Guest Editorial

Water Policy at the Crossroads

by James S. Lochhead, Executive Director
Colorado Department of Natural Resources

Government, and particularly natural resource and water policy, is at important crossroads. In our increasingly complex society, it seems that virtually no issue can be decided upon or resolved in isolation from other issues. We are confronted, therefore, with decision-making gridlock, as the interconnections between problems threaten to overwhelm institutions that were formulated in simpler times to respond to discretely defined issues.

As new realities outstrip old institutions, there is growing frustration with government, and especially the federal government. “Takings” legislation was introduced in the Legislature this year, and legislative resolutions were adopted protesting federal involvement in state affairs. The increasing use of constitutional referendums threatens the thoughtful development of public policy by elected representatives.

At the same time, many Coloradans are also asking for responsible governmental regulation. Although the state’s economy is booming, growth pressures throughout the state are carving up pristine mountain valleys. Communities struggle with how to develop the appropriate combinations of regulations and incentives to allow development, but direct it in an appropriate way that preserves open space, agricultural economies, and the community values that make Colorado a special place. Gas drilling activities create clashes with farmers, and concerns about pollution of water wells. Those concerns have led to a strengthening of the Oil and Gas Conservation Commission, and the formation of a task group to address the issue of state legislation relating to surface damages. In the wake of Summitville, the state has strengthened its laws regarding bonding and reclamation of certain mines.

Many Coloradans are actually calling for increased federal regulatory presence in the management of our state’s water resources. Many others, of course, believe an increased federal regulatory presence in Colorado threatens the thoughtful development of public policy by elected representatives.

REGULATORY TAKINGS—“WHY ALL THE FUSS?”

by James W. Sanderson

The Fifth Amendment to the United States Constitution contains the words “nor shall private property be taken for public use, without just compensation.” Traditionally this meant the government had to pay if it wanted to build a highway on a person’s property. In recent years, the courts have also made the government pay when it restricted a person’s use of property to the point of leaving it essentially without value. The courts are becoming deluged with cases by property owners who were prohibited from building on wetlands and beachfronts or who had to dedicate public access over property to rivers or beaches.

Some may object to the application of this constitutional provision to prevent the government from regulating one’s property to the point that it has been taken. I submit that we should be grateful the courts are vigorously applying this constitutional protection. These are times of limited dollars for government spending on discretionary programs. Yet “the public” clamors for more open space and recreational access.

The Fifth Amendment embodies the recognition that private property is essential to freedom. I would submit that freedom of speech is less valuable to one without property—certainly not valueless and clearly important. But without “means,” that is without a means of support independent from the government, one lacks true freedom. Economic freedom, freedom of speech, liberty, and property rights are inter-dependent.

Continued on Page 4

Colorado Water Congress
Summer Convention
Westin Hotel—Vail
August 25 & 26, 1994
DOUG KEMPER

Doug Kemper, 39, of Aurora, was elected CWC President in January. Doug is the Manager of Water Resources for the City of Aurora. He is in charge of raw water operations, water resources planning, and one of the largest agricultural reclamation projects in the nation. He is now in his eighth year with the city. Prior to working with Aurora, he worked five years as a consulting engineer with Rocky Mountain Consultants, Inc.

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

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

Doug and his wife recently built a new home on 3.5 acres in unincorporated Adams County where they live with their two children.

JIM HOKIT

Jim Hokit, 52, of Montrose, was elected CWC Vice President in January. Jim has lived in Montrose since 1969 and has worked for the Uncompahgre Valley Water Users Association since 1973. In 1980, he became General Manager responsible for the overall operation of the Project.

He has served on the CWC Board of Directors since 1981. Jim is a member of the Colorado River Water Users Association and the Four States Irrigation Council for which he served as president in 1988. During the past seven years, he has served on the Board of Directors of the Economic Development Council and he is also a board member of the Montrose County Chamber of Commerce.

NEIL JAQUET

Neil Jaquet, 47, of Golden, was elected CWC Treasurer in 1993. Neil is the Manager of Water Resources Development for Coors Brewing Company. He is in charge of water rights and facilities development to supply this Colorado brewer with an uninterrupted supply of water. He joined Coors in 1975. Neil has served on numerous ditch company and volunteer organization boards of directors. He is serving his second term on the CWC Board of Directors and has been active on several committees.

Jaquet holds Master’s degrees in ground water geology and water resources management from the University of Wisconsin - Madison. He is completing his Master’s of Business Administration at the University of Denver. He served in the U.S. Army during the Vietnam era.

Neil and his wife, Betty, have three adult children.

EDWARD E. “ED” POKORNEY

Edward E. “Ed” Pokorney, 50, was elected CWC Assistant Treasurer in January. Ed is Director of Planning for the Denver Water Department. He joined the Water Department in 1982, and was most recently Manager of Intergovernmental/Public Relations. In addition, he participates with the following groups: National Water Resources Association (Board Member); NWRA Municipal Caucus (Chairman); Colorado Water Utility Council Legislative Committee; and many Colorado Water Congress Committees.

