November, 1987
No. 822

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Gudy Gaskill and Weldon Schwartz represented the CMC and the Colorado Trail Foundation in Washington at the 1986 Take Pride in America Awards Ceremonies. Gudy, sent by the Dept. of Agriculture, accepted the award from Vice-President Bush, Sec. Educ. Bennett, Sec. of Interior Hodel and Sec. of Agriculture Richard Lyng, Clint Eastwood, Louis Gossett Jr. Activities included a semi-formal dinner given by the Dept. of Agriculture, an award ceremony at the National Arboretum, a reception by President Reagan in the Rose Garden, and an informal evening social for all finalist and winners. Despite record breaking heat, Weldon and Gudy received a “warm welcome” in Washington. CMC, together with Friends of the Colorado Trail, won this award for its contribution to the building of the Colorado Trail. Gudy has been instrumental to the planning and development of this trail for the past dozen years.

The theme of this issue is the work performed on the Trail during this past summer by various crews. The trail is now completed, and it is fitting that Gudy and the trail crew work should be recognized at this time. The Colorado Mountain Club can be proud of its part in this nationally acclaimed project.

—Weldon H. Schwartz

COVER

The planning, building, and using of a bridge are one of many facets that fit into construction of The Colorado Trail this summer. The photos are by Alan Kania and the connecting logo is the symbol that marks the completed trail.

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ORMES ON TV

Bob Ormes, author of the Guide to the Colorado Mountains and active member of the Pikes Peak Group, will appear on Channel 6's Senior Showcase at 6:30 p.m., Saturday, November 7, and at 9 p.m., Friday, Nov. 13.

MONTROSE TO BE CONFERENCE SITE

The 11th annual Wilderness Leaders Conference, sponsored by the Colorado Environmental Coalition, will be held at Friendship Hall in Montrose, Colorado on the weekend of November 14-15. Discussions will center on Wild and Scenic Rivers, the BLM Wilderness Review and the National Forest Wilderness bill. The registration fee is $15.00, which includes all meals and materials.

For information, contact Kirk Koepsel at CEC, 2239 E. Colfax Ave., Denver, 80206, 393-0466.

COLORADO SKIING PROMOTED IN D.C.

Colorado Ski Country USA and Busch City Ski created a man-made ski slope on Washington's Capitol Hill last month to promote skiing here.


SKI VAIL—& SEE A FILM TOO!

Ski films from around the world will be showcased during the 14th Annual International Ski Film Festival, December 2-5 at the Westin Hotel in Vail.

The event will include entries in four categories: Ski Racing and Competition; Instruction and Technique; Resort and Travel; and Special Skiing Films.

For information on special lodging/film festival packages, call the Westin Reservations Desk at 1-800-228-3000.

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1987-88
Mexican Volcanoes
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Huascaran and Mt. McKinley

Last year we had the pleasure of having CMC members on our teams in Mexico, Ecuador, and on Mt. McKinley.

Now we are forming teams for the coming year. If you want to be part of an expedition, where your involvement in decisions, route finding, climbing, etc. is expected and welcomed, contact us for information on the above climbs.

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COLSONS OPEN LODGE

Fran and Dave Colson, a mother and son team who are active in the Denver Group, are opening the Alpen Hutte Lodge this fall in Silverthorne. A dormitory style lodge, it is modeled after the huts in Europe, where Fran led tours, including one CMC tour, on her summers off from teaching in the Jefferson County Public Schools.

The lodge will accommodate 64 guests in rooms with bunk beds to sleep four to eight people each. Lockers are provided with a refundable deposit to provide security.

Fran and Dave planned the hut while hiking in New Zealand and Australia during her retirement year.

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YURTS-TO-YURTS: THE ONLY WAY TO TRAVEL!
The Colorado Division of Parks and Recreation reports that cross-country skiers wishing to use the yurts (hut-to-hut) backcountry ski system in the Colorado State Forest this winter should make reservations as soon as possible.
The Never Summer Nordic Co. of Fort Collins has designed a marked trail system for skiers of all abilities, using three yurts 3-4 miles apart.

SPRING ON KAMET SUMMIT
Mountain Travel, oldest and largest of adventure travel firms, plans to launch an expedition to the summit of 25,477’ Kamet, the third highest mountain in India.
The 41-day trip, departing May 2, 1988, is open to ten high altitude-experienced mountaineers. Land cost is $6850, including all expedition arrangements, leadership and equipment.
For more information and a day-by-day itinerary, call Mountain Travel, 1-800-227-2384.

SKI AREAS TO COMBINE THRILLS
Vail Associates, Inc. have reached an agreement with Arrowhead at Vail, Inc., to purchase the majority of the real estate holdings of Arrowhead, located adjacent to the western boundary of Beaver Creek Resort.
This connection of Arrowhead and Beaver Creek could potentially create the largest ski area in the U.S., with over 2000 acres of skiable terrain. It would also give the resort the greatest vertical drop in the state—4040’ from the top of Beaver Creek mountain to the base of Arrowhead.

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Co-leaders: Gudy and Polly Gaskill, 526-0809, 548 Pine Song Trail, Golden, Colo. 80401

CRESTED BUTTE SKI TRIP
Feb. 12-15
Presidents' Holiday Weekend.
Ski downhill, ski cross-country, or snowshoe during this three-day weekend at the Nordic Inn, adjacent to the ski area.

Register with $127.00 at once with leaders, Tony and Jeanne Euser, P.O. Box 33122, Northglenn, CO 80233. Phone 252-9425. Make checks payable to The Colorado Mountain Club, Crested Butte Trip.

YELLOWSTONE PARK
Feb. 24-Feb. 29, 1988
Easy, moderate and difficult trips are planned daily for cross-country skiing and snowshoeing in a Winter Wonderland! Leave Denver, Wednesday, Feb. 24, at 8:30 p.m.; return Monday, Feb. 29, from Snowlodge, arriving in Denver around midnight.

