The Nature Conservancy, and the Colorado Coalition of Land Trusts, started to discuss ways to work together. As a result of these discussions, a diverse group of recognized Colorado water leaders formed the non-profit Colorado Water Trust in September 2000 to provide technical assistance and funding needed on a state-wide basis to establish conservation water rights in coordination with, and to supplement the actions of, existing governmental entities and non-profit organizations.

For more information, contact Peter Nichols, Executive Director, Colorado Water Trust, P.O. Box 1654, Cortez, Colorado 81321; 970-963-6273; petermichols@springs.net.

Colorado Water Rights

Colorado Water Rights

Continued from Page 10
for shutting down the system. The success of such a method of attack, even on a limited scale, portends the undermining of confidence in the management of the supply system. How large a consumer point of entry and point of use of how much volume would it need to be to have this impact? We are not sure with certainty to say, as it will be specific to location and circumstances. We know that it is feasible to disrupt the supply with diesel and other forms of more visible spillage, and that we can detect the presence of such pollutants very quickly. We know that every day the roads of Colorado carry a choice of tankers with toxic chemicals such as phosgene and hydrochloric acid that could be hijacked or stolen for use against the water systems. Again we have to consider possibilities, moving onto probabilities in order to calculate our response and our capabilities.

Our 'assassin's menu' went on but it should not be necessary to elaborate further. We believe convincing the argument that dilution of toxicity occurs within large bodies of water and that it is difficult to deliver sufficient quantities to cause serious harm. Difficult. Not impossible.

Removals of water storage locations can work in favor and against the trespasser with criminal intent. But the intent is moving then apparently still, its flow supporting system is low and has kept going in others. Water availability has survived through an assumption of trust that no person in their right mind could find the reason or the means to harm us by stealing our water supply. There are many other issues about water security that this audience will have discussed and will continue to debate. But they all become academic if just one of the several meanings of water security fails to deliver the physical protection of the water supply system.

The fundamental need today, this minute, is to grasp the nettle and face what needs to be done.

- Plan — make your plan capable of impact mitigation, identifying the range of threats and the range of countermeasures.
- Do not treat this as a specialist only effort — maintain a strong multifunctional team for your protection program.
- Anticipate the demands that an announced but executed threat may impose upon you.
- Identify the range of threats and the range of countermeasures.
- Deter the would be attacker or hoarder with an aggressive and proactive security program of visible activities.
- Respond by providing the fastest and most efficient, constantly tested communications and data management, emergency, law enforcement, crisis management and other contingencies.
- Bring security into your business plan, permanently.
- Abandon any thought that you can do this without a solid investment in security technology, but aim to integrate all of your management systems for both cost and performance efficiency.
- And leave nothing, absolutely nothing, to trust.

I hope you will join us and share our panel discussion.

This presentation was made at the CWC Annual Convention on 12/4/2002.
CWC MEMBERSHIP REPORT

This report is intended to bring the membership up-to-date with Colorado Water Congress activities for calendar year 2001. 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. Thirteen of the eighteen water bills introduced in the State Legislature and supported by CWC were enacted into law;
2. The nine water bills opposed by CWC were all 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;
6. Participated in the “Save Our Constitution” effort; and
7. Authorized the filing of an amicus curiae brief in the Golden Recreation Flow case.

* It should be noted that CWC’s efforts during the Special Session of the Legislature consumed 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. HB01-1240, Concerning the Creation of the Water Resources Legislation Review Committee
2. HB01-1246, Concerning an Authorization for Counties to Receive Wastewater Construction Grants on Behalf of Small Communities in Unincorporated Areas
3. HB01-1250, Concerning Interference with the Flow of Water in a Ditch
4. HB01-1354, Concerning the Establishment of a Water Banking System, and, in Connection Therewith, Making an Appropriation
5. HJR01-1022, Concerning the Species

Conservation Eligibility List
6. SB01-025, Concerning Fiscal Impact Statements Included in the Ballot Information Booklet for Initiated or Referred Measures
7. SB01-044, Concerning the Continuation of an Augmentation Requirement for New Withdrawals of Groundwater Affecting the San Luis Valley Confined Aquifer System
8. SB01-157, Concerning the Funding of Colorado Water Conservation Board Projects, and Making Appropriations in Connection Therewith
9. SB01-214, Concerning the Application of State Air Quality Standards to the Use of Prescribed Fire for Management Activities Within the State, and Making an Appropriation Therefor
10. SB01-216, Concerning the Establishment of a Procedure for the Adjudication of a Recreational In-Channel Diversion by a Local Government, and making an Appropriation Therefor
11. SJR01-004, Concerning Additions and Modifications to the Drinking Water Revolving Fund Eligibility List
12. SJR01-005, Concerning Additions and Modifications to the Water Pollution Control Revolving Fund Eligibility List

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 — 1/24/01, 2/27/01, 4/3/01, 4/24/01, 5/19/01, 6/2/01, 11/12/01
Management & Budget Committee — 2/23/01, 3/23/01, 4/27/01, 7/27/01, 9/25/01, 10/26/01, 11/10/01, 12/17/01
CWC Official Business Meeting — 1/26/01, 8/24/01, 10/13/01
State Affairs (Legislative) Committee — 1/15/01, 1/29/01, 2/5/01, 3/5/01, 3/12/01, 3/28/01, 4/9/01, 4/30/01, 5/21/01, 10/7/01
Federal Affairs Committee — 3/12/01, 4/9/01, 4/30/01, 11/27/01
CWC Water Education Committee — 1/25/01, 8/24/01
State Affairs Subcommittee on Recreational Flows (SB01-216) — 4/9/01
Special Committee on Irrigation Districts — 5/24/01, 9/5/01
CWC Resolutions Committee — 8/9/01, 12/17/01
CWC Endangered Species Colorado River Project

ANNOUNCEMENT: 12 General CLE credits have been awarded by the State of Colorado for attorneys attending the 44th Annual Convention in January, 2002. Forms are here in the office of the Colorado Water Congress at 1580 Logan St., Ste. 400, Denver, CO 80203. We will be happy to mail you a form if you let us know by e-mail at macravey@cowatercongress.org or telephone at (303)388-0812 or fax at (303)837-1607 that you need one. Upon completion return to this office for processing.

Dick MacRavey
Executive Director

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