Pokorney holds a Ph.D. from the University of Missouri. After completion of his academic efforts, he served in the U.S. Air Force as a Captain. Post Air Force activity included helping found the Colorado Forum, an organization of corporate chief executive officers involved in public policy issues.

Ed is married, and he and his wife, Elizabeth, have two daughters.

ROBERT O. BURR

CWC immediate Past President Bob Burr, 57, of Walden was born and raised on a ranch in Jackson County and went on to attend Oklahoma State University where he received a Bachelor of Science degree in Animal Husbandry. He is co-owner and manager of a family farm operation which has been in the family since the 1920’s. He served in the Wyoming air National Guard from 1958 to 1964.

Bob serves as Director of the North Park Stockgrowers, the Jackson County Water conservancy District (of which he is also Secretary-Treasurer), and the North Platt-Laramie River Basin. He is also a member, and Chairman of the Water Committee, of Colorado Cattlemens Association.

Bob has served on numerous Colorado Water Congress Committees (Management & Budget, State Affairs, Federal Affairs, Waterlands, Wilderness, Resolutions). He has recently become a land owner representative on the North Park Habitat Partnership Program.

Bob is married, and he and his wife, Frances, have two daughters.

RICHARD D. “DICK” MACRAVEY

Richard D. “Dick” MacRavey, 63, is in his fifteenth year as Secretary and Executive Director of the Colorado Water Congress. MacRavey is no stranger to the CWC. 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 states of the Larimer-Weld “208” Water Quality Management Planning effort.

In 1970, MacRavey 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, MacRavey was appointed by the Legislative Leadership and served as one of the 48 members of COLORADO VISION 2000. In 1989, the Legislative Leadership appointed MacRavey to the 16 member Legislative Council Subcommittee on Long-Range Planning for State Government.

During 1969 - 71, MacRavey served on the National League of Cities Board of Directors. He is presently 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 International City Management Association (cooperating member).

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

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The reservoir site mentioned in the settlement agreement was the "Azure Reservoir and Power Project" located on the mainstem of the Colorado River in lower Gore Canyon. The costs of permitting, design, and development of Azure were to be entirely the Sub-district's with the River District as project co-applicant and eventual reservoir owner and operator.

The maximum feasible capacity of Azure was originally anticipated to be 28,000 to 30,000 acre feet of stored water for Western Colorado users and adverse economic considerations precluding much of the intended benefits of stored water for Western Colorado users and adverse economic considerations precluding much of the intended benefits of stored water for Western Colorado users and adverse economic considerations.
The increasing use of constitutional referrals threatens the thoughtful development of public policy by elected officials.

Speculative development proposals and in-state litigation have caused as much controversy, and cost as much money, as any "federal intervention on state's rights." In the meantime, Nebraska, Kansas, New Mexico, Texas, California, and Nevada all salivate at the prospect of more Colorado water flowing downstream.

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Sanderson: Regulatory Takings—"Why All the Fuss?"

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In the debate which swirls around regulatory takings, one can see a case in point, a case of the potential for abuse in a pure democracy where a majority rules. The government (the majority) attempts to limit one's use of property without compensation for that limitation. Essentially, this takes the ultimate use of one's property without having to pay for it. That creates the "rub." It is the Fifth Amendment which steps in to put limits on what the majority (the government) can do in limiting a person's use of property.

THE EVOLUTION OF REGULATORY TAKINGS

The U. S. Supreme Court's most recent opinion on regulatory takings is the 1992 case of Lucas v. South Carolina Coastal Commission. 1 Plaintiff Lucas sued because legislation amending the South Carolina Coastal Zone Management Act of 1972, passed subsequent to his acquisition of beachfront property, prevented him from developing two lots situated along the South Carolina coast. This high court case has extended the tension between the rights of property owners and what many see as broad social ends such as protecting or providing public access to areas with high public scenic values. 2 The case and many others still in the judicial system focus the issue of whether the governmental action, in this case, was for their losses during the quest by the majority to achieve the "public interest."

It is important to keep in mind what the Fifth Amendment guarantees. It provides that private property shall not be taken "without just compensation." The amendment was not intended to preclude taking of private property for public purposes, but to secure compensation. 3 Protection extends to property owned by states and local units of government even though obviously dedicated to a public purpose. 4

While early takings cases involved condemnation, today's emphasis is on the physical appropriation of a citizen's property by governmental action. 5 These inquiries are essentially case-by-case factual inquiries and a review of compensation in such event. This protection extends to public uses, the regulatory takings concept has extended beyond this to the issue of whether the property owners will be paid for their losses during the quest by the majority to achieve the "public interest."