There will be a $5.00 cancellation fee. The balance of the trip cost will be refunded only if a replacement is available. To sign up for the trip send a $247.00 check, payable to The Colorado Mountain Club—Yellowstone Trip, at once to Tony Euser, P.O. Box 33122, Northglenn, CO 80233. For further information call the leaders, Tony and Jeanne Euser, 252-9425.

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November 1987
Lawsuit Threatens Club’s Existence

By Richard A. Jones, President

In June, 1986, a lawsuit was filed against the Club and the trip leader by Kathy Voight as a result of her being separated from the group on a Denver Group climb of Grizzly Peak in December, 1984. She was found the next morning by search and rescue groups, suffering from frostbite. The October, 1985 Trail and Timberline carried an article, detailing the trip and weather conditions. The lawsuit asks for a jury trial with the jury to set damages. There is no limit to the dollar amount of any damages, since the lawsuit was filed just before a state law went into effect setting limits.

The trial is currently set for March, 1988. Starting early in the summer, depositions have been taken of the people involved in the trip and in the rescue effort. These depositions are continuing. Some of the search and rescue people have been critical of the trip, and other club trips, because the group did not keep together.

At the beginning of August the Club received a set of “interrogatories and document production”—questions to answer and copies of documents to furnish. At this point, meeting with the Club attorneys, the very real danger to the Club began to emerge due to the nature of the trial and jury system and circumstances concerning the Club’s insurance coverage.

The Club carries liability insurance to cover itself, trip leaders, volunteers, etc. This kind of insurance has been increasingly difficult to obtain and the cost has gone up dramatically in the last few years. Note that some mountaineering organizations have insurance that covers only the club—not trip leaders, but CMC insurance has always covered leaders and volunteers.

In April, 1984, the carrier of the Club insurance was changed to Great Global Insurance Company; in investigating this new company, we were assured that they were reinsured in turn by a larger company. This policy was for $300,000. In addition, for that year (April '84 - April '85) the Club had an “umbrella” policy that covered $300,001 to $1,000,000. In April, 1985, the insurance carrier was changed again to another insurance company and the coverage was raised to $500,000. The writer of the umbrella policy declined to renew it. This is the current insurance coverage; the Club and its volunteers are covered by a $500,000 policy.

In February, 1986, ten months after the coverage expired and five months before the filing of the lawsuit, Great Global Insurance filed for bankruptcy. This left the Club exposed for any claims arising from the period April '84 - April '85—which includes the time of the accident. Because no claim had been awarded—the lawsuit had not yet been filed—the bankruptcy released the reinsurer from any responsibility. The State of Colorado has an insurance account, funded by a small “tax” on policy premiums, to protect against this sort of situation. The Club defense is paid by this account, and any claim against the Club—up to a limit of $50,000 would be paid. The net result is as if the Club had a $50,000 insurance policy, instead of the $300,000 one, for that year.

So the situation for the period of the accident is that the Club is covered by the State of Colorado fund up to $50,000. It is exposed—or “self-insured” from $50,001 to $300,000. The umbrella policy would cover any claims from $300,001 to $1,000,000.

It is this gap from $50,000 to $300,000 that poses the real risk to the Club’s existence. Why? Because of the way the jury trial system works. The jury cannot be told anything about the financial resources or insurance coverage of the defendants—nothing at all. If they decide a damage award is proper, they are supposed to decide the amount, and who will pay which fraction, based on “the facts of the case” and not the ability to pay. Since the Club basically has no assets besides the clubhouse, it is easy to see the very real threat this poses. No matter how good the Club defense position is, no matter how good the Club attorneys are, if the lawsuit goes to trial before a jury, there is an element of chance on the outcome.

Additionally, even if the suit results in no damages or damages less than $50,000, the Club may be hurt in terms of being able to

(continued on page 252)
Will and Way Completes Colorado Trail

By Willard Boblett of Fort Collins

On September 4, 1987 the final three links of the Colorado Trail were put in place at Molas Pass, Mt. Princeton and Camp Hale. Hurrah! Hurrah! Gudy Gaskill and the U.S. Forest Service with the help of several thousand volunteers pulled and tugged for 14 years until the chain stretched all of the way from Durango to Denver.

Talk about perseverance! (Also known as arm twisting.) That Gudy lady is something. Even though it hurt a little at times, the twisting never broke anything and I believe that all of us really liked the effort and we dared not disappoint Gudy knowing how much effort, time, money and self-sacrifice she had put into the trail. She bullied us at times, convinced us that we could do what first appeared to be impossible, or by her example shoved us into going farther than we believed we could.

During the trail building season, she seemed to be everywhere and nowhere at the same time. If one were to try to catch her at Durango she was supposed to be at Silverthorne; she had been to Silverthorne and left for Lake City but late yesterday she departed for the Mt. Princeton trail crew camp. Of course, the Mt. Princeton camp didn't have a telephone, so a dead end. Start all over next week. No point in trying to drive and catch her. Even when she was leading a trail crew (several times last summer), it was usually at least a five-mile backpack to her camp.

Then, suddenly, she would show up in our camp just to see how things were going and to tell us what a great job we were doing and how the other crews were progressing. Also, that if we could do a bit more than our programmed mile, perhaps we just might finish the link up. Sometimes there was a bit of cajolery slipped in too, or was it prodding? It really didn't matter as it obviously worked.

Gudy swings a mean Pulaski and McCleod along with using any of the other trail building tools better than most of us. She doesn't hesitate to do more than her share of the trail building with her crews and then helps with the chores back in camp.

She also found time to express her appreciation to the volunteers by doing things to make the hard trail work and primitive camp life a bit more enjoyable, such as baking pies, cakes and muffins in the Coleman oven. Of course, she made sure the ingredients were in the allotment of supplies she purchased before the trail building season began and delivered to the Forest Service for transportation to the camps. She has been especially thoughtful in preparing gifts for each of the trail crew leaders by making ceramic items for them the last two years plus a sweatshirt with a Colorado Trail map on the front for '87.

