

High Country News

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A Paper for People who Care about the West

One Dollar

A Special Issue

Tribes struggle for sovereignty and power

The image of Indians and their reservations is not a happy or a hopeful one. The stereotype is of an isolated and dispirited people living on bleak land the white man did not want, and afflicted with every variety of social disease, but especially alcoholism. Depending on your philosophy, the wretched conditions on America's 270 reservations are either due to the miserliness and incompetence of the federal government in discharging its trust obligation to 750,000 reservation Indians, or to the welfare-state dependency and helplessness the trust obligation has fostered.

There is no question about the isolation and despair on many reservations. The next issue of *High Country News* will carry an article by Geoff O'Gara on the epidemic of suicides that has plagued central Wyoming's Wind River Reservation.

There is, however, a side to the Indian story which goes beyond the poverty which afflicts some reservations and the pickup truck consumerism which afflicts others. It is a story of Indian tribes forcing the United

States to make good on a few of the promises made to the tribes in the 19th century. It is the subject of this issue of *HCN*.

The empowerment of the tribes is clearest in the case of water. In the East, water comes with the land. If you buy 40 acres with a stream through it, you also own the stream. You can use it to generate electricity for your house, to water your garden, or just to look at.

In the West, water is far too scarce to attach to something as plentiful and worthless as mere land. Here, water is separable from the land. There is no point, the Western ethic holds, in letting water flow noisily through Idaho's Hells Canyon or Arizona's Grand Canyon when that water can be spread over fertile and irrigable mesas upstream of the canyons.

At an ever-increasing rate, the tribes in the West are winning control of large amounts of this separable water. Often they are winning water which has been used for generations by local ranchers, or by non-Indian communities. Their first victories were

in court. But now that the strength and depth of their legal case is clear, there are more negotiations -- in Montana, in Idaho, in Colorado, in Wyoming -- as states try to strike better, more logical deals than they might get in court.

This *HCN* explores the progress many tribes have made on paper toward gaining control of water, and thus of their destiny. The stories include a description of a conference on Indian water held in Denver this fall, an account of the tug of water between Wyoming and the Wind River Reservation tribes, and a story on negotiations between Idaho and two Snake River tribes.

Lest it appear the tribes are concentrating solely on water, there are two stories by Marjane Ambler. One is a status report on CERT, the Council of Energy Resource Tribes, and its efforts to help reservations which have oil, gas, coal and uranium. The second describes attempts to control hazardous waste on the reservations.

In reading about reservations, one

fact must be remembered: the tribes consider reservations to be sovereign entities, equal to and separate from the state the reservation happens to be in. Reservations, Indians say, have a special relationship with the federal government due to the treaties they have signed.

That has many implications, ranging from signs on Arizona highways which say, "You are now entering the Navajo Nation," to intense struggles with the states over which will control reclamation and clean air and water laws, levy taxes, administer child adoptions and mete out justice.

The stories in this issue are distant from life on the reservations. The water conference was held in an expensive Denver hotel, and the various negotiations are attended by a few Indian leaders and their usually Anglo experts. Nevertheless, if there is a brighter future ahead for reservation Indians, it probably lies with the off-the-reservation decisions being made now.

--Ed Marston

Indians breathe life into old treaties

by Ed Marston

By all rights, the conference on Indian water held in Denver this fall should have been a celebration. Attorneys for tribes in the arid West have sued for and won millions of acre-feet of water over the past two decades. In the well-watered Northwest, tribes have gained rights to half of the fish in the Columbia River.

The victories have left the Anglo water world in disarray. Ross O. Swimmer, principal chief of the Cherokee Nation in Oklahoma and Interior's new Assistant Secretary for Indian Affairs, ended the two-day

conference by summing up non-Indian reaction to the Indian successes:

"Wait a minute! We didn't know those were *real* treaties. We didn't know those water rights were there."

Now they know. The state of Wyoming learned recently that it can't win against the Indians even if it launches surprise legal attacks in state court. The key case in Wyoming is on the Big Horn River system. There, judges in state courts have essentially upheld a water award of nearly 500,000 acre feet to the Wind River Reservation. The award was initially made by former Congressman Teno Roncalio, acting as a court-appointed special master to take testimony and make a recommendation. *pages 10, 7*

Roncalio was at the conference to tell 200 Indians, experts and

government officials how the *Winters Doctrine* led him to that award. The *Winters Doctrine*, a 1908 decision of the U.S. Supreme Court, states that when the federal government signed a treaty to establish a reservation, it also implicitly set aside, or reserved, enough water to make the reservation bloom.

In the case of the Wind River Reservation, shared by the Arapahoe and Shoshone tribes, Roncalio decided it would take 500,000 acre-feet to irrigate all of the reservation's "practicably irrigable acreage," or PIA in the jargon.

An attorney for the Fort Peck (Montana) Reservation tribes, the Sioux and Assinboine, told the conference that the Wyoming decision was heard in Montana, convincing that state to negotiate. When the

negotiations were over, the Fort Peck Reservation had rights to 1 million acre-feet of water out of the Missouri River -- enough water to irrigate its PIA.

The doctrine and PIA are not the only arrows in the tribes' legal arsenal. Representatives of Northwest fishing tribes were there to talk about the 1974 Boldt decision and related cases. Based on treaties, the courts have awarded the fishing tribes half of the fish in the Columbia River. Those decisions may turn into grants of habitat as the Indians seek to keep sufficient water of high enough quality in the streams to maintain fisheries.

A few days before the Sept. 26-27

(Continued on page 10)

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WESTERN ROUNDUP



High Country News

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Wyoming's water plan hits a drought

With the recent slumps in energy development and the economy, the tap appears to be running dry on Wyoming's \$600 million water development program.

"A lot of projects on the books are pretty much up in the air," says Helen Deniston in the state auditor's office. "Wyoming will definitely have to look at where the priorities lie."

Money was not viewed as a problem in 1978 when Gov. Ed Herschler, D, first sold the Wyoming Legislature on his water development program. As envisioned by the governor, the comprehensive plan for supplying the state with new water would cost about \$1.2 billion, with the state paying half. The Legislature agreed to start setting aside funds and added a funding mechanism: a 1.5 percent excise tax on coal.

Money wasn't a worry then, according to State Rep. Rex Arney, R-Sheridan, chairman of the Legislature's joint select water committee. "The state was pretty flush, largely because of mineral development."

To implement the new program, a Water Development Commission (WDC) was established in 1979 to identify potential new water projects. Later, the commission was also

authorized to work on rehabilitation and groundwater projects as well. Arney's committee was created in 1982 and now has authority to review WDC recommendations before they go to the Legislature and governor.

Funds for the new water development program come from the excise tax on coal, as well as legislative appropriations from the general fund -- which to date total \$114.6 million -- and federal "or other non-state sources." Rehabilitation projects are funded from a 0.167 percent severance tax on oil and gas, appropriations from the general fund and federal and non-state sources.

Despite recent drops in the energy industry, Deniston says neither the coal excise nor severance tax revenues have decreased significantly. "Coal income has been running just about even with what it has since the real boom." The coal excise tax should yield around \$19-20 million for new water projects, and the oil and gas severance tax is expected to add another \$5-6 million to the coffers. The permanent mineral trust fund -- from which money is loaned for projects -- hasn't changed significantly from 1982's \$128 million.

The problem, she says, is the

dependence on "sizeable chunks" of money from the state's general fund. "They (the Legislature) were looking at \$100 million a year" from the general fund. According to Deniston, that money isn't there.

The general fund is used for a variety of purposes: "It's been suffering for the last couple of years," Deniston says. "We don't have the money to pay for all the services we need. We don't have any surplus."

Among projects that will be funded, Deniston says, is the \$47 million Buffalo Bill Dam. The money has been appropriated and "it will be spent." But the fate of other projects is less certain. Only \$3 million has been appropriated for the Middle Fork Dam and Reservoir, although Michael Purcell, executive director for the Water Development Commission, has estimated it will cost \$45 million.

Given the current state of economic affairs, a \$600 million program is "probably" unaffordable, according to Warren White, an assistant to Gov. Herschler. "Some projects may have to be put on the shelf for a while," White says.

--P.L. Blair

Dear friends,

We should tell readers of an intense power struggle in the offices of HCN. We call it the War of the Discs, and it pits East against West.

Disc I holds our Eastern readers; disc II holds our Western readers. In the old days, East was divided from West by the 100th meridian. We divide them today by zip codes -- below 81000 is East, above is West.

The East includes Colorado's Front Range, where 30 percent of the people in the paper's official five-state territory live, Montana, the Dakotas, and a major subscriber center -- Washington, D.C. The Western disc has Wyoming, Idaho, Utah, western Colorado, New Mexico, Arizona...

Until recently, the two discs held equal numbers of subscribers. But over the last few months, the gap between them has widened sharply. Disc I now has 1,969 subscribers while Disc II has 2,109 readers. The total of 4,078, by the way, is the highest we have seen except for the brief period in 1983 following the merger of HCN's 3300 readers with *Western Colorado Report's* 1,000 readers.

The discs, by the way, can hold 3100 names each, so don't fear that your Christmas gift subscription (buy one, get one free) will harm us. And if better comes to better, and there is an avalanche of new subscribers, we can always create a new disc.

Development Director Judy Moffatt spent 16 days late this summer touring HCN's northern reaches and visiting a score or so readers. She tells us she made a number of interesting discoveries.