A regulatory taking results from governmental regulation that interferes with a property owner's economic interests to such a degree that even though the government does not physically take the property, the property is deprived of substantially all of its economic value. 6 This protection extends to property owned by states and local units of government even though obviously dedicated to a public purpose. 7

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The general policy that takings claims against the federal government must be filed in the U. S. District Court in the case of United States v. Riverside Bayview Homes, Inc. 9 In a case where a landowner sued to overturn a Section 404 dredge and fill permit issued for wetlands, the landowner also complained that the federal agency had unconstitutionally taken the property. The Supreme Court stated:

We have held that, in general, "[e]quitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when the injury sought to be prevented or stayed is not of such nature as to authorize a bill in equity." The injury claimed here is the destruction of a part of property by construction of a road. Such an injury is not such as to authorize the issuance of a mandatory injunction, nor equitable relief, because it is not of such a nature as to require the granting of such relief. 10

That case [Lucas v. South Carolina Coastal Commission] and many others still in the judicial system focus the issue of whether the property owners will be paid for their losses during the quest by the majority to achieve the "public interest."

That case [Lucas v. South Carolina Coastal Commission] and many others still in the judicial system focus the issue of whether the property owners will be paid for their losses during the quest by the majority to achieve the "public interest."

A case to watch is one involving a partial regulatory taking (i.e., less than all of the property's potential use could not be developed due to wetlands). The plaintiff was denied a Section 404 permit to cultivate 11.5 acres of coastal wetlands in New Jersey. 11 The case is entitled Loveland Harbor v. United States, 12 and involves a property owner which the Courts ruled had the right to be compensated for denial of a Section 404 permit. It has been embroiled in the U.S. Courts system for nearly ten years and now sits in the Federal Circuit Court (the appeals court created to hear Courts appeals) following arguments, en banc, on February 10, 1994 (Docket No. 91-5050). It promises to be a major pronouncement of the entire Appellate Court. Its eventual outcome may also be important to water right's owners which frequently face regulatory or permitting demands to buy-up a portion of a water rights yield. Agencies like to argue that as long as the owner has some yield left, there has not been a taking. It has been said that taking an acre-foot of water yield is not different from taking the corner of a piece of property on which to site a highway interchange.

In an effort to enact some state policy on the subject of regulatory takings, Senator James Rizzuto introduced S984-194. As this article goes to print, its fate is not known. It has generated vigorous debate in the General Assembly. State agencies wonder what actions the bill may curtail. Those seeking unfettered ability to regulate use of property fear it will impede that agenda. Property owners are grateful that "the line needs to be drawn" on what is acceptable. Many owners lack the resources to sue for a taking and need some help in protecting their interests.


PRIVATE PROPERTY FACES MANY ASSAULTS

The decade of the 1990's may prove to be one in which the Fifth Amendment is tested in many ways. The "commonly" fill permit process for wetlands is being advanced on many fronts. Of course, there are the "Feds," whose actions to protect wetlands and endangered species have spawned the claims court litigation referenced above.

There are also the acts of the State and local governments such as those struck down in the Lucas case. Finally, in Colorado, we see proponents of initiated measures asking the voters to approve amendments to the Colorado Constitution which raise takings questions.

FEDERAL ASSAULTS ON WESTERN WATER RIGHTS

Failures by the United States to impose minimum stream flows on federal lands dating back to the 1970s, U. S. v. New Mexico, 438 U.S. 696, 98 S.Ct. 3012 (1978), and continuing to today though the federal government's efforts to advance reserve water rights claims on behalf of the United States are falling short of the underlying game plan. Millions of dollars have been spent by taxpayers in Colorado to fight off these efforts to control the water in Grelley. 13 The United States eventually decided to not prosecute its appeal in Division 1.

Having failed in its efforts to secure these rights in water court, the federal agencies can now be expected to step up to this effort to impose minimum stream flows at every turn. Northern Colorado communities have faced demands for more water through the renewal of their rights-of-way applications for long-existing water diversion facilities. The U. S. Forest Service wants increased instream flows within the National Forest. In addition, recent draft biological opinions under the Endangered Species Act relating to historic depletions on the Colorado River and especially more recently on the Platte River proposed that historic depletion levels be made-up downstream so water which has been used by Colorado cities and farmers for years could be removed in the streams to benefit endangered fish and birds. The U. S. Fish and Wildlife Service does not want to pay for this water. It essentially seeks "atoneenment" for alleged historical impacts to threatened and endangered species which utilize the Platte River in Nebraska, from the historic impacts from the use water rights lawfully created years ago for the benefit of the human settlements in Colorado.

ASSAULTS VIA THE BALLOT BOX

It is no longer only the federal government which at times attempts to obtain the property of Coloradans without having to pay for it; the regulatory takings subject is brought into focus by those wishing to amend the Colorado Constitution. They are initiated amendments being advanced under the procedures provided for initiative processes in Colorado.

The Proposed Initiative or W.A.T.E.R. would enable the Colorado Constitution to impose conditions on final conditional water right decrees entered on and after January 1, 1995 for out-basin water use. Given the time delay which often occurs between the formation of the intent to appropriate and the entry of a final decree, the measure, if approved, could have takings implications. Since the water rights made subject to voter approval can have the status of property, the districts involved may have to compensate water rights owners who sue based on the diminished value of the property right if an out-of-basin water user is not permitted to develop the water. Opponents of a Proposed Initiative On Water Rights To Amend the Colorado Constitution To Adopt And Defend A Public Trust Doctrine with respect to the waters in Colorado argue its adoption will have takings implications. Clearly, the implications of such an adoption are not well understood. Hopefully, if the measure makes the ballot, its implications will be illuminated by the public debate.