Already Gudy is involved in planning for the 27 maintenance crews for '88 and a ser-
ies of four, three, two and one week hikes on
the Colorado Trail to celebrate the linkups.

Gudy is much more than I have presented
here in my limited way. I have listed some of
the things I personally know she has done in
an attempt to help the reader learn something
about this gracious, unselfish, competent,
human type lady. Gudy has received awards
for her work on the trail from the Depart-
ment of the Interior, former Governor Lamm
and many others. I do not believe she has
received an award from the Colorado Moun-
tain Club. If not, I hope planning is afoot
for appropriate recognition for Gudy, or can
begin soon.

Fassbinder Gulch

By Irene Cazer
of Denver

Twenty-nine people from thirteen different
states comprised Crew 9 at Fassbinder Gulch
from July 18 to 25. Of this number, only
twelve were first year trail builders. The others
had from one year to a number of years expe-
rience and eleven were spending from two
weeks to the entire summer at Fassbinder and
other sites.

We built about three-fourths mile of
difficult trail up a steep incline with large
rocks, which had to be moved, and a shelf,
which had to be dug into the hillside in order
to have a place to stand, and a rough trail,
which had to be cleared and leveled.

One of the rewards at the end of our sec-
section was the sight of a beautiful waterfall
tumbling over a cliff at the end of the canyon.
At this point the trail turned and continued
back toward Road End to be completed by
the next few weeks’ crews.

I guess the powers above were also
interested in getting the trail through because
our daytime weather was fine. Rain, and once
a hail storm came at dinner time, or after we
had gone to bed. The culmination of this was
a sky-shattering electric storm on the last
night. A lightning bolt carried such zap that
it lighted our tents like day and even knocked
Tony Euser out of bed and THAT’S got to
be powerful.

Some of our crew members may have
already forgotten the names of new friends,
whom they vowed to remember forever. Some
may have forgotten how to play “Skipbo”
and some may have forgotten how to make
“coffee can ice cream” and how to boil coffee
in lengths of old pantyhose, but I’m sure that
not a one of them has forgotten the hike in
and especially out from the trail site each day;
two miles in at the beginning of the work day
and 20 miles up-hill at the end of the day.

Some may not have recovered yet, but by
next summer they will be ready to return and
have another shot at creating a trail that will
last longer than any of us and continue to
give pleasure to future generations who will
probably not realize the sweat, blisters and
fellowship that went into its creation.
The Journey West

By Gudy Gaskill
of Golden

The scenery was incredible! We had packed the previous day over five and a half miles of newly constructed trail. It had been a hike of superb beauty, passing many small waterfalls cascading down red stone walls. We were camped below Twin Sisters amidst tall Engelmann spruce, utilizing the only flat area around. We were crew #23 and were assigned to build a trail west of camp, linking our new trail to the Engineer Mtn. trail. A strong crew of 26 volunteers moved dirt and rock like a motorless bulldozer for the next two days. We were determined to reach the saddle by the end of the week. Beautiful weather, warm days and cool evenings kept the spirits high and the pulaskis flying. With the cool evenings, the shepherder's stove in the community tent shed a lot of warmth to the ardent card players. Snowbanks that were several hundred feet up in the passes were used to keep the meat frozen and snow for our daily ice cream 'social.' By Friday noon we had topped the pass and spent the afternoon walking through the flower bedecked fields to the junction with the Rico-Silverton trail. Crew #24 would be able to finish the last section of posting if the weather held. We had had a memorable week.

The weather turned bad the next week and crew #24 worked in a whiteout, with snow and hail covering the route. The helicopter, bringing in the posts, was delayed until the weather warmed up and the snow melted. The last post was put in Friday afternoon and a happy crew hiked out Saturday morning.

The crews had finished one week ahead of time, so the next crew was moving down into Junction Creek to help complete another section. An impossible landscape with bands of protruding rock had been conquered to become one of the many beautiful sections of the Colorado Trail.
A Tale to Tell of the Trail

By Randy Jacobs
of Palmer Lake

On a typically cool and cloudy Rocky Mountain spring day, two members of the CMC’s volunteer trail crew loaded a three-quarter ton pickup in Denver with at least one ton of supplies and inconspicuously chugged off to Durango. The only incident the pair reported on the way to Durango was a slight overheating of the import on La Veta Pass, which was rectified with a pit stop in Fort Garland. The tracks they left on the rain slick highways were destined to be followed by at least 900 volunteers to fill 47 different trail crews on six different forest service districts over the course of the summer as the CMC, the Colorado Trail Foundation and the Forest Service made an unprecedented push to finish the last 40 miles of the Colorado Trail.

The non-profit Colorado Trail Foundation (CTF) was formed this spring and is made up largely of CMC members and is represented by the Forest Service. The CTF is scheduled to take over maintenance and continuing construction of the trail in 1988 leaving the Trail and Huts Committee of the CMC free to organize and carry out other trail projects across the state.

At Junction Creek Campground, Animas District Ranger Ted Lamay was waiting for the entourage in Loop D which had been outfitted with a cook tent, storage tent and community tent for the volunteers and which would serve as base camp for the first half of the summer as the Colorado Trail progressed up Junction Creek. A quiet mood of anxious anticipation accompanied the small group as they reminisced about last year’s 2½ miles built in Junction Creek and about the tremendous job facing them this summer in completing 10 extremely difficult miles to join last year’s finishing point with the Slide-rock Trail below Kennebec Pass at the head of Fassbinder Gulch.

Not missing on this initial team of crew members was the massive effort which had preceded the rather simple task of organizing the base camp in Junction Creek for trail crew #1.

Since December, a handful of dedicated volunteers of the CMC and the CTF quietly, but persistently, laid the groundwork that made the 47 trail crews possible. They sent out literally thousands of pieces of correspondence to former trail crew volunteers and new...
recruits who had expressed interest in the trail crews. They sought publicity through newspapers, magazines, radio, TV, moun-
taineering shops, giving slide shows of the trail's progress over the years, word of mouth and spending hours on the phone patiently answering the questions of interested parties.