I found that most HCN readers love and have dogs, that the dogs love children (which was fortunate, since they kept my six-year-old son Nathan entertained) and that the readers are provocative and entertaining people who know the Rockies and *High Country News*.

In addition to dogs, two readers

keep a herd of buffalo (Dave and May Reynolds of Lander), one raises horses (Emily Stevens of Dubois) and one cultivates an incredible flower garden (Elizabeth Blake of Pinedale).

Readers come in all occupations: outfitter/legislator John Turner of Jackson Hole; Western artists John Clymer of Teton Village and James Bama, who lives in Wapiti, Wyoming, with long-time HCN reader Lynne Bama; retired dude wrangler Dorothy Duncan of Sheridan, Wyoming, who led tourists on horseback into Glacier and Yellowstone national parks starting in the early days of the century; and guest ranch operators Emily and Bud Betts of Dubois.

Other hosts and luncheon and dinner companions who were generous with the hospitality and views of the Rockies were two half-sisters, Mardy Murie and Louise Murie-McLeod of the Jackson Hole area; Sarah Doll of Lander; HCN board member Geoff O'Gara and his wife, Berthenia, of Lander; Leonard and Sandy Sargent of Corwin Springs, Montana; board member Adam McLane and his wife, Nancy, who threw a get-together to

introduce me to Helena readers; freelance writer Jim Robbins of Helena; and naturalist-writer Dr. Myron Sutton, attorney Wink Davis and professor Jerry Coffee, all of Bozeman.

While many readers were concentrated in the Jackson Holes and Bozeman, others were scattered all over the path of our 2,500-mile trek. We visited with John and Hap Reuben, who have their home/fishing hole on the Yellowstone River near Livingston, Montana; Jean Anderson of Billings; and Larry Mehlhaff of the Sierra Club and Lynn Dickey of the HCN board and the Wyoming Legislature in Sheridan. Our final stop was in Kaycee, Wyoming, with Sally Gordon, before heading south back to Colorado.

I came away from the trip with memories of a gigantic and beautiful country and a favorite quote, from Polly Renne of Bozeman, who said she wasn't interested in drawing fine lines between the words environmentalist and conservationist. Like Aldo Leopold, she said, "I consider myself a dilettante nature lover... I'm a member of the community of which the natural world is a part."

--the staff

HOTLINE

Defending Holy Cross

A Colorado citizens' group called the Holy Cross Wilderness Defense Fund filed suit last month in federal court to stop construction of a controversial water project planned for the Holy Cross Wilderness. The Homestake II water diversion project, sponsored by the fast-growing cities of Aurora and Colorado Springs, would take 20,000 acre-feet a year from high-altitude streams in the wilderness. The suit asks the federal court to revoke permits issued by both the Forest Service and Army Corps of

Engineers because environmental and public concerns were not adequately addressed.



Mountain of the Holy Cross

Mott proposes a Burr Trail solution

There is still some confusion about who guaranteed what to whom, but this month Park Service Director William Penn Mott, Jr. attempted to break a 15-year impasse over the fate of Utah's 66-mile Burr Trail.

The dirt road winds through spectacular canyon country in southeastern Utah, including Capitol Reef National Park (15 miles) and Bureau of Land Management and state lands (51 miles). The debate has pitted Garfield County commissioners and the state's congressional delegation, all of whom want the road paved to boost tourism, against conservationists who say blasting a paved road through the sandstone country will forever damage its character.

Mott said he would try to settle the dispute after touring the trail in October. His conceptual plan as outlined in a letter to Utah's delegation and Gov. Norm Bangerter Nov. 7, proposed:

- The Park Service would negotiate a takeover of jurisdiction of the trail, which would be maintained as a "rural scenic road."

- The road would be upgraded with a gravel surface to make it usable year-round. There would be no major changes in the vertical or horizontal alignment of the trail.

- One new bridge would be built over Bull Creek to replace a frequently washed-out stretch of road.

- Some other stream crossings would be "hardened to permit travel during and after high water periods."

- About a mile of road now in the creek bed on the east side of Capitol Reef National Park would be rerouted to the adjacent bench to prevent washouts.

- An interpretive visitors center would be built in the town of Boulder in Garfield County. It would "encourage complementary development there."

- The Burr Trail would be paved at its "most critical portions" -- areas where erosion is a current or potential problem.



Mott named no mileage for paving in his letter, but at a press conference in Washington, D.C., he said the total might be 10-15 miles. Duncan Morrow, an aide to Mott, cautioned in a telephone interview that the 10-15 mile figure was "off the top of his (Mott's) head."

Not so, said Bob Weidner, an aide to Sen. Jake Garn, R-Utah. He said Mott's figure includes paving 12-13 miles of Long Canyon and its descent by hairpin turns into an area called the Gulch on BLM land. Weidner said Mott discussed paving the Long Canyon stretch with Garn.

Mott's aide, however, said, "The letter (from Mott) is the basis for negotiation." Morrow said some reporters have gone wrong "by assuming what Garn's office said is what Mott said..."

Morrow said Mott was also not specific in his letter about continuing grazing rights on land near the trail. "It didn't come up in Mott's conversations with Garn's office, but reporters are telling me it did."

Last week Garfield County commissioners issued a statement praising what is now being called the Mott Compromise. The commissioners said they agreed with Mott's "reasonable approach," but insisted that the rights of "cattlemen, miners and travelers"

must be protected, Long Canyon and the Gulch paved, and reversion clauses added as insurance in case Mott's plan was not implemented.

Mott's aide said he had not seen the commissioners' statement but expected issues to emerge that needed to be resolved. The Park Service rarely takes over any property with a reversion clause, he added. "It is unlikely that will be acceptable."

Terri Martin, a Salt Lake City staffer with the National Parks and Conservation Association, said many elements of Mott's proposal "have merit," including transferring jurisdiction of the trail to the Park Service, building an interpretive center, hardening washes, adding one bridge and making minimal changes when the road is graveled.

A key issue is the now vague paving plan, she said, as well as Sen. Garn's and Garfield commissioners' insistence on access for tour buses, which would mean some major road expansion, and continuation of cattle grazing.

Another question, Martin said, is whether Sen. Garn will amend his bill which asks Congress to appropriate \$8.5 million to begin paving the entire Burr Trail.

--Betsy Marston

South Dakota voters nix a nuke compact

Shrugging off the wet chill of the season's first snow storm, South Dakota voters gave the proposed Dakota Compact a cold shoulder in a Nov. 12 special election. A resounding 83 percent of the voters -- 91,000 of them -- said 'no' to the compact that could have allowed the siting of a large, low-level radioactive waste dump in the state. It was the first special election in the state's history.

While Dakota Compact opponents claimed the victory clearly reflects opposition to a large radwaste dump, compact and dump supporters pointed to low voter turnout as evidence that people either don't care or are confused about the issue. Unofficial figures put voter turnout at about 25 percent.

Officials of Chem-Nuclear Systems, Inc., the company hoping to construct and manage a low-level dump in South Dakota, said they weren't surprised by the vote. "We anticipated the outcome," said Paul Corpstein, operations manager. "But we hoped for a greater turnout. Apparently the voters have confidence in the state Legislature to make these sorts of decisions."

Homer Harding, state senate majority leader and a compact supporter, said the low turnout

probably meant most South Dakotans "aren't too concerned about radioactive waste."

Waste dump opponent Debra Rogers disagreed. She served as a county coordinator for the Nuclear Waste Vote Coalition, the grassroots group that has spearheaded efforts to derail the compact and Chem-Nuclear's plans. "Dump supporters are only trying to diminish the scale of the vote," she said. "They are hoping to set themselves up to do whatever they want to in the future."

The compact just defeated would have allowed the governors of South and North Dakota to appoint compact commissioners, who would have then had the power to choose among three options for low-level radioactive waste storage. The options included opening a large dump site in South Dakota for the region or nation, opening a small dump limited to waste from South or North Dakota, and exporting radwaste to another state or disposing of it on-site.

Nick Meinhardt, statewide coordinator for the coalition, warned that if South Dakota officials and the Legislature persist in promoting a large radwaste dump in the state, his group will begin circulating petitions to force another vote. "We are

prepared to work with the Legislature to arrive at acceptable plans for the disposal of our state's low-level waste," he added.

Corpstein said the election will not have any impact on his company's future plans in South Dakota. Without the Dakota Compact and its commission in place, he said, "We instead will work through the Nuclear Regulatory Commission" to review 48 sites in Fall River County that the company has identified as suitable for a radwaste burial ground. Fall River County was the only one of the 66 counties in South Dakota where voters approved the Dakota Compact.

Debra Rogers, however, said Chem-Nuclear cannot proceed without written permission from the state. "Chem-Nuclear can't go to the NRC until South Dakota signs a statement indicating state ownership of site land and long-term state liability for a site," she said.

With the election over, speculation has already begun to focus on the 1986 state legislative session. During the last session it seemed no secret that many legislators favored a large radwaste dump in the state.

--Peter Carrels

HOTLINE

Keeping ranchettes at bay

A rancher on Colorado's urbanizing Front Range has donated six square miles of land to a non-profit group to save it from development. The 4,000-acre Douglas County ranch near Sedalia is surrounded by five-acre ranchette-type subdivisions. According to the *Denver Post*, the land could sell for \$12 to \$16 million to developers. But when rancher J. Raymond Falck, 74, couldn't find anyone to take over his cattle ranch, he gave it to Colorado Open Lands in Denver. The group's vice president, Martin Zeller, said his organization, which has a \$150,000-a-year budget, is pleased. But it also faces a financial challenge. "Most cattle operations lose money and this one is no exception."