Finally, a ballot proposal is working its way towards the voters that would allow the people of Colorado new access to water for productive, commercial and even other recreational activities. The takings ramifications are intriguing. What the proposal would allow would be Continued on Page 8
Colorado Water Congress

36th

Annual Convention

Our Friends from the Lower Basin. L to R: Gerald Zimmerman, Rini Peterson, Pat Mulroy and Jim Lockhead (Colorado, presiding).

The opening General Session. L to R: Department of Natural Resources Executive Director Ken Solano, Attorney General Gale Norton, CSC Vice President Doug Kemerer and NSWA Executive Vice President Tom Donnelly.

The debate on "Have the Peds Declared War on the West?" held everyone's interest. L to R: David Robinson, Maggie Fox and Greg Hobbs.

Pat Mulroy, General Manager, Las Vegas Valley Water District, spoke on "Are Western Water Policies Flexible Enough to Meet Changing Demands?"

Now these two guys have something to smile about. L to R: David Merritt and Rolly Fricke.

Some people go all out to please! Very sincere.

A smile was deviating.

The Colorado Water Conservation Board exhibit.

One of those informal baddies where the real business gets accomplished.

The Thursday PM General Session dealt with the Fed.

One of the many Concurrent Workshops that went well attended.

Above: Chuck Green, Editor of the Editorial Pages, The Denver Post, addressed the Friday Luncheon on "Where Are Our Leaders?" In addition, Mr. Green did a "This is Your Life Fred Anderson". Left: Rini Peterson, Director, Arizona Department of Water Resources, spoke on "The CAP Dream in Changing Western Water Policy".
Sanderson: Regulatory Takings — "Why All The Fuss?"

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the Constitution of Colorado to be amended so that crimi-
nal trespass would not be charged against anyone who
stays within the water outlines of any non-navigable
stream. The current law in Colorado is that the premises
that are protected by criminal trespass laws include the
bottom of all bodies of water if fee title to the bottom
has been passed through normal conveyance procedures.
Therefore, under current law, if a rafter or fisherman
gets out of a boat and touches the bottom of a stream, he/she
is potentially guilty of trespass if he/she touches the
bottom on private property. The ramifications of the
Constitutional amendment being proposed would make it
unlawful to charge a person with criminal trespass as long
as they touch the water.

There are currently many miles of stream in Colorado
that have private property on both
sides and the underlying land held in fee
ownership. There is a significant
value associated with the current power
to prevent access to the land which
lies alongside and
underneath the flowing
body of water, and that
access to the
flowing body of water can
therefore be
denied by enforcing
the trespass laws, even if the current statute allows
recreators to float by without being convicted of trespass.
If a constitutional amendment passes, "state action"
will deprive the owners of such land of that value.
Should this measure pass, there can be no doubt that something of
"value" will have been taken by "state action."

THE FUTURE
As foolishly as predicting the future may be, a couple
of things seem likely. The intensity of the debate over
regulatory takings will increase as the environmental and
social agenda of the Clinton Administration unfolds and
the limitations on new government spending are realized.
Congressmen are now stating federal tax increases will be
needed to cover national health care reforms — where
will money come from for wetlands purchases? In
Constitutional amendment limits in Amendment 1 we
predict to severely restrict funding without voter approval.

These pressures will enhance the temptation to achieve
public purposes by limiting private property use without
paying for it. I have even heard a pundit speculate that
next the government will declare that the spare bedroom
many people have should be available for meeting the
homelessness crisis. I do not believe the pendulum will
swing that far. I believe it already is swinging in the
opposite direction.
The legacy of the Lucas case means that courts
will take less account of legitimate state interests in regulating
and more account of a loss in an individual’s property value
resulting from that government action. In the final analy-
sis, the legacy of Lucas is that, when compared to the
decades of the 1960s and 1970s, more property owners will be
compensated for regulatory takings.

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Should this measure pass, there can be no doubt that something of
"value" will have been taken by "state action."