They solicited donations from individuals, businesses, corporations and foundations, all of which went to purchase nearly $30,000.00 worth of food to feed the volunteers on the trail crews. They busily perfected designs of Colorado Trail T-shirts, patches, pins, hats and certificates to be provided for the 1987 trail crew volunteers. They planned menus to feed an army of volunteers, they provided literature and organized a seminar for leaders and co-leaders of the trail crews to insure a smooth running camp. They discussed, planned, and revised incredible logistics involving the setup, supply and resupply of four simultaneously running trail crew base camps along those sections of the 450-mile Colorado Trail still needing construction.

And with all this, Saturday, May 21 was somewhat of an anti-climax as 15 additional members of Trail Crew #1 rolled into Loop D, the camp now supplied and ready to cope with at least four weeks worth of volunteers. Like the overcast skies that week, a somber mood fell over the group as they reconnoi-
tered the steep, rocky gorge of Junction Creek that needed to be ascended where last year's trail crew left off.

Trail Crew #1 members complained that the greatest challenge, almost worse than the rocks, dense undergrowth and enormous trees, was the inability to cling to the steep face of the mountainside while a foothold was chiseled out with great difficulty. This maneuver was reported successful only by a one-handed hold on the pulaski with the other providing a rather improvised belay to a well rooted gambel oak or wild rose.

The first week's crew was also amazed at how dramatic their section of trail had become and were particularly proud of portion of their labor, nicknamed the Hanging Trail, which traversed a steep drop above a waterfall on Junction Creek. Co-leader Lucille Klinger notes that it took a little effort to break in the cook tent, which almost burned down that first week due to a run-
way stove, the only casualty being a cremated rhubarb pie.

By the time the second week rolled around, the skies had cleared and the Hanging Trail gave way to slightly more civilized trail building. However, some energetic volunteers noticed that the feeling in their hands and forearms had disappeared due to the constant clanging and shuddering of the pulaski on the abundant rocks in the gorge. Thankfully, this ailment proved temporary.

The third switchback was reached by the end of the second week when leader Marcie Guerin decided enough was enough. Several exasperated members of leader Guer-
rain's Trail Crew #3, who tend to be more inclined to the traditional work ethic, report with disgust that many unnamed members of that team conserved sufficient energy during the day to allow them stamina enough to
dance the night away at a local watering hole in Durango, thus denying the trail that extra bit of effort.

That privilege was taken away once the camp was moved along with the progression of the trail work to Dry Creek. Trail Crew #4 was about a five-mile backpack from the base camp at Junction Creek Campground and leader Pete Rowland enlisted the aid of llamas to service this spike camp, ignominiously christened “Nettleville.” Pete reports with some dismay at the total lack of understanding and disregard with which the animals took the seriousness of the project. One unconcerned fellow seems to have preferred the cool, rocky bottom of Junction Creek to the Colorado Trail and another decided to go AWOL near the end of the week when a weekend R&R was coming up anyway.

By the end of week five, Jim Ray’s group had topped the gorge, and the way had become comparatively smooth sailing. But by this time it was obvious that the unexpected slow going in the gorge had put the carefully planned trail completion estimate seriously behind. A mad scramble was mounted in mid-June to add several extra trail crews and to extend the life of Nettleville by two weeks.

This news was disheartening to Bill Newton, who had backpacked his equipment to Road End Canyon to set up Trail Crew #6. Because of the last minute rearrangement and addition of trail crews, his volunteers would have to hike to their camp via a section of the proposed trail that was flagged with blue tape but not yet constructed. That job was left to the later Nettlites led by John Stanely and Steve Quinn. Bill’s flock, as well as Trail Crew #7, led by Jim Roeder, were then forced to walk the infamous “blueline” for two weeks to and from the base camp at Junction Creek Campground. Once at Road End Canyon, things perked along relatively smoothly, using in part the abandoned and historic old Oro Fino mine district trail back down into Junction Creek gorge at the mouth of Wall’s Gulch.

Bill Ramaley, the San Juan Group’s official head of the Colorado Trail reception committee, had pity on the volunteers struggling in the canyon and took it upon himself to provide the camps with cake and ice cream at unpredictable moments.
occupants of Nettleville were at least once delighted when he appeared with two gallons of ice cream in his backpack cooled with dry ice.

By mid July, enough progress had been made in the lower end of the canyon to warrant moving the base camp from Junction Creek Campground to the end of the forest service road at the head of Fassbinder Gulch for Crew #8, led by Bob Boblett. From here, work progressed down the canyon in hopes of linking up at summer’s end with the earlier volunteers’ work, which ended just north of Road End Canyon. Bill Newton was again packing his equipment to a spike camp near the mouth of Wall’s Gulch in upper Junction Creek by August 1st for Trail Crew #11 as trail construction continued slightly behind schedule down the steep, rugged canyon.

Unfortunately, by the last scheduled trail crew in the Junction Creek area the fourth week of August, nearly a mile of trail had yet to be constructed in the most remote and inaccessible section of the canyon.

But as fate would have it, the simultaneously running trail crews at Molas Pass, 50 miles to the north, finished their 10-mile segment of the Colorado Trail one week ahead of schedule. This meant Larry Grow’s Crew #25, scheduled to finish up at Molas, could be transferred into the remote gorge at Junction Creek. Larry reports that his experienced team of 14 veteran trail crew volunteers worked like gang busters and miraculously finished the section and thus linked the earlier summer’s work with the later. This crew was also amazed when a chopper appeared at tree-top level in the isolated canyon and began filming for a documentary on the Colorado Trail.