No longer protected



Clarks Fork of the Yellowstone River

The state-funded Wyoming Water Development Commission is investigating Wyoming's Clarks Fork of the Yellowstone River for possible water storage or hydroelectric projects, despite Forest Service recommendations to protect a 21-mile stretch under the Wild and Scenic River Act. The Forest Service recommendation protected the Clarks Fork for a three-year period, but that safeguard expired Sept. 13, opening the river to possible water projects. Shoshone District Ranger Bob Hammond says Wyoming Gov. Ed Herschler, D, and the state's congressional delegates are reluctant to support the river's protection because of possible economic benefits from water projects. Hammond says the Forest Service will continue to manage the river as wild, but that the decision to protect the Clarks Fork is ultimately up to Congress.

BARBS

Plus, elk bugling and pinon nuts falling to the ground are creating bedlam.

James Kahan of Grand Canyon Helicopters thinks the flap about aircraft noise in the canyon is ignoring the fact that the Colorado River's waterfalls and rapids are also quite noisy.

In that case, shouldn't the top management of the R.J. Reynolds Tobacco Co. be executed?

According to an attorney for R.J. Reynolds, the issue in an upcoming liability trial isn't that the smoker-cancer victim was addicted to cigarettes. The issue is the smoker's "personal responsibility, personal accountability for one's actions," according to *The New York Times*.

HOTLINE

A spectacular sight



Visitors to Montana's Glacier National Park have been treated to a fascinating rite for the past month as thousands of spawning kokanee salmon and hundreds of hungry bald eagles gathered for an orgy of birth, death and dining. Mike Aderhold from Montana's Department of Fish, Wildlife and Parks reports that up to 118,000 salmon and 500 bald eagles have been counted in the area in a single day. The gathering occurs at Apgar Bridge along Lower McDonald Creek in the southwest corner of the park because several dams built in the Flathead River Valley left McDonald Creek the best spawning site in the entire drainage. Masses of dead and dying salmon entice eagles from as far away as Great Bear Lake, 1,200 miles to the north in Canada, as well as some 50,000 people from 20 states and provinces who make the journey to watch the spectacle.

What are our recreation needs?



Bikecentennial '76

President Reagan's Commission on Americans Outdoors met for the first time last month to take a look at what the country's recreation needs are and how those goals can be met for the next 20 years. The commission is a resurrected version of the Outdoor Recreation Resources Review Commission formed under President Eisenhower that led to many of today's wilderness laws, including the Wild and Scenic Rivers Act. The new 15-member commission is chaired by Tennessee Gov. Lamar Alexander and, in addition to four members of Congress, includes many representatives from the recreation industry. Conservationists have expressed concern about their lack of representation on the commission. Only three members, Sally Ranney from the American Wilderness Alliance, former Nature Conservancy President Patrick Noonan, and Arizona Rep. Morris Udall, are considered strong backers of environmental concerns.

Montana lab produces submissive grizzlies

Diana Doan Martinez, who works with University of Montana bear researcher Charles Jonkel, has been testing a red pepper spray on captive bears in Missoula.

Martinez approaches the bears, stamps her foot on the concrete floor and rattles a cage door, waiting to see if her actions will provoke the black or grizzly bears into charging her. If it does, Martinez, safely behind an iron gate, sprays the animal in the face with the red pepper mist called capicum.

A black bear held in captivity during the summer had had two doses of the acrid spray on previous occasions, and apparently learned its lesson -- it refused to come out of a secluded chamber and charge Martinez. Which is what the 23-year-old bear researcher had hoped.

"She's a real feisty little bear," Martinez, a wildlife biology student, said during the experiment. "After the first treatment she charged, but since then she hasn't come out." The bear, she said, learned to associate people with pain.

Jonkel and his assistants are looking for ways to restore a fear of man in bears that have lost that fear. Called "aversive conditioning," the bears are held in cages for a week or two. Twice a day researchers approach the bear and if the animal reacts aggressively, it is punished with a spray of capicum.

Jonkel said it is too early to judge how well the conditioning works. Fifteen bears, including three grizzly bears, have been through the program; all but two have steered clear of humans after graduation, Jonkel said.

Aversive conditioning is controversial among bear researchers. Chris Servheen, coordinator of the U.S. Fish and Wildlife Service Grizzly Bear Recovery Team in Missoula, believes conditioning will not work under clinical conditions.

"The only promise is in the field," Servheen said. "Lab experiments don't have a relationship in the field. It's a different environment and the animals react differently."

He said the best way to keep bears wild is to prevent them from getting used to people. Once a bear has been corrupted, he said, it is usually too late.

An official at Glacier National Park, however, said he believes conditioning will soon be an important tool in the arsenal against problem bears. "There's a role for aversive conditioning in our national park," said Gary Gregory, a resource management specialist. "We're watching Jonkel's tests closely. As soon as it's received field testing we'll try it in the park."

Conflicts between people and bears have become a serious problem in Montana, especially in the national parks. As the bears' habitat shrinks because of development, and more people take to the backcountry, the number of conflicts has increased.

In recent years, there have been nine fatal bear maulings in and near Yellowstone and Glacier, the only two parks in the Lower 48 with grizzlies. In 1984, a Swiss woman camping in Yellowstone was killed and eaten by a grizzly. Later in the summer a 12-year-old boy was dragged from his tent in a crowded Yellowstone campground and mauled. He survived.

While Jonkel hopes that by aversively conditioning troublesome bears he can head off human fatalities, he also hopes it will help preserve the grizzly bear, which is listed as a threatened species. Usually, bears which attack a human are either killed or shipped to Canada.

The 54-year-old biologist acknowledges that the animals do experience pain in the experiments, but argues that if they are trained, instead of being killed, they will be released back into the wild.

In addition to aversive conditioning, the experiments have also allowed researchers to try different animal repellents. So far bears have been treated with ultrasonic noise, pressurized boat horns, skunk odor, shark repellent, Mace and looms -- umbrellas and instantly inflating balloons, including one that was shaped like a dog.

But the most effective repellent so far is the capicum. The substance is propelled in a fine mist from a small canister that looks like a fire extinguisher. Once inhaled it irritates the throat and nasal membranes, and takes away the breath, much like tear gas.

A small company in Arlee, Montana, is marketing the spray under the brand name 'Animal Repel.' A six-inch canister sells for \$20. The spray has been used only once in the field, with questionable results, Jonkel said. A bear researcher, camping purposefully near a radio-collared grizzly bear, provoked the animal to attack. The scientist produced his red pepper, but either missed the target, or the bear ignored the spray.

The grizzly knocked the man down and stood over him before the researcher was able to hit the bear full in the face. The bear turned and left, though it isn't known if the pepper was responsible.

There have also been questions raised about whether conditioning bears takes something out of a wilderness experience.

"People say, 'who wants a kiss-ass grizzly. When you're in the woods you want one that's going to attack and kill you,'" Diana Martinez said. "But with so many conflicts, it's whether you want a live bear or a dead bear."

--Jim Robbins

Montana halts grizzly hunt



Bob Kennedy, Hungry Horse News

Hunter Phil Sword with a 500-pound grizzly he shot in Montana's Bob

Marshall Wilderness. Sword also killed a grizzly last year.

Montana's controversial grizzly bear hunt was halted last month when the established quota of human-killed bears was reached. Effective Oct. 23, the state Fish and Game Commission closed the grizzly season in the Bob Marshall Wilderness complex and cancelled the soon-to-open Rocky Mountain Front season after two bears were killed in the Mission Mountains. That brought the year's total to 15

human-caused grizzly deaths. Although a subquota of six females was originally set, only three sows were killed this year from all causes.

State fish and wildlife officials expressed disappointment that problem bears could not be hunted on the eastern front. If more grizzlies die before the season's end, next year's hunting quota could be reduced.

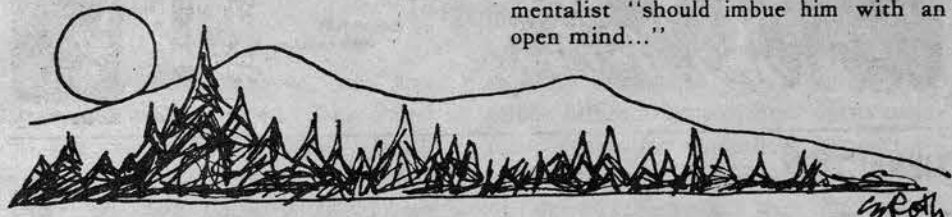
BULLETIN BOARD

NOMINATE A LANDOWNER

Nominations for the 1986 Colorado Division of Wildlife Landowner of the Year Award will be accepted until Dec. 10. The award is intended to recognize a private landowner's contribution towards enhancing wildlife habitat and improving relations with sportsmen. Nomination forms can be picked up at most stores that sell hunting and fishing licenses. All Colorado landowners are eligible, and this year's winner will be announced at the National Western Stock Show in January. Contact Colorado Division of Wildlife, Landowner Recognition Program, 6060 Broadway, Denver, CO 80216, or phone 303/297-1192, ext. 318.