112 S.Ct. 2886 (1992) ("Lucas")
U.S. Const. Amend. V. First English Evangelical
Lutheran Church v. County of Los Angeles, 482 U.S.
See, e.g., United States v. Carmack, 329 U.S. 230,
242 (1946), ("[W]hen the Federal Government ... takes
for a federal public use the independently held and con-
trolled property of a state or of a local subdivision, the
Federal Government recognizes that it is obliged to pay just
compensation for it . . ."); California v. United States,
395 R.2d 261, 263 - 64 (9th Cir. 1968) ("[T]he Fifth
Amendment protects an interest in the State from appro-
ration by the United States without just compensation.").
This is true even when the property has been dedicated
by the State for public use.
See, e.g., United States v. Causby, 328 U.S. 256
(1946), (government planes flying low over a chicken
farm constituted a compensable physical invasion that
prevented the owner from operating a successful chicken
farming business); Baker v. Burbank-Glendale-
Pasadena Airport Authority, 218 Cal. Rptr. 293 (Cal.
1985) (homeowners allowed to use municipality for tak-
ing due to noise and vibrations caused by aircraft).
Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922)
(statute forbidding mining of subsurface coal constituted
taking of coal); Ruckelshaus v. Monsanto Co., 447 U.S.
986 (1984) (interest in environmental data recognized as a
trade secret under state law and thus property interest for
takings purposes). But see, Calvert Investments, Inc. v.
Louisville Metropolitan Sewer Dist., 847 F.2d 304 (6th
Cir. 1988) (no property interest in expectation to continue
delivery sewage (treatment services); United States v.
1986) (entry onto property for CECLA clean-up
purposes is not a taking); Cecos International, Inc. v.
Jorling, 706 F. Supp. 1006 (N.D.N.Y. 1989), aff’d, 895
F.2d 66 (2d Cir. 1990) (company’s expectation that per-
mit procedures will not change is not a protected property
interest for takings purposes); Environmental Waste
Control, Inc. v. Agency for Toxic Substances and
damage to business reputation from preliminary assess-
ment under CECLA not a protected property interest); Lucas
v. South Carolina, 2 Cl. Ct. 244 (1985), aff’d, 765
F.2d 1548 (4th Cir. 1985 did not constitute a taking).

Penn Central Transp. Co. v. New York City, 438
U.S. 104, 124 (1978) 98 S.Ct. 2564, 2569, etc. ("Penn
Central").

28 U.S.C. § 1491 (a) (1) (1988); Pressnell v. ICC,
494 U.S. 1 (1990) (takings challenge to conversion of
public lands easement from railroad to public trail without
permissive use were not brought in Claims Court).

474 U.S. 121, 127-28 (1985) (facial challenge to
permit requirements of § 404 of the Clean Water Act, 33
U.S.C. §§ 1244, as regulatory taking premature).


4 "In the matter of the amendment applications of
the United States of America for reserved water rights.
No. W-8439-76 Dist. Cl. Colo., Water Div. 1, Feb. 12,
1993.

WOLFORD MOUNTAIN RESERVOIR
BACKGROUND AND PROGRESS

Continued from Page 3
August 26, 1993, with the diversion of Muddy Creek into
a channel on the east side of the valley. Concurrent with the
diversion of Muddy Creek was the construction of a new access
road to the dam site and the creation of the construction
"camp."
Excavation of the foundation of the dam down to
firm shale, and the excavation of the core trench up the
west side of the valley was next. Placement of the foun-
dation concrete for the outlet conduit, and the pouring
of the base of the outlet tower followed. On the 20th of
December the project was closed down for Christmas and
the winter.
This winter was relatively mild, especially so for the
Mid-Plateau region which is accustomed to long stretches of
below normal temperatures and bitter winds forming
impressive snow drifts. By the mid-February, skeleton
crews resumed work on concrete form construction, along
with delivery, installation and welding of the eight foot
diameter concrete conduit. The conduit was fully
encased in two to three feet of concrete during late March
and early April.
Following outlet conduit completion, the multi-level
outlet tower was constructed, as was one of the three
tower bridge piers. In addition, excavation was started
on the chute for the service spillway. Stripping of the over-
burden from the east abutment of the dam was started.
At its April meeting the River District Board awarded
the contract for relocation of U.S. Highway 40 to Lawrence
Construction of Lincoln. By the end of April, over
25% of dam construction was complete.
In addition to actual dam construction, Blatter &
Sons began work on the wetlands mitigation areas down-
stream of the dam site. Over 420 acres of wetlands will
be created or enhanced by a series of surface and sub-
surface irrigation in replacement for the estimated
290 acres of existing wetlands which will be inundated by the
reservoir. Conservation measures to protect a species
milkvetch listed as endangered were initiated prior to
commencement of construction. Other mitigation,
including big game habitat enhancement and creation of a rec-
recreation area will commence this summer. In conjunction
with the Colorado Division of Wildlife, the River District
is responsible for creation of a fishery in and below the
reservoir. Additionally, up to 3,000 acre feet of water
will be released from the reservoir for the benefit of the
endangered fish of the Upper Colorado River.

ASPINALL WATER LEADER OF THE YEAR AWARD
This award, established in 1980, is presented to that
person who demonstrates the highest level of leadership
and leadership qualities shown by Wayne N. Aspinall
in development, protection and preservation of the water
of the State of Colorado. The award need not necessarily be
an annual one. Nominees may be any person who best
demonstrated the "Aspinall" characteristics of leadership.
Individuals interested in applying for the Aspinall
Water Leader of the Year Award should request an
application from the Colorado Water Congress office in Denver.
The deadline for filing an application is August 1, 1994.