On Friday, September 5, Trail Crew #25 backpacked out of the canyon on a completed trail and made their way back to Molas Pass to take part in a low key golden spike ceremony to commemorate the linking together of the Colorado Trail on the Animas district and the trail as a unit from Denver to Durango. Fitting the mood as Trail Crew #1 began 15 weeks earlier at Junction Creek Campground, the day was overcast and rainy. But the spirits of the small crowd of volunteers and dignitaries soared above the clouds in the realization that a difficult challenge had been met and, by sheer determination, a great accomplishment made.
Colorado Water and the Lords of Yesterday

By Charles Wilkinson
Professor of Law
University of Colorado at Boulder

Our State Conservation Committee was so impressed by Prof. Wilkinson's address to the Colorado Water Conference in Gunnison that it is paying for its eight pages in this edition. We think you'll agree it's worth your reading and our magazine space.

The formative era of Colorado water policy, and of nearly all natural resource policy in the American West, was the extraordinarily dynamic second half of the nineteenth century, when the region's resources were used to fuel the westward expansion, the single greatest movement of human beings in world history.

It was a time of opportunity perhaps unlike any other. The federal and state governments threw open the land and other resources of the American West for the settlers. The Hardrock Mining Act of 1872 allowed miners to obtain absolute ownership of entire mineral deposits, and the twenty acres of land over them, at the moment they struck a valuable mineral deposit. Private railroad companies received, among many other things, over 120 million acres (an area about the size of Colorado and Wyoming) to build the transcontinental railroads. The public rangeland was left open to free grazing of domestic stock. The national forests were dedicated to timber cutting as the first use and a policy of below-cost sales was adopted to assist small timber dependent towns. The great rivers of the Pacific Northwest were developed to support hydropower.

Appropriation of western water was the furthest extension of our national and regional determination to dedicate the West's resources to extractive use and to grant hard, vested rights to such uses. Streams were literally zoned for consumptive appropriation. There were no limits on dam building and flooding of canyons. At baseline, individual developers were left to make their own decisions on public water, even if it meant that a stream might go dry or that a large urban area might strip a rural community of its lifeblood. Western water, Colorado water, was there for the taking.

This era is often painted as the heyday of private enterprise and, to be sure, it was marked by ample ingenuity and hard work. Yet water development in Colorado and other western states was energized by massive governmental support that allowed consumptive users to obtain radically underpriced water. This occurred in three fundamental ways.

First, the state and federal governments have never required any payment at all for the use of public water. This is in direct contrast to normal principles of public resource development and is a good example of why I say that water policy is the most extreme form of western resource development. When a timber company wants to use government timber, it must pay a stumpage fee. A rancher must pay a grazing fee. A commercial fisher must pay a substantial license fee. A company mining for coal, oil, or gas must pay royalties to the government. Only in the case of water and hardrock minerals is no fee required.

Second, the state and federal governments not only allowed free appropriation of western water, they also subsidized development through a multi-billion-dollar dam and canal building program in which the United States recovered only a small fraction of the cost. The states participated by establishing special water districts, such as the conservancy districts, that subsidized private water
development through tax exempt bonds, revenue-raising authority, and other mechanisms.

Third, water users have imposed extensive costs on other private users and on the public in the form of various forms of water pollution, but water developers have almost never been held accountable for these externalities.

It needs to be underscored that this far-flung program of subsidized, laissez faire development of western resources was probably a good thing for its time, even if it did depart from market principles and even if it did favor private development to the near-total exclusion of any public interest as we conceive of it today. The country needed water projects. It needed to hold out hope to people in the East who wanted to head out over the horizon toward a new start. Strong measures were needed and they worked, at least in the sense that they were necessary and appropriate to fulfilling the government's clearly-enunciated policy to open the American West for settlement by non-Indians and to develop a true coast-to-coast economy and society.

The issue we ought to be discussing, therefore, is not one of hindsight. The question is not whether the policies of the era of manifest destiny were right for those times. The question is whether they are right for these times.

Two or three decades after the turn of the century, disparate events began to take hold and gradually create a society and climate increasingly at odds with the old policies. You are well familiar with the forces that changed societal attitudes. The boom-and-bust mentality fueled by the "take-it-now" laws left too many western towns in shambles. The stress of population growth became ever more visible on landscapes from Los Angeles to the Front Range. Deep economic currents veered away from the heavy extractive industries toward lighter local economies oriented toward recreation and tourism. Our supplies of resources began to dwindle. In the field of water, for example, we hear the generality that "most of the best reservoir sites have been used up." The actual numbers lend depth to that generality. Before 1930, the dams produced 10.4 acre-feet of water for each cubic yard of dam volume, i.e., cubic yards of cement or other construction material. In the 1930's, the ratio dropped to 2.1 acre-feet/cubic yard. Since World War II, the

![Colorado River in Glenwood Canyon](File Photo)

November 1987
ratio has dropped to .3 acre-feet/cubic yard. This means that the recent dams are just 1/7 as efficient as the dams of the 1930's and are 1/30 as efficient as the dams before 1930.

We are a practical people and we react to lunchpail issues and to close-to-home events and pressures. But we are also a thinking people and our minds and destinies can be turned by great ideas. Thus our region has also been shaped by intellectual leaders and it may be worthwhile to look for a moment at some people whose ideas have clashed with the notions that dominated 19th century law and policy and who have helped reshape contemporary attitudes.

**Great influences on western life: John Muir, Aldo Leopold, Bernard DeVoto, Rachel Carson, Wallace Stegner, and John McPhee.** The first great intellectual influence was John Muir, the naturalist, explorer, and author who was voted the single greatest Californian in history by a California Historical Society poll taken in the 1970's. Muir, of course, passionately advocated the preservation of wild lands, and was a driving force in the creation of the wilderness system that now exceeds 80 million acres, or 4% of all land in the country. He believed in the beauty of wildness and was not afraid to talk about beauty for its own sake. He also understood the interrelationship of all natural things and presaged notions of modern resource management. John Muir said, "When we try to pick out anything by itself, we find that it is bound fast by a thousand invisible cords that cannot be broken to everything else in the universe." Muir held another belief, one with which our society is not yet as comfortable as with Muir's other ideas that we have come to accept. Muir thought that each plant, animal, and mineral deposit had its own dignity and its own right to exist. Once, while hiking in the Sierra, he came upon a rare orchid. Muir wrote, "I never saw a plant so full of life; so perfectly spiritual..." He did not mean that the plant made him feel spiritual: Muir meant that the orchid was spiritual.