WEED WARS

Forest Service officials in the intermountain region of Utah, Nevada, southern Idaho and southwestern Wyoming are planning a program to control noxious weeds and poisonous plants. A regional team is currently drafting an environmental impact statement for treatment of the 31 million-acre region. Alternatives range from no action to use of chemical, biological and mechanical controls. Send written comments on the program before Dec. 2 to local Forest Service offices or to J.S. Tixier, Regional Forester, Intermountain Region, 324 25th St., Ogden, UT 84401.



SECOND CHANCE IN UTAH

The Bureau of Land Management has prepared preliminary draft environmental analyses for land in Utah that was added or restored to Wilderness Study Area status by decisions of the Department of Interior Board of Land Appeals and the Eastern District Court of California. The court rulings added acreage to three WSAs in and near the Henry Mountains and restored WSA designation to nine areas of less than 5,000 acres that had been dropped by former Interior Secretary James Watt. A draft environmental impact statement covering all Utah BLM-managed WSAs is scheduled for release in early 1986. Copies of the preliminary analyses are available at the BLM Utah State Office, 324 South State St., Salt Lake City, UT 84111, as well as at district BLM offices.

GRIZZLY HUNT IN WYOMING?

The Wyoming Game and Fish Department's new draft for a Grizzly Bear Management Plan includes a proposal for sport hunting the bears, now listed as "threatened." Dale Strickland of Wyoming's Game and Fish says sport hunting is being considered as a management tool, and that hunting "would only be used if its use would facilitate recovery." Strickland says hunting could be allowed before the population goal of 300 grizzlies is reached only if it proves to be an effective recovery tool. Bears targeted for hunting would be in areas outside designated grizzly habitat or where overcrowding caused problems. The state's bear management plan, which also covers plans for habitat protection and management, will be given to the U.S. Fish and Wildlife Service next spring as part of a nationwide revision of grizzly bear management policy. Wyoming Game and Fish encourages public response to their draft plan and will hold public hearings on Nov. 25 in Dubois and Nov. 26 in Cody. Hearings in Jackson, Cheyenne and Casper have already been held.

SMALL BUSINESSES -- SMALL COMMUNITIES

A two-day seminar on small businesses in small communities will be held at Western State College in Gunnison, Colorado, Dec. 10 and 11. The seminar is directed at both communities and at individuals in the communities interested in the availability of financing, the pitfalls to success, and a history of small business development in other regions. The fee is \$48 and information is available by calling Marlene Zanetell at 303/943-2082, or writing to her at: Rural Communities Institute, Western State College, Gunnison, CO 81230.

TWO ARCH DRUIDS

David Brower, former executive director of the Sierra Club and Friends of the Earth, and Stewart Udall, former Secretary of the Interior, will appear Thursday, Dec. 5, at A Celebration and Awakening, commemorating the new awareness of the Colorado Plateau as a sacred place. In addition to the talks, those who attend may sign a scroll which will be dropped over Cathedral Monument and view a rare film of Glenwood Canyon before the dam. The event is a fundraiser for the Utah chapter of the Sierra Club. Admission is \$8 in advance and \$9 at the door. It will be held at Kingsbury Hall at the University of Utah starting at 8 p.m. Call 801/363-9621 for information.

NEW AT WOC

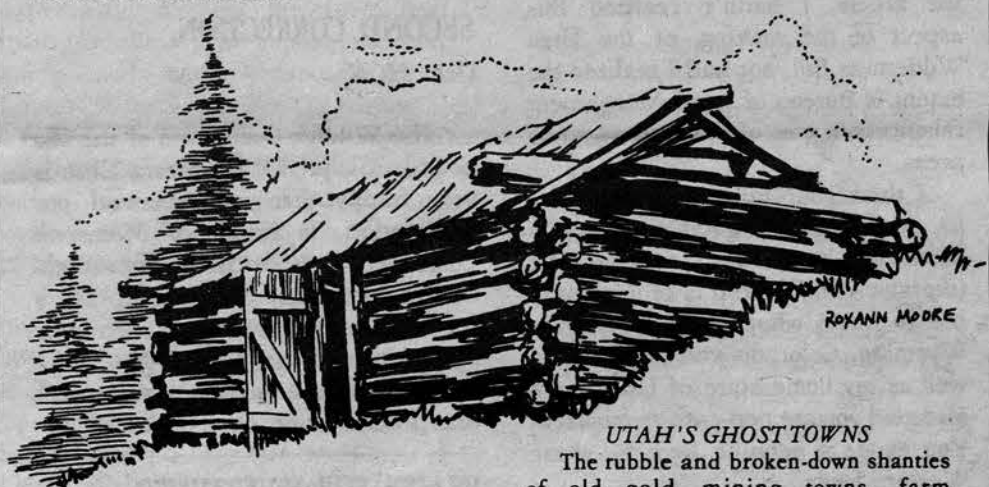
The Wyoming Outdoor Council gained a new executive director in October, replacing Debra Beck. He is A. Donn Kesselheim, a former staff director of the Colorado Mountain Trails Foundation who has worked with Outward Bound as a writer, consultant and national board member. Most recently he was headmaster of the Woodstock School in the Himalayan foothills. John Barlow, president of WOC's board, said Kesselheim's experience as an educator rather than as a professional environmentalist "should imbue him with an open mind..."

CELEBRATING 27

The Montana Wilderness Association will hold its 27th annual convention (yes, they're really that old!) Dec. 6-7 in Missoula's Sheraton Hotel. A variety of panels and speakers will address this year's theme, "Montana Wilderness: the Unfinished Work," covering topics that range from Forest Service trends to decisions about the state's remaining wild lands. Special attention will be given to grass-roots organizing, acid rain and wilderness management. Call or write MWA for more information at Box 635, Helena, MT 59624 (406/443-7350).

GUIDE TO WILDLIFE AREAS

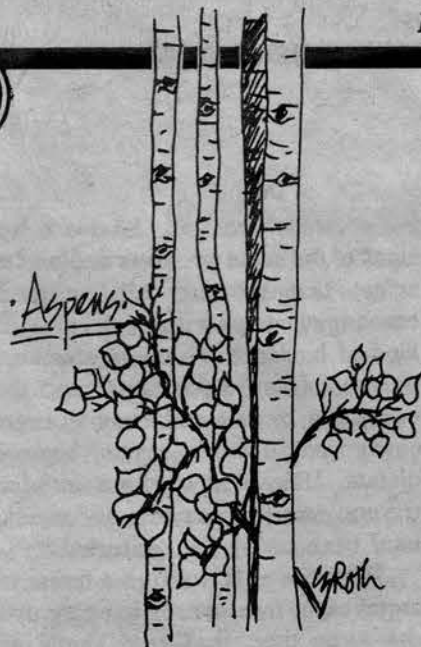
The Colorado Division of Wildlife has published its fourth edition of the *Guide to Colorado's State Wildlife Areas*. The 32-page booklet costs \$2 and lists 222 properties managed by the state for outdoor recreation. Included are 21 maps showing 41 of the areas. Copies are available from Division of Wildlife officers in Fort Collins, Colorado Springs, Pueblo, Durango, Montrose, Grand Junction and Denver or by writing a check to Colorado Outdoors, c/o Division of Wildlife, 6060 Broadway, Denver, CO 80216. The Department asks people to include their name and address on a separate sheet of paper when ordering, and to write the name of the guide on the memo line of the check.



PIONEER MONTANA EXPLORERS

Old maps, contemporary color photos and abbreviated histories of explorers such as Lewis and Clark and Father Pierre Jean DeSmet comprise this ninth paperback in *Montana Magazine's* geographic series. *Montana's Explorers: The Pioneer Naturalists 1805-1864*, by Larry S. Thompson, offers a good overview with excellent illustrations.

Montana Magazine, Box 5630, Helena MT 59604. Paper: 109 pages.



THE CONIFERS AREN'T COMING

Beginning several years ago, coincident with Louisiana-Pacific's commercial interest in aspen trees, the U.S. Forest Service in Colorado discovered that the conifers were coming to invade and then drive out the aspen. The aspen, they said, could regenerate if they were clearcut. Acting on this conviction, the Forest Service rode about the countryside warning that unless there was extensive clearcutting by L-P the region would eventually lose its *Populus tremuloides* and fall color drives. Information at the time was hard to find, but now, thanks to the same Forest Service, it is available in abundance. The agency has just published *Aspen: Ecology and Management in the Western United States*, edited by Norbert V. DeByle and Robert P. Winokur, in a glossy format which is very well organized and illustrated and walks a nice line between dry academic papers and popular writing. We don't want to give away the plot, but one paper says that aspen forests may be a climax species in many places, indicating that the agency can dismount. There are also articles on aspen management that are very revealing of the non-forestry social and economic assumptions that then lead the agency to its silvicultural policy. For a free copy, write: Publications Distribution, Rocky Mountain Forest and Range Experiment Station, 3825 East Mulberry, Fort Collins, CO 80524, or call 303/224-1798.

CHEVRON CONSERVATION AWARDS

Chevron Corporation is accepting nominations through Dec. 31 for the 1986 Chevron Conservation Awards. Presented each year to 10 professional conservationists working for non-profit organizations and to 10 volunteer workers, the Chevron Award winners receive a \$1,000 honorarium, an engraved bronze plaque and a trip to Washington, D.C. for the awards banquet in May. Judges for this year's awards include Charles Callison, founder of the Public Lands Institute, and Wilderness Society Executive Council member Margaret Murie. Nominations should include at least two letters of endorsement and a detailed description of the nominee's achievements. For more information or to send nominations, write Chevron Conservation Awards Program, Box 7753, San Francisco, CA 94120.