GLENN G. SAUNDERS &
JOHN U. CARLSON LEGAL SCHOLARSHIP
In recognition of the contributions made by the late
Glenn G. Saunders and the late John U. Carlson, the
CWC Board of Directors has established the Glenn G.
Saunders & John U. Carlson Legal Scholarship.
This scholarship will be awarded to either a law stu-
dent or associate of a Colorado law firm. The recipient
will receive a full scholarship to the Annual CWC
Colorado Water Law Seminar to be held on September
29 - 30, 1994 at the Holiday Inn - Northglenn, 1 - 25 &
120th Avenue, Northglenn, Colorado.

Individuals interested in applying for the Glenn G.
Saunders & John U. Carlson Legal Scholarship should
submit an application to the CWC office in Denver.
The deadline for filing an application is July 1, 1994.

Colorado Water Rights
The first-ever Colorado Legislative Water Festival was held on Thursday, April 21st in the House Hearing Rooms of the Colorado State Capitol Building. The event was sponsored by the Senate and House Agriculture & Natural Resources Committees, the Water and School Lands Interim Committee, and the Central Colorado Water Conservancy District. The purpose of the Legislative Water Festival was to provide legislators the opportunity to learn about water in Colorado from elementary and high school students, and water groups. Over 300 people attended.

Three activities were held in the House Hearing Rooms. Carl Crookham, teacher at Zuni Alternative High School in Denver had several at-risk teenagers from Denver teaching about local surface water quality, water history, and water lore. Scott Elementary School 5th graders from Greeley competed against teams of legislators in a Water Wizards competition regarding Colorado water facts. Legislative Water Wizards included State Representatives Bill Jerke, R - LaSalle, Bob Shoemaker, D - Canon City, Pat Sullivan, R - Greeley, Bob Eisenach, D - Fort Morgan, Lewis Entz, R - Hooper, and Bud Mollenberg, R - Kirk, and State Senators Joan Johnson, D - Denver, and Elsie Lacy, R - Aurora. And finally, a game regarding Colorado water allocation was developed for the festival by Brian Werner of the Northern Colorado Water Conservancy District and Chris Treese of the Colorado River Water Conservation District. A Colorado grown lunch was provided by Bette Blinde and the Colorado Foundation for Agriculture. Several exhibits were also scattered about the Capitol basement.

Governor Roy Romer proclaimed April 21st as “Water Education Day” in Colorado in honor of the first-time event. Senator Don Ament and Representative Bill Jerke were instrumental in organizing the Legislative Water Festival, and it would not have occurred without their strong support.

LARRY D. SIMPSON
ENGINEERING SCHOLARSHIP

In recognition of the contributions made by Larry D. Simpson, the CWC Board of Directors has established the Larry D. Simpson Engineering Scholarship. This scholarship will be awarded to either an engineering student or a non-partner of a Colorado engineering firm. The recipient will receive a full scholarship to the Annual CWC Water Law Seminar to be held on September 29-30, 1994 at the Holiday Inn - Northglenn, 1-25 & 120th Avenue, Northglenn, Colorado. Individuals interested in applying for the Larry D. Simpson Engineering Scholarship should request an application form from the Colorado Water Congress office in Denver. The deadline for filing an application is July 1, 1994.
Denver, March 14, 1994 — Denver attorney Eugene F. Megyesy, Jr. was sworn in as Honorary Consul for the Republic of Hungary in ceremonies held at 5:30 p.m., Monday, March 14, 1994 at the Governor's Mansion, 8th Avenue and Logan Street.

Pal Tar, Hungarian ambassador to the United States, conducted the swearing in ceremonies, and U.S. District Judge John Kane served as master of ceremonies.

The consulate in Denver serves the states of Colorado, Wyoming and Utah. Megyesy's responsibilities include the promotion and development of commercial, economic, cultural, scientific and tourist relations between the Republic of Hungary, the United States and the three-state region.

Prior to opening the Denver office, Hungary established consulates in Seattle, San Francisco, Houston, Miami and Cleveland.

"The timing of this ceremony is really significant for me since March 15th is a Hungarian national holiday. The date commemorates the 1848 revolution by Hungarians against the ruling Hapsburgs of Austria and the holiday continues to symbolize Hungary's independence," said Megyesy.

He escaped from Hungary in 1956 with his parents during the uprising against the Soviet Union. A fifth generation attorney, Megyesy represents corporate and municipal clients on environmental matters. He is president of the Hungarian Club of Colorado, past chairman of the Colorado Bar Association's Environmental Section, a Trustee of the Souls School Fund, and the Nature Conservancy.

ASPINALL
14TH AWARD
PAINTING

A limited number of colored photographs (11" x 14") of the painting of the "Alva B. Adams Tunnel — East Portal" presented to Fred E. Anderson as the 14th recipient of the "Wayne N. Aspinall Water Leader of the Year Award" at the 36th CWC Annual Convention of the Colorado Water Congress are available for $25. 