Aldo Leopold was a second great influence on the American West and its land and water. His book, Game Management, published in 1942, permanently altered the course of wildlife management: he proved that to manage wildlife, you don't manage animals, you manage habitat. He explained, in vivid words that remain at the core of resource management and development today, that Darwin was too limited because he tended to focus on each individual species. As Leopold put it, we must think on a plane perpendicular to Darwin. Leopold also believed, as did Muir, that we must strive toward a greater understanding of the being of natural systems. Leopold urged all of us to "think like a mountain."

Bernard DeVoto, a native Utahan, sent out his vision of the West to all of the nation from his Easy Chair column in Harpers magazine. In the late 1940's and early 1950's, DeVoto lashed out against the subsidies and the give-away of federal lands. He called them land grabs and held up the sordid side of federal land policy for all to see.

Rachel Carson, who wrote *Silent Spring* in 1962, is thought of as our greatest advocate against pollution. She was that, but she was also much more. The heart of Carson's message cut to the quick of all natural resource policy in the West. She decried the essential arrogance of humanity: "The 'control of nature' is a phrase...borne of the Neanderthal Age of biology and philosophy, when it was assumed that nature exists for the convenience of man."

The fifth influence on western life, Wallace Stegner, may turn out to be the greatest of all. Stegner's commentary on policy is necessarily diffuse, because, although he is a Pulitzer Prize-winning historian (for *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West*), he is first and foremost a novelist. Great novels — and *Big Rock Candy Mountain, Wolf Willow*, and *Angle of Repose* are surely that — work their magic through subtlety, through indirection. But Stegner's wondrous life's work has laid out the people and the places of the West for all of us to see as does no other source. Stegner knows this land and its people and, in the tradition of Muir, Leopold, DeVoto, and Carson, has spoken out many times against the arrogance of trying to dominate nature. He will say this in an upcoming piece that I have seen in galleys: "Behind the pragmatic, manifest-destinarian purpose of pushing western settlement through federal water management was another motive: the hard determination to dominate nature... God and Manifest Destiny spoke with one voice urging us to 'conquer' or 'win' the West; and there was
no voice of comparable authority to remind us of [the]...quiet but profound truth, that the manner of the country makes the usage of life there and that the land will not be lived except in its own fashion."

The final writer who has helped create a new way of thinking about the West is John McPhee. In a straight-forward, evenhanded, yet brightly-etched way, McPhee has challenged us to open our minds to geologic time. In *Basin and Range*, McPhee taught us how — with all our frailty and inadequacies — to struggle back into deep time, back to when the mountains were formed, back even before then. Human arrogance shrinks way down in that long horizon and the desire to conquer nature dissipates. The needs of today take on a different cast when they are stacked up against the millennia that it took the mountains to grow. Thinking like a mountain comes closer to reality.

Through all of these societal changes, ideas, and many other things, we began to realize that sound resource policy must be more than the aggregation of individual private rights. The many common pool resources called for a different approach as the amount of private uses in the pools burgeoned. The idea grew that private uses had to comport with the public interest. Importantly, when used in a principled sense, the public interest includes far more than diffuse interests, such as recreation and beauty. The public interest also includes the obligation of one private user to other private users, to communities, and, in a larger sense, to a smoothly operating market.

**By the late 20th century, a consensus has emerged as to the root principles that should guide the West's land and resources.** These are not just my, or any single group's, ideas but rather are broadly-stated precepts held by the vast majority of persons concerned with the American West. The consensus — a mix of national policies, local prerogatives, market economics, social concerns, and environmental protection — encompasses these ideas:

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*Lake Haiyaha in winter.*

*Frank Cechner*

November 1987

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1. Roughly equal respect should be given to the traditional extractive uses and to the more recently conceived nonconsumptive uses. Wildlife, recreation, and wilderness are "resources" — they, too, are a supply of something valuable.

2. Resource development should be conducted in a relatively level, consistent way in order to promote and preserve stable, lasting communities.

3. Sustained-yield management should be employed so that resources will be available in sufficient quantity and quality for future generations.

4. Government policy should be neutral and should not hold out inducements that artificially promote development.

5. The federal and state governments usually ought to receive a fair return when their resources are developed.

6. Government subsidies should be given to private industry only sparingly and under compelling, well-documented circumstances.

Stated even more broadly, a consensus exists that western resources generally ought to be developed but that development ought to be balanced and prudent, with precautions being taken to recognize noncommodity resources, to protect community values, and to provide a fair return to the public.

This modern consensus exists but development in the American West does not proceed in accordance with it. Rather, westside natural resources policy continues to be dominated by the lords of yesterday. These lords are not people but rather a battery of 19th century laws, policies, and ideas that arose under wholly different social and economic conditions but that remain in effect due to powerful lobbying forces and a lack of public awareness. In other fields, the lords of yesterday include the Hardrock Mining Law of 1872; the dedication of the public range to unmanaged, subsidized grazing of domestic stock; the dedication of many of our national forests to below-cost timber sales; and the domination of the rivers of the Pacific Northwest by hydropower, to the detriment of the great salmon and steelhead runs. In water, the lords of yesterday include those branches of prior appropriation that give absolute protection to inefficient existing uses under the rubric of vested rights; allow extensive, unregulated nonpoint source pollution; fail to provide a fair return to the government for the use of public water; give inadequate protection to rural communities; and leave our rivers and canyons mainly to the discretion of individual appropriators with little public oversight.