UTAH'S GHOST TOWNS

The rubble and broken-down shanties of old gold mining towns, farm communities and pioneer settlements along the desert's waterways are all thoroughly explored in George A. Thompson's *Some Dreams Die*. The book records the history of Utah's ghost towns with old black and white photos, descriptions of the towns when they were bustling with pioneers and tall tales from way back when.

Dream Garden Press, 1199 Iola Ave., Salt Lake City, UT 84104. Paper: \$9.95. 194 pages. Illustrated with photos and maps.

COLORADO CONIFERS

Tree identification for the non-botanist, by means of physical appearances of the bark, needles, cones and entire tree silhouettes, is described in Robert McPhee's *The Conifers of the Southern Rocky Mountains*. A useful chart shows which trees commonly, and rarely, occur at four life zones, from the foothills (6000 to 8000 feet elevation) to subalpine (10,000 to 11,500 feet elevation). The chart also gives examples, mostly in Colorado, of where each zone can be found. Author McPhee is also responsible for the numerous illustrative photographs in the booklet.

Far West Trading Co., P.O. Box 1809, Denver, CO 80218. Paper: \$2.50, including postage. 32 pages.

ABBEY PERSPECTIVE

Resist Much, Obey Little consists of interviews, literary criticism, memories of meetings and letters -- all centering on Edward Abbey. The book shows that he is admired not only by environmental crazies but also by such respected writers as Wendell Berry, William Eastlake, Barry Lopez, and Gary Snyder. Abbey doesn't escape criticism, but all see him as a defender of the Southwest desert and wilderness, and as a great comic spirit of hope. But before reading this book, take some straight Edward Abbey by reading *Desert Solitaire*, *The Brave Cowboy*, *Fire on the Mountain* and *The Monkey Wrench Gang*.

Dream Garden Press, 1099 Iola Avenue, Salt Lake City, UT 84104. Paper: \$7.95. 127 pages.

AMERICA'S ONE-TEACHER SCHOOLS

Four hundred black and white photos enrich this survey and pithy history of *America's Country Schools*, written by Andrew Gulliford for the National Trust for Historic Preservation. Gulliford strives for an unromantic appraisal of these schools which served as the heart of a community.

National Trust for Historic Preservation, 1600 H St. NW, Washington, D.C. 20006. Paper: \$18.95 plus \$2.50 postage. 296 pages. Illustrated.



TRAIL GUIDE PUBLISHING

Several environmental groups in Pennsylvania and West Virginia earn money by writing, editing, publishing and selling trail guides for hiking, ski-touring, canoeing, etc. Their experiences over the past 15 years have been summarized in a 32 page "how-to" manual which tells how \$3,000 to \$10,000 a year can be generated by a volunteer committee. The manual costs \$2 from the Allegheny Group, Sierra Club, c/o 210 College Park Drive, Monroeville, PA 15146.

SOUTHWESTERN COLORADO PLAN

The Bureau of Land Management recently announced its final decision on the San Juan/San Miguel Resource Management Plan for southwestern Colorado. The plan will be used to manage 994,000 acres of public land for the next 10-15 years. Decisions for the area include designation of a 156,000-acre Anasazi Culture Multiple-Use Area, maintenance of a small wild horse herd in Spring Creek Basin and recommendation of the Dolores River Canyon Wilderness Study Area for wilderness designation. For a copy of the decision and maps, contact the BLM, San Juan Resource Area, 701 Camino del Rio, Room 102, Durango, CO 81301 (303/247-4082) or Uncompahgre Resource Area, 2505 S. Townsend, Montrose, CO 81401 (303/249-7791).

WESTERN COLORADO BLM LAND

The Bureau of Land Management is now accepting protests for western Colorado's newly released final environmental impact statement. A part of the Grand Junction Resource Management Plan, the EIS covers management of 1.3 million acres of public land in Mesa, Garfield, Montrose and Delta counties. Written protests of the proposed decision should be sent before Dec. 16 to Director, Rm. 202, Bureau of Land Management, 1800 C Street NW, Washington, D.C. 20240. The EIS is available at BLM offices in Grand Junction, Glenwood Springs and Denver, Colorado, and at county public libraries.

6-High Country News -- November 25, 1985

LETTERS

FORESTS DO HAVE SOULS

Dear HCN,

I found George Wuerthner's essay (HCN, 9/30/85) on foresters and forests extremely thought-provoking. Forestry schools sound like medical schools, with major emphasis on separate parts, relatively little on interconnectedness and a tendency to believe that old is not important. A crash course on the latest physics theories would surely benefit both disciplines and hasten the bridging of the gap between our outdated 17th century perception of separate parts and the up-to-date 20th century perception of the dematerialization of matter into processes, fields and wholes.

Today's physicists are sounding more and more like poets and mystics. We may need to acknowledge that forests really do have souls. Physicists are telling us that spirit and matter are interconvertible; that every atom of every cell appears to have some kind of consciousness; that we are all -- trees, slime, rocks, birds, animals, humans and stars -- varied expres-

sions of the same proteins and nucleic acids; that we are all constantly exchanging atoms with each other in a kind of biodance which is animated, purposeful and disciplined; and that each atom, by its own behavior, exerts change on all other atoms, however distant. Unity and oneness interlock the universe, just as poets and mystics have been saying for centuries.

When we walk through a forest the atoms of the forests are changing us at the same time that our atoms are changing the forest. To believe that an observer can be objective and separate is no longer possible. The awe and reverence this point of view generates has the potential to interweave science with mysticism, change our self-perception and thus revolutionize our arrogant rational, materialistic culture.

In the words of physicist David Bohm, "Everything is alive; what we call dead is an abstraction." Forests do have souls!

Edith Dunn
Aspen, Colorado

AX IN CHEEK

Dear HCN,

Where was George Wuerthner when I was a struggling forestry student? O, would that I had stood at the foot of his Acropolis and listened while bounteous wisdom flowed from his sagacious and most Socratic lips! Had I so repaired, I would not be the poorly educated slug of a forester that I am today. Indeed, I could be "over-educated" as George tells us he is.

Doubtless, even Dr. Johnson would not have attempted a definition of "over-educated." I checked three dictionaries -- they didn't either. Intuitively, one would think "over-educated" would mean too educated or being in a state of knowing too much. Yet one need only read George's essay to see that he does not qualify.

One adequately educated in wildlife -- let alone "over-educated" -- would know that "Pileated Woodpecker" is spelled with initial capitals, as are all bird names. The

quintessential ecologist should at least know -- and admit -- that when old growth is removed and Pileated Woodpeckers leave, young growth comes in and hosts an entirely different array of species, both avian and terrestrial.

As an example of bad education and insensitive foresters, George cites his *alma mater*. The last two symposia I attended happened to be hosted by that same University of Montana. While there, I was very impressed with both faculty and students and their commitment to the faces of forestry called wilderness, wildlife, and recreation.

Douglas G. Turner
LaBarge, Wyoming

UTAH COMMENT

Dear HCN,

As a resident of Utah, I thoroughly enjoyed Ray Wheeler's piece on the state's wilderness politics. It contained abundant information regarding the political struggles between the various conservationist groups. Before the article, I hadn't realized this aspect of the making of the Utah Wilderness Bill, nor had I realized the extent of Bureau of Land Management falsification, etc. of wilderness study areas.

I think your publication provides its readership a good service by detailing key issues within the intermountain West. It is of interest to me to know what is happening in Wyoming, Colorado and Montana as well as my home state of Utah. I am also glad you are non-commercialized. You exude a genuine love for these Western lands.

Rosalie A. Gilpin
Ephraim, Utah



Kayo Robertson

CORRECTION

Dear HCN,

I would like to draw attention to a serious error that appeared in the book note section of the Sept. 30, 1985 issue of *High Country News*. Elliot Bernshaw states in his book review of "In Praise of Mountain Lions" by Edward Abbey and John Nichols that Montana is one of four western states that class the lion as a "varmint predator." He further states that "it is legal for anyone at anytime to kill any mountain lion, male or female, even nursing mothers and suckling cubs." Nothing could be further from the truth.

Montana has classified mountain lions as big game animals since 1971. Moreover, lion hunting is subject to numerous regulations which in part include a limited wintertime kill season, a late winter pursuit-only season, hunters having to obtain a license three months prior to the season, no taking of females with young at side and mandatory check of all kills.

Last year, nearly 1,100 hunters participated in lion hunts providing both recreational and economic benefits to the state. Known non-hunting or control mortalities have averaged less than 10 per year since a hunting season was enacted in 1971; a small number for such a large state. The current status of the state's lion population based on best available information is stable to slightly increasing. It must be emphasized that the future of the lion hinges on conservation of its habitats and that of its prey base rather than protectionism from legal harvest.

It is commendable that the importance and value of the mountain lion is being brought to light, but disconcerting that Elliot Bernshaw and the Sierra Club did not research their writings more accurately. I sincerely hope you will correct this error for your readers.

Arnold Olsen, Administrator
Wildlife Division
Fish Wildlife and Parks Dept.
Helena, Montana

SECOND CORRECTION

Dear HCN,

The Wildlife Committee of the Rio Grande Chapter of the Sierra Club is very happy that you reviewed our publication, *In Praise of Mountain Lions* (HCN, 9/30/85). Readers might like to know that they can obtain a copy by sending \$3 to 1415 Phoenix NW, Albuquerque, NM 87107.