If interested in obtaining a copy of this photograph, please contact the Colorado Water Congress, 1390 Logan Street, Suite 312, Denver, CO 80203 — or call or fax in your order. (phone) 303-837-0812 (fax) 303-837-1607.

CWC 1994
STATE LAWS OF INTEREST TO WATER USERS

The Colorado Water Congress will be publishing, in June, a book containing all water and water-related laws of the second regular session of the fifty-ninth General Assembly. Since this book is over 150 pages in length; and paper, printing, postage and labor are significant costs, the price of the book is $50 (CWC members) and $100 (non-members) — plus appropriate sales tax, if applicable. Furthermore, since there will be only 25 copies of this book available, distribution will be governed in order of requests. Readers are urged to place their order for the "1994 Colorado Laws Enacted of Interest to Water Users" as quickly as possible. Call or write the Colorado Water Congress, 1390 Logan Street, Suite 312, Denver, CO 80203, or phone 303-837-0812.

BILL HORNBY JOURNALIST SCHOLARSHIP

In recognition of the contributions made by Bill Hornby to balanced reporting on water issues, the CWC Board of Directors has established the Bill Hornby Journalist Scholarship.

This scholarship will be awarded to either a journalist student or a reporter of a news media organization. The recipient will receive a full scholarship to the Annual CWC Colorado Water Law Seminar to be held on September 29 - 30, 1994 at the Holiday Inn - Northglenn, 1 - 25 & 120th Avenue, Northglenn, Colorado.

Individuals interested in applying for the Bill Hornby Journalist Scholarship should request an application form from the Colorado Water Congress office in Denver. The deadline for filing an application is July 1, 1994.

BORESEN SCHOLARSHIP

The late Ed Boresen, CWC President in 1983, has been honored by the CWC Board of Directors with the establishment of a scholarship in his name to the Annual CWC Colorado Water Law Seminar to be held on September 29 - 30, 1994 at the Holiday Inn - Northglenn, 1 - 25 & 120th Avenue, Northglenn, Colorado.

The recipient of this annual scholarship should be an active member of the agriculture community who desires to provide leadership on behalf of agriculture in water matters. The scholarship waives the $500 registration fee for the recipient.

Individuals interested in applying for the Boresen Scholarship should request an application form from the Colorado Water Congress office in Denver. The deadline for filing an application is July 1, 1994.
This report is intended to bring the membership up-to-date with Colorado Water Congress activities for calendar year 1993. 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. Eight of ten water bills introduced in the State Legislature and supported by CWC were enacted into law;
2. All six of the 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 Studies;
4. Concluded legal intervention (in cooperation with the Colorado Municipal League) in the Environmental Defense Fund v. EPA lawsuit in the Federal District Court;
5. The continued effort (as a CWC Special Project) on the matter of passage of a Colorado Wilderness Act was rewarded with the President signing said Act in Denver on August 13, 1993;
6. Participated actively in the Colorado Water Education Foundation;
7. Participated in the establishment of the Water Quality Forum;
8. Conducted first ever CWC Annual Summer Convention in Fort Collins, July 7-8, 1993; and
9. Produced first and last "Melodrama" on "Should the Water Buffalo be Listed as an Endangered Species?"

The new water laws and resolutions supported by CWC were:

SB 260 - concerning the enterprise status of water activities of governmental enti­ties for purposes of Section 20 of Article X of the State Constitution
SB 182 - concerning the regulation of biosolids under the "Colorado Water Quality Control Act"
SB 241 - concerning extension of the statutory provisions which created a presump­tion of no material injury to water rights or to any existing well for wells on residential sites which are used for specified limited purposes
SB 130 - concerning the enterprise status of water activities of governmental enti­ties for purposes of Section 20 of Article X of the State Constitution

Authority pursuant to Section 37-95-107.6, Colorado Revised Statutes

HB 1054 - concerning the elimination of the time limitation on any contract entered into by any metropolitan sewage disposal district

HB 1060 - concerning exceptions from the notice requirements of statutes governing applications to construct water wells outside designated basins

HB 1273 - concerning the Colorado Water Conservation Board Construction Fund, and making appropriations in connection therewith.

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

Board of Directors - 1/20/93, 1/22/93, 2/11/93, 5/17/93, 9/22/93 and 12/15/93
Management and Budget Committee - 2/10/93, 4/16/93, 10/22/93, 11/19/93 and 12/15/93
CWC Official Business Meeting - 1/22/93 and 7/8/93.

State Affairs (Legislative) Committee - 1/20/93, 1/25/93, 2/6/93, 2/8/93, 2/11/93, 2/15/93, 3/19/93, 3/29/93, 4/19/93, 5/3/93 and 12/16/93

Role of the State Engineer Committee - 1/20/93.

Wetlands Committee - 1/20/93.
Special Committee on Water Conservation - 2/12/93.

CWC Workshop on Federal Water Rights/Wilderness - 1/20/93.
Federal Affairs Committee - 1/20/93.