Western resources law and policy has begun to loosen the grip of the lords of yesterday in several respects. In most major resource areas — land use, timber, range, minerals, wildlife, recreation, wilderness, and, increasingly, water — governments make decisions on the basis of planning and resource management, including the regulation of private uses, to the extent constitutionally allowed. The idea is that these issues are too site-specific for a legislature; not fully amenable to market solutions; and inappropriate to leave wholly to private decision-making. Thus, we have employed administrative agencies to refine some nuances of, and enforce, the public interest.

The field of water policy has lagged behind in these developments. In Colorado, the State Engineer's Office acts as a distribution agency whose main duty is to allocate water precisely in accordance with the provisions of judicial decrees, even though those judicial decrees typically allow waste of water. To be sure, this state has developed a progres-
sive law providing for instream flows. But the law was not enacted until 1973, so that any rights under it are junior to the tens of thousands of established vested rights. The emerging policy of wildlife mitigation applies only to new uses. Seniority continues to rule on nearly every stream in the state. Deep reform cannot occur unless senior rights are included.

Thus, water officials serve as administrators of existing property rights, not as planners or managers of natural resources. There is, of course, considerable irony in this. We have become used to strict regulation of uses of land, but the vested interests have succeeded in blocking regulation of water even though the effects of water use are even more pervasive than the effects of land use, because downstream uses can be affected literally hundreds of miles away.

Nevertheless, we are in a new time for Colorado water and state water officials and legislators should continue, in a serious way, their current earnest process of reassessment. A basic goal ought to be to require conservation of water by existing users so that we can rationally plan for future uses and, where feasible, avoid expensive, environmentally-destructive water projects. To implement that broad objective, Colorado ought to give serious consideration to the following proposals. These suggestions are radical in the current climate that pervades Colorado water — a climate dominated by the lords of yesterday and their powerful proponents — but these kinds of changes will certainly come. They are consistent with policies that we follow in regard to all resources other than water and they will be demanded by the increasing press of people and ever scarcer resources. My proposals are a mixture of market-based devices and principles of modern resource management.

First, Colorado ought to view all water policy — to plan it — in a coordinated way, comprehensively, by watershed. The state has made a good beginning in two respects. It has developed water courts with jurisdiction by watershed. Watersheds are the logical planning units in the West. Colorado also adjudicates the appropriation of surface and groundwater conjunctively, and has the most advanced system in the country in that regard. But the lords of yesterday still have a hammerlock on policy: appropriative water rights are isolated out, elevated in importance, granted within an essentially closed system, and enforced rigorously according to seniority and decreed amount. Colorado water has been parcelled out with virtually no thought having been given to these crucial things: water quality; fish and wildlife, which can be protected only as junior rights; economics; conservation; local land use planning; and the needs of federal lands. Under Colorado law, all of those things are linear and parallel to each other. As Aldo Leopold would put it, water policy ought to be a plane that cuts across those things.

Second, Colorado ought to exact a charge for the use of water, just as governments routinely do when other natural resources are used for consumptive purposes. The charge, which should be levied on every acre-foot diverted, ought to be modest but should be gradually increased. The use of a pricing mechanism such as this would be a powerful tool for conservation. The old, established uses have few present economic incentives to conserve water.

Third, Colorado ought to adopt a broad-based charter to require water efficiency. Beneficial use ought to be defined by drainage and subdrainage through rule-making. The State Engineer’s Office then ought to enforce phased-in, true beneficial use standards and in so doing would make an important step toward becoming a water manager in the modern sense of the phrase. Colorado law already requires the optimum use of water, prohibits the waste of water, and makes waste a misdemeanor punishable by a fine of not less than $100. C.R.S. ;37-92-501(2)(e), ;37-84-107—109. The Colorado Supreme Court has made it clear that beneficial use does not include waste, even if an old decree may allow a particular amount of water to be diverted: “There is read into every decree awarding priorities the implied limitation that diversions are limited to those sufficient for the purposes for which the appropriation was made, regardless of the fact that such limitation may be less than the decreed rate of diversion.” Weibert v. Rothe Brothers, 200 Colo. 310, 618 P.2d 367, 372 (1980). The Ninth Circuit Court of Appeals and other western courts have found that “beneficial use is a dynamic concept, which
is variable according to conditions... and therefore [is variable] over time.” United States v. Alpine Land & Reservoir Co., 697 F.2d 851, 855 (9th Cir. 1983). California courts have taken the same tack. In 1986, in the leading Sacramento Delta decision, the California Court of Appeals said this: No water rights are inviolable; all water rights are subject to governmental regulation... If the Board is authorized to weigh the values of competing beneficial uses, then logically it should also be authorized to alter the historic rule of ‘first in time, first in right’ by imposing permit conditions which give a higher priority to a more preferred beneficial use even though later in time. United States v. State Water Resources Control Board, 182 Cal. App. 3d 82, 277 Cal. Rptr. 161 (1986).

Those words did not come from liberal California judges. They came up from the ground, from the stresses imposed by population, development, wasteful practices, and scarce supplies. They are precisely the same factors that we face in Colorado, ever more severely each day. The adoption of regulations to achieve a new level of efficiency is not prohibited by existing decrees or constitutional provisions.

I understand, of course, that the lords of yesterday, not the ideas I have just suggested, continue to rule Colorado water. But these kinds of reform will come. There are too many physical, economic, and social imperatives for the vested interests to hold the lords of yesterday in place indefinitely. The only question is how long.

How, ultimately, do we make a rich, a full, a complete water policy? The beginning of the answer is that a great many factors must go into any natural resources policy in the American West, for these are complex times. Colorado water means too many things to too many people for it to be pat, one-dimensional, bound up in a single ideology, as is the case with prior appropriation. Another, but related, part of the answer is that we must move away from jargon, from bland words and thinking that dehumanize what ultimately are intensely human, even spiritual, matters.

In the very last analysis, none of us knows whether this is wholly a secular world. But if there are spirits, surely they must reside, as John Muir believed, in the mountain West. And their favored places — where they most prefer to dip and twirl and revel — must be in the deep canyons. And of those places, they must keen most of all toward those mystical spots where the power is the greatest, where the big canyons form narrow corridors and the rivers must gather up all of their strength, and rush and foam and rage, in order to push through.