Your reviewer made one statement that needs some clarification: "Ac-

cording to the Sierra Club booklet, the four states of Idaho, Montana, Wyoming and Texas still class the lion as a 'varmint predator.' " This information came from Ed Abbey's article written in 1970. Today only Texas still regards the mountain lion as a varmint and offers it no protection.

Carol Cochran
Albuquerque, New Mexico

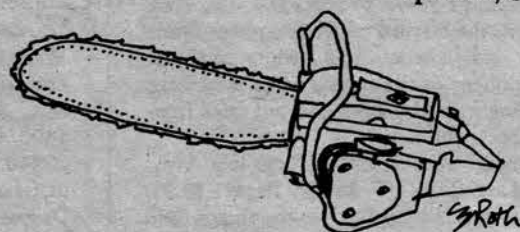
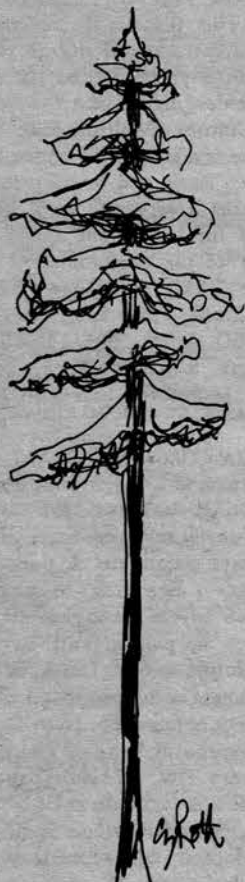
PRAISE FOR WUERTHNER

Dear HCN,

I really enjoyed George Wuerthner's guest essay, "Treating forests as if they had souls," (HCN, 9/30/85). I think journalists, as well as foresters, can profit from Wuerthner's lesson. Sometimes the emphasis on reporting environmental controversies leads us to forget how nice wilderness really is.

The controversy comes to assume greater importance than the object of the controversy. Let's not lose our ability to see the forest through the trees! In any event, I hope HCN will publish more articles like Wuerthner's thoughtful piece.

Bruce J. Noble, Jr.
Cheyenne, Wyoming



LETTERS

ROBERT WEED ATTACKS THE UTAH WILDERNESS ASSOCIATION

Dear HCN,

Thanks to Ray Wheeler for a very good article on the Colorado Plateau and the honor of having my likeness hanging in effigy from a power pole in Escalante, grace HCN. I would like to say that although Ray told a very factual account of the politics of conservation in Utah, a few important facts need to be stated.

When the Forest Service's wilderness bill was being negotiated, Dick Carter, being the realistic and reasonable person that he is, was willing to let Mid-Continent and ARCO blast 50 miles of new roads that would have destroyed Death Hollow forever. It was only when other groups began screaming to Rep. John Seiberling and threatening to kill the bill that Dick Carter backed down.

Carter's contention that he would

have preferred more acreage in the High Uintas rather than Mt. Timpanogous as compensation for Box-Death Hollow is pure bull. Carter stated openly to other conservationists that he didn't trust Seiberling and would rather work with the Utah delegation. When Seiberling pushed for 20,000 more acres in the High Uintas as compensation for Box-Death Hollow, Carter opposed this and said he liked the bill just the way it was.

Finally, on negotiations over BLM wilderness, Ray did not tell the whole story. In January of 1985, the Utah Wilderness Association said that the time had come to announce a BLM wilderness proposal for Utah. Carter was astonished that other guys were not prepared and even implied that UWA were the true professionals that had been doing their homework and

knew the land. Nothing could have been further from the truth. At this point, the UWA proposal was for 2.7 million acres. It became clear through those series of meetings that UWA members did not know the land and in many cases were drawing lines on maps never having been to the area on the ground.

If this is not the truth, why does the UWA proposal now have 3.8 million acres? How did 1.1 million acres slip past Carter, the true professional that he is? It's no wonder that most conservationists in Utah fail to trust Carter's judgment any longer and feel that the reasonable and realistic proposal for BLM wilderness in Utah is 5 million acres.

Robert Weed
Escalante, Utah



M. MORAN

THE BLM REPLIES TO THE COLORADO PLATEAU ARTICLES

Dear HCN,

During our review of Ray Wheeler's article entitled "Last Stand for the Colorado Plateau" which appeared in the October 14, 1985 edition of *High Country News*, we noted that there was an error in the acreage figure used to highlight the results of the Arizona Strip District's wilderness recommendations.

We hope the following will help clarify the BLM wilderness review program in the Arizona Strip area and enlighten you as to the true facts concerning our recommendation.

The Arizona Strip District identified a total of 46 wilderness study areas, including five areas classified as instant study areas, during the inventory process. Each of the 46 areas was studied to determine its wilderness suitability. The study phase allowed us opportunities to evaluate each of the WSAs in a

multiple-use context. The regional socio-economic values, needs for certain resources, contribution of public lands to employment opportunities, needs for wilderness opportunities in the region and representation of ecosystems in the National Wilderness Preservation System, were all analyzed and evaluated.

The results of the initial findings were published in two draft environmental impact statements. The first DEIS addressed three instant study areas: Paria Canyon Primitive Area, Paiute Primitive Area, and a portion of the Vermillion Cliffs Natural Area. This DEIS, released to the public in April 1980, recommended 112,742 acres for wilderness preservation. The second DEIS, which was released in January 1983, addressed the Arizona Strip District's remaining 43 WSAs and recommended an additional 26,186 acres as suitable for wilderness designation.

The proposals contained in both DEISs represented the Arizona Strip District's initial effort in determining which WSAs should be recommended as suitable. The Arizona Strip District was in the process of preparing Preliminary Final Environmental Impact Statements, with the BLM final recommendations, when Congress took action on resolution of the wilderness issue for the Arizona Strip area. The public comments received during the DEIS 90-day review period influenced the recommendations in these PFEISs. Due to pending action by Congress, these PFEISs were never completed in final form and, as a result, the BLM final recommendations were never publicized.

In the two draft documents, the BLM recommended a total of 138,928 acres of public land as suitable for wilderness preservation. This is considerably more acreage than the 30,000-acre figure used in the article. The BLM's final recommendations would likely have been significantly larger based on the public comments received on the DEISs. You should be aware that the land area designated as wilderness by Congress included both state and privately owned lands, and additional contiguous public lands

administered by BLM, which did not qualify for WSA status under the provisions of the BLM wilderness inventory policy.

The passage of the Arizona Wilderness Act of 1984 reflected the culmination of many hours of intensive negotiations and discussions among representatives of industry groups, conservation organizations, state and federal government agencies, as well as congressional staffs. The BLM Arizona Strip District Manager played a major role in these negotiations which ultimately resulted in legislation representing a balanced approach to the development and management of economic resource values and the preservation of wilderness values.

Since passage of the Arizona wilderness legislation, we have been implementing a land exchange program to acquire key parcels of land to facilitate wilderness management on the Arizona Strip. We have acquired a sizable acreage of state of Arizona lands which are now being managed as part of the National Wilderness Preservation System.

Dean D. Bibbes
State Director, BLM
Phoenix, Arizona

MORE ON THE BLM

Dear HCN,

I have just finished reading "A BLM employee's cry of rage" which appeared in the Oct. 28, 1985, issue of *High Country News* (page 15), and I would like to voice my support for all the things the author said in the article. I have been an employee of the BLM for nearly 14 years and have observed, or have been impacted by, most of the situations the author identified and some that he/she did not mention. From my observations and experiences, the hardest thing to deal with is the lack of any active overt support from co-workers within the agency. Most fellow workers will give verbal support, but will not take any action which may impact their career ladders. Most supervisors have achieved their positions because they learned to play the game well and they do not want to be associated with anyone who is not considered a team player by the administration's appointees, who are calling the shots. Therefore, most supervisors will give little or no support. In fact, he or she will most likely suggest that you become a team player and quit making waves over each "little" infraction of the regulations. The next thing will be a suggestion that you find a position in another location within BLM, or better

yet, outside BLM. If these actions do not work, then you will be helped into a position where you cannot have any impacts on policy or management decision. As the author said, you are "neutralized."

I am sorry that I cannot offer the author any hope for the situation improving in the immediate future, especially if *real* multiple use management is to be implemented on public lands within reasonable time frames. What I can offer the author is a future filled with frustration, which will cost a considerable amount of money in relocation fees, and most likely will weigh heavily on his/her physical and mental health.

I would like to let the author know he/she is not alone in his/her observations of how the system works. Right now the BLM is operating on the "good ol' boy" system, just like before the passage of the Federal Land Policy and Management Act of 1976. However, if enough employees hang in there long enough, and don't quit, there is some hope for the future. On the other hand, if the people who question the present resource allocation system continue to quit, the "Big Three" will win with little or no effort and BLM will continue to operate in the status quo.

A BLM Employee

OSTRICH-LIKE ENVIRONMENTALISTS

Dear HCN,

As an economist who deals with resource (mostly water) issues on a routine basis, I was impressed with Ray Wheeler's article in the October 14th issue, "Last Stand for the Colorado Plateau." However, I was again disappointed by how ostrich-like environmental writers often are in their approach to the large issues of development vs. conservation. In reality, economic values are important facts of life as is national defense, i.e., critical minerals stockpiles, etc. The strategy of presenting issues and facts in a context where the world is presented only as seen by wilderness buffs is a detriment to the conservation movement.