Instream Flow Committee - 4/12/93, 4/29/93, 9/22/93 and 10/22/93.
Special Subcommittee on Instream Flows - 10/6/93 and 10/22/93.
Roan Creek Committee - 3/17/93.
Long's Peak Committee - 3/17/93 and 4/5/93.
Water Transfer Drafting Committee - 2/4/93.
Interstate Water Transfers Task Force - 4/5/93 and 12/16/93.
CWC Nominating Committee - 9/22/93.
CWC Aspinall Award Committee - 9/22/93.

CWC Resolutions Committee - 1/20/93 and 7/1/93.
CWC Fish & Wildlife Special Project Management Committee - 1/14/93, 2/24/93, 3/24/93, 5/19/93, 6/22/93, 8/31/93, 10/7/93, 11/17/93 and 12/15/93.

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

5. CWC Workshop on Legal Ethics in Water & Environmental Law held on October 19, 1993.
6. CWC Workshop for Board Members of Water Conservancy/Conservation Districts held October 20, 1993.
9. CWC Workshop on Federal Environmental Laws held on November 9, 1993.
10. CWC Workshop on The Legislative Process held on November 10, 1993.

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

1. Secured seven new sustaining members, 18 new individual and associate member during 1993.
2. Named Frank Milenski the 13th recipient of the "Wayne N. Aspinall Water Leader of the Year Award" at the 1993 CWC Annual Convention.
3. Published Colorado Water Laws Enacted in 1993 of Interest to Water Users (120 pages).

In regard to CWC's written communication (newsletters), the following newsletters were published during 1993:

2. Water Intelligence Report - 12/30/93.

Again, Alice Kay and I 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
You have undoubtedly heard the line: "I am from the Federal Government, and I am here to help you."

Well, we'll let you be the judge on this matter. We are going to quote from Lynne Newton's article titled, "Forester's rebuke riles legislators" that appeared in the May 4, 1994 The Capitol Reporter. Specifically, Ms. Newton's article was written as a result of a joint Senate and House Ag committee meeting when Elizabeth Estill, the Regional Forester with the U.S. Forest Service appeared and spoke at the joint meeting.

Estill was on hand to update the committees on the status of reissuing special-use water permits in the Arapaho Roosevelt National Forest.

Reading from prepared notes, she also asked members of both committees to consider "enlightened legislation" when dealing with water issues.

"Just what is 'enlightened legislation.'" asked Senator Dave Wattenberg, R - Walden.

Estill testified that the Forest Service is only doing its job - a job complicated by the National Environmental Policy Act, the National Forest Management Act and the Endangered Species Act.

"Compliance with three acts of Congress is something a federal agency does not take lightly and generally cannot be done very quickly," Estill said.

But, while outlining the process to the committee, she angered those for whom protection of state-held and privately owned water rights is crucial.

She asked the committee members if they were still in the Dark Ages, adding that it was time to get off "biological and water buffalo principles" and look at a broader approach to water issues.

"I appreciate you telling us how to run the state government," Representative Lewis Enz, R - Hooper, said to Estill at the end of the joint session.

Yessiree. We're from the Federal Government and we're here to help you.

July 8, 1994 — WORKSHOP ON FOREST SERVICE & WATER ISSUES — Holiday Inn - Northglenn, Northglenn, CO. This workshop is co-sponsored by the Colorado Municipal League and the Colorado Water Congress. The featured speaker will be U.S. Senator Hank Brown. For more information, contact the CWC office in Denver, CO: 303-837-0812, or the CML office (Geoff Wilson) in Denver, CO: 303-831-6411.

July 20 - 22, 1994 — COLORADO WATER WORKSHOP — Western State College, Aspinall-Wilson Center, Gunnison, CO. For more information, contact Western State College, Aspinall-Wilson Center in Gunnison, CO: 303-641-2238 or 303-943-7156.

August 3 - 5, 1994 — NWRA WESTERN WATER SEMINAR — Snow King Resort, Jackson Hole, WY. For more information, contact the NWRA office in Arlington, VA: 703-524-1544.

August 25 - 26, 1994 — CWC SUMMER CONVENTION — The Westin Resort at Vail, Vail, CO. For more information, contact the CWC office in Denver, CO: 303-837-0812.

September 29 - 30, 1994 — CWC COLORADO WATER LAW SEMINAR — Holiday Inn - Northglenn, Northglenn, CO. For more information, contact the CWC office in Denver, CO: 303-837-0812.

December 12 - 16, 1994 — NWRA ANNUAL CONFERENCE — Hyatt-Regency, New Orleans, LA. For more information contact the NWRA office in Arlington, VA: 703-524-1544.

January 26 - 27, 1995 — CWC 37th ANNUAL CONVENTION — Holiday Inn - Northglenn, Northglenn, CO. For more information, contact the CWC office in Denver, CO: 303-837-0812.

December 10 - 13, 1995 — NWRA ANNUAL CONFERENCE — Hilton Hawaiian Village, Honolulu, HI. For more information, contact the NWRA office in Arlington, VA: 703-624-1544.