There is, as you know, a place like that not far from our largest city and there are plans to pour in a solid concrete slab the width, depth, and height of a fifty-story office building. Then, ever so slowly, the water would back up and push out the animals — and the spirits, if they exist — not just out of the narrows but out of the canyon as well.

How do we resolve these things? One method we would call procedural. That would be simply to bring all of the people up to the canyon and the dam site. If they went there, most of them would oppose the dam, some because it is wrong to destroy such a place, some because it is too expensive to destroy such a place, a few because of the spirits.

A second thing is what we would call substantive. We need water laws that cause us to weigh in geologic time, that cause us consciously and deliberately to focus on the millions of years, all of the misty deep past, that it took to craft a Black Canyon of the Gunnison or a Glen Canyon or a South Platte Canyon and to weigh that expanse of time against the needs of those who want a dam now. Animals, canyons, beauty and geologic time are not too abstract for legal protection. We know how to protect abstractions — there are a multitude of examples, among them free speech, due process, and beneficial use.

And we ought to dare to do another thing. We ought to try to think like a canyon, as Aldo Leopold and John Muir charged us to do. It is hard, and it runs counter to the human arrogance that all of us possess, but we ought to try.

In conclusion, let me emphasize what you all know from your experiences in public life. The best results, the only lasting results, come from community consensus. That is not a homily, that is a profound truth. All of us have seen examples, some small, some large, of people meeting, talking, compromising, and reaching a common ground, the highest ground of all.

My real point here is that our whole com-
THE COLORADO MOUNTAIN CLUB

We are organized: “To unite the energy, interest and knowledge of the students, explorers and lovers of the mountains of Colorado; to collect and disseminate information regarding the Rocky Mountains in behalf of science, literature, art and recreation; to stimulate public interest in our mountain area; to encourage the preservation of forests, flowers, fauna and natural scenery; and to render accessible alpine attractions of the region.”

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munity cannot now participate equally because the process is closed in fundamental ways. The lords of yesterday skew Colorado water toward certain things. They include extractive development, the stability of existing rights, farm land and city lawns. Those are all respectable and legitimate things, especially when they implicate our struggling ranch and farm communities. They unquestionably should be in the formula. But so should many other things. The lords of yesterday deny those other things and we will not have made things right in this best and most glorious of all places until we broaden the inquiry and give a fair say to economics, conservation, canyons, beauty, geologic time, and even the spirits.

White water on the Yampa. Myron Tanenbaum

November 1987
Climbers Guide to Castlewood Canyon
by Alan Mosiman, 35 pages, $5.00.

Alan Mosiman’s eagerly awaited book, Climbers Guide to Castlewood Canyon is finally out. Castlewood Canyon, a practice area for CMC technical climbing instruction, will now be “found” by the rest of the climbing community. Then this area will be likened to the climbs found in Boux in the south of France with its dead vertical climbs on pockets and nubbins.

Mosiman takes a common sense approach to a detailed description of the area. The descriptions are from renderings done throughout the winter and spring of 1987. There are no photos to aid in route description, but, owing to the absence of discernable features of the area, the book does not suffer from this absence. I heartily encourage anyone interested in improving their face climbing skills to buy this book and frequent the area.

A word of caution: make sure you check your ego at the Ranger Station. The ratings are definitely conservative. The concept of “hangdogging” a 5.7 is not unheard of. On the other hand, if you can climb 5.8 here, you can face climb 5.8 anywhere. I’ll see you at Castlewood—with Al Mosiman’s guidebook in hand!

Tim Harrison
Denver Tech Section

Liability Suit
Continued from page 236

continue its current liability insurance policy. Of course, another effect of this lawsuit is the new Release of Liability members must sign now.

What is the current situation? The taking of depositions and collecting of documents is continuing—the “discovery” period. The trial is scheduled for March, 1988. The executive committee of the State Board as well as the Denver Group Council consider protecting the club in this lawsuit as the highest priority. The preparation of the Club’s defense is continuing. If you have any information or ideas, please contribute them immediately. If you have questions, don’t hesitate to ask me or any member of the State executive committee.

Seventy-five years ago a small group of people who loved the mountains and were willing to accept the risks associated with them started something whose joys and benefits we have inherited. We intend to do everything we can to insure that in seventy-five more years lovers of the mountains will still have the joys and benefits of the CMC.

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TOTAL...........

Trail & Timberline — No. 822
Outings

Continued from page 235

PARIA CANYON, GRAND GULCH CANYON BACKPACKS
May 8 to 13 and May 15 to 20, 1988

Two of the most spectacular backpacks in the canyon area, these two separate trips are limited to eight people each. Paria Canyon (May 8 to 13) involves approximately 1300 miles round trip driving, individual food, any motels enroute, and $3 registration. Grand Gulch involves approximately 1100 miles of driving plus food and $3 registration. Participants can sign up for one or both trips.

All participants must sign up with the leader directly and send $3 registration for each backpack to the CMC Clubrooms earmarked for the particular trip. These backpacks, approved by the Outing Committee, are open to all CMC members. Contact Dick Chuitke, Box 457, Crystal Beach, FL 34256 (813) 784-1825.

YANGTSE VALLEY BICYCLE TOUR
China, June, 1988

This 26-day tour features an in-depth overland excursion—by bicycle, plane, train, and bus—across China’s rice bowl and the chain of ancient cities that first introduced silk, porcelain, and jade to the world.

Tour price: Approximately $3450., land and air from San Francisco. With a few exceptions, includes breakfast, lunch, and dinner every day. Make reservations now by sending a $50.00 non-refundable deposit check made payable to Colorado Mountain Club China Bicycle Trip. Mail to Tony and Jeanne Euser, P.O. Box 33122, Northglenn, CO 80233. Phone 252-9425.

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