I was especially intrigued by Mr. Kincaid's reported assessment of why Energy Fuels Nuclear was willing to cooperate in increasing the amount of land designated as wilderness on the Arizona Strip. While his language was quaint and colorful (nice words for vulgar and offensive) his comment

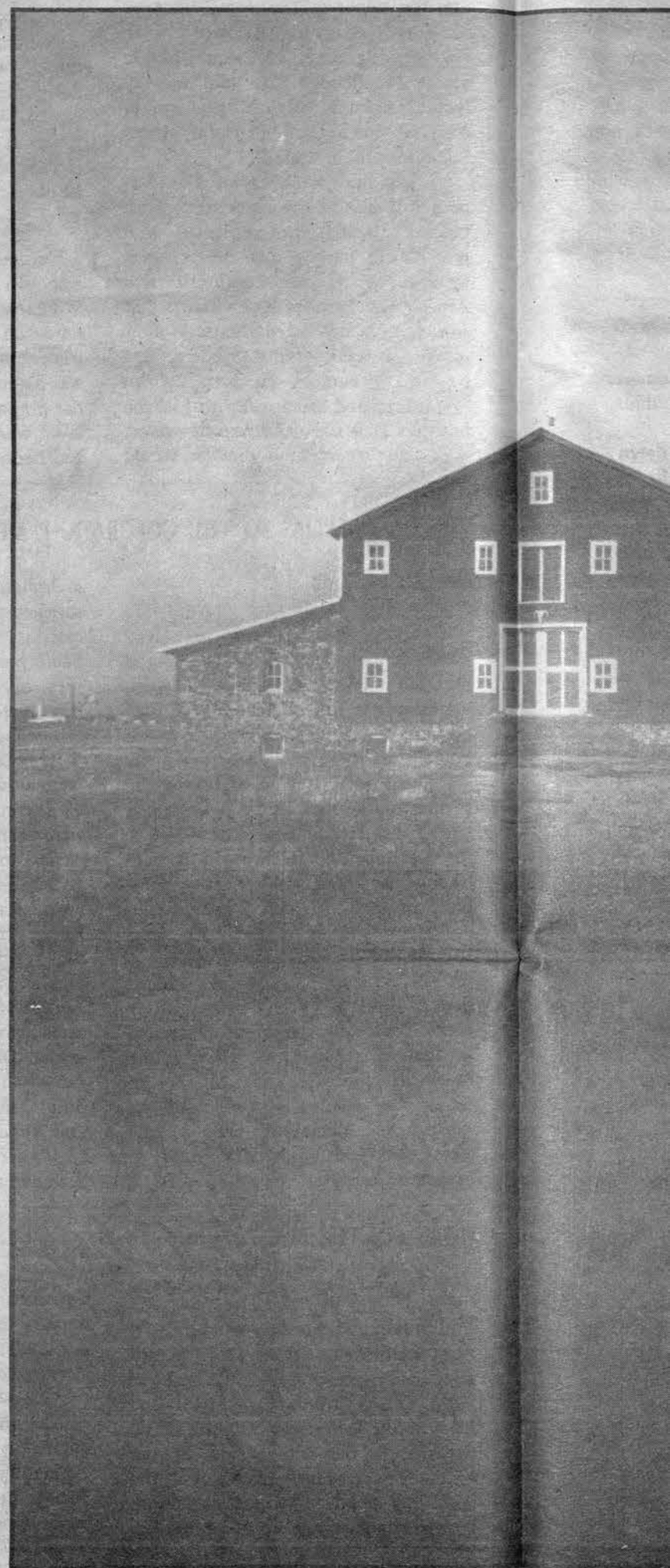
suggests a locker room approach to contemporary problem solving.

I have no first hand knowledge of the negotiations that took place between conservationists and Energy Fuels Nuclear. From Mr. Wheeler's description and Mr. Kincaid's interpretation though, it seems likely that what is described as a one-sided victory for conservationists was in fact a sterling example of how both sides can win and the general welfare be increased by honest negotiations between adversaries. The all-or-nothing approach of conservationists usually results in both sides having to settle for something less than they desire. When negotiation between parties seeking their own self interest is the ruling attitude, as may have been the case on the Arizona Strip, both conservation and economic values may be increased if not optimized. Perhaps this is the more relevant point.

Lyle C. Summers
West Jordan, Utah



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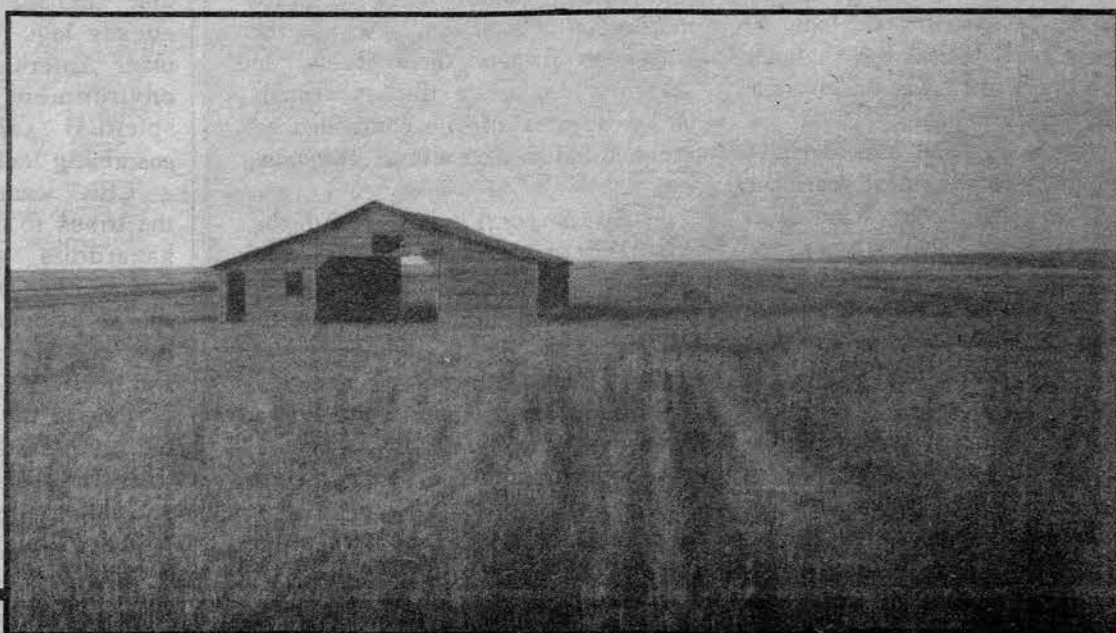
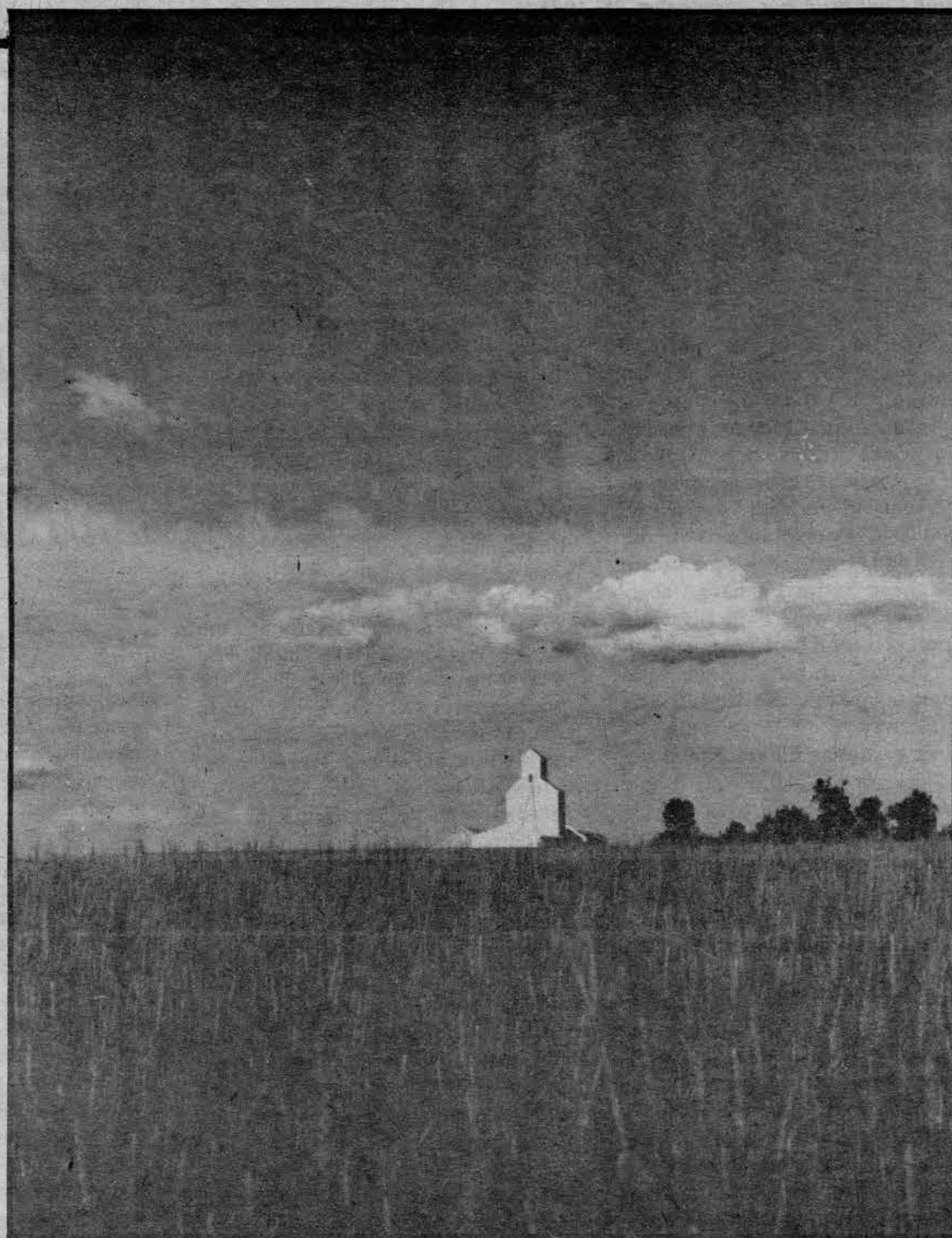
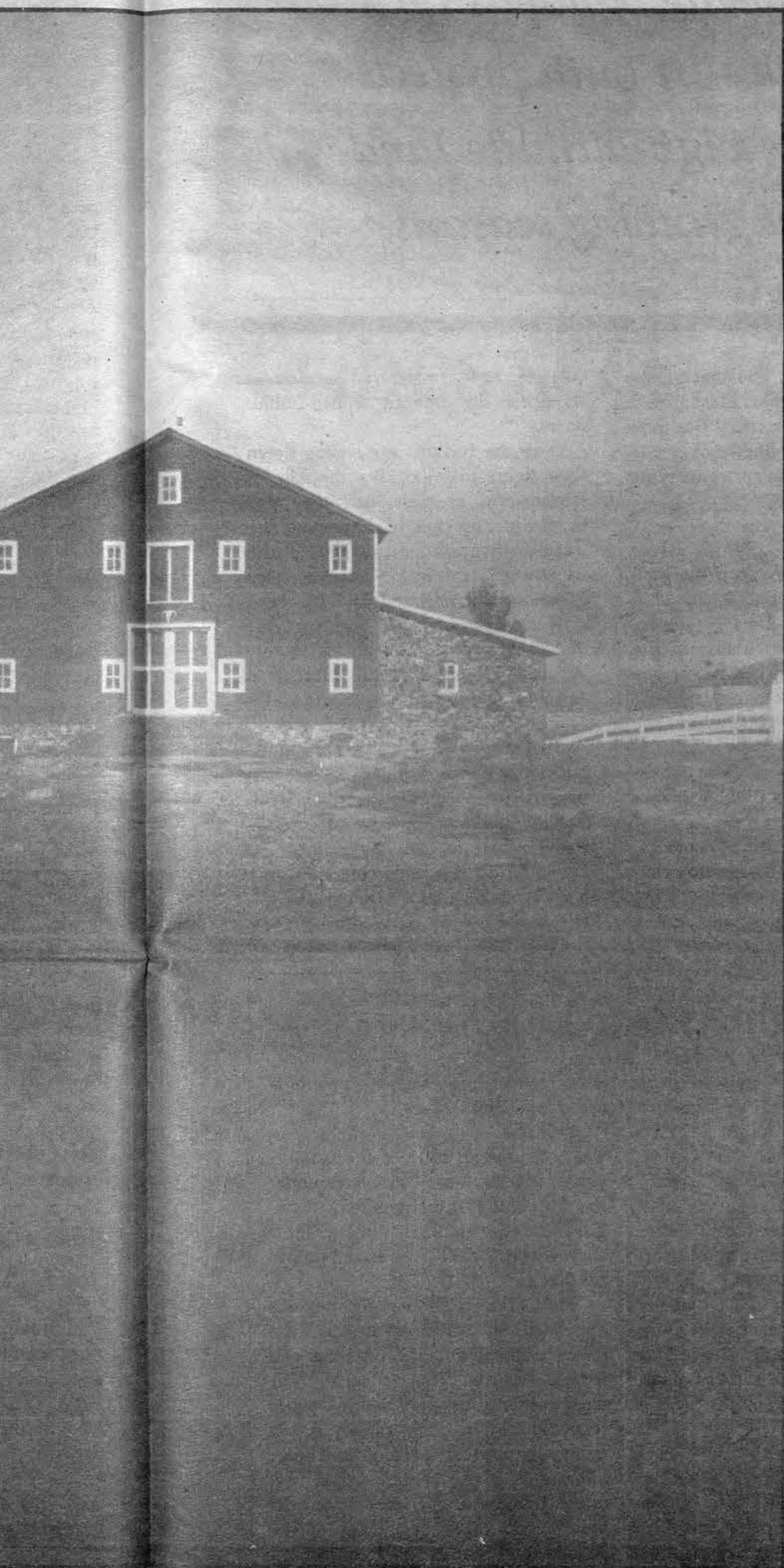


Winners and entrants in Northern Plains Resource 3rd annual Rural Montana

Photographs, clockwise from left: *The Barn* by Carrie Brosz, Santa Cruz, California; *Cowboys* by Darleen Joyce, Billings, Montana; *Railroad Depot at Nevada City, Montana*, by Jon J. Brown, Columbus, Montana, honorable mention-heritage; *Driveway and Barn* by Travis Elder, Helena,

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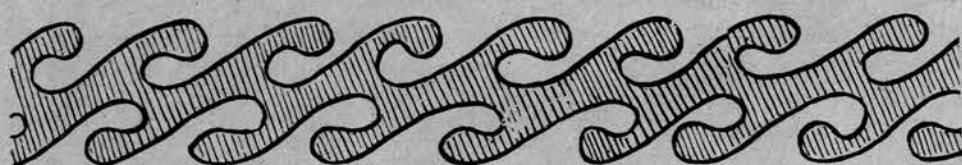
Entrants in the Gallatin Resource Council's Rural Montana Photo Contest

Left: *The Barn* by
Jon J. Brown,
Helena, Montana;
Cowboys by
Travis Elder, Helena,
Montana; *Railroad Depot*
by Ed Barta, Billings,
Montana; *In the Field II*
by Ron Paulick, Great Falls,
Montana; *Sheep* by Travis Elder,
Helena, Montana; *Barn* by
Ed Barta, Billings, Montana.

Montana, 2nd place - youth 18 and under; *In the Field II* by Ron Paulick, Great Falls, Montana, best black and white; *Sheep* by Travis Elder, Helena, Montana, 1st place - youth 18 and under; *Barn* by Ed Barta, Billings, Montana.

Indian water conference...

(Continued from page 1)



conference, put on by the American Indian Resources Institute of San Francisco, a federal court in Albuquerque, New Mexico, extended Indian water rights beyond those based on treaties. The judge, ruling on the 15-year-old Aamodt case (HCN, 3/5/84) said Pueblo Indians in the Tesuque and Nambé/Pojoaque stream system near Santa Fe have "aboriginal" rights to water. The rights are superior, or senior, the judge said, to those of the Indians' Anglo and Hispanic neighbors who are currently using the water.

Their case was different from the Fort Peck or Wind River tribe's because the Pueblos were not nomads whom the government tried to turn into tillers of the soil. So the Pueblos have neither a treaty nor a federally created reservation. Instead, their claim is based on their long tenure on the land -- they trace their villages and use of the surrounding land and water to prehistory. According to the U.S. District Court, their centuries-long occupancy establishes their water rights ("first in time, first in right").

Wendell Chino, president of the Mescalero Apache Tribe in New Mexico, in a fierce opening address, said: "The federal district judge has ruled that Indian tribes retain their aboriginal rights to water despite their unlawful appropriations by non-Indians."

But Chino also said of Aamodt: "This is another case on paper."

Chairman Peterson Zah of the Navajo Nation in Arizona and New Mexico, said: "Much of what I heard is about paper. As Indian leaders, we have a duty to inspire our people to do what they can to help themselves. I don't want to put all of our eggs in the ability of attorneys to win water rights."

The paper victories, awards of water the tribes have not yet put to use, have come at a high cost. Awards of water under PIA are hotly contested; before an acre of land is declared "practically irrigable" and therefore eligible for water, it is fought over by armies of experts in three piece suits.

As a result, the tribes have spent millions of dollars of their own money and millions more of the federal government's money on attorneys, soils specialists, hydrologists, engineers and economists. John R. Washakie, an officer of the Shoshone Tribe on the Wind River Reservation, described the process:

"You run out and hire about 95 experts, and then the next year none of them agree." In the Wind River case, there was "the attorney who goes to sleep during a meeting. You only hope that Stetson (Tom Stetson, the tribe's chief consultant) wakes them when something important happens."

Donald Antone, Governor of the Gila River Indian Community in Arizona, said, "We have always dealt with one law firm -- our fees sent all their children through law school. After years of litigation, they tend to say: 'My water rights, my case, my

issue.' It's hard for us to re-educate the attorneys to the real facts."

Despite the resentment, there was unanimity that good experts are worth their cost. To not hire them or to negotiate away the water without litigation is "dollar wise and water foolish," a speaker said.

Washakie said, "Without the best advice available, you'll lose everything. If you don't have the money, go out and borrow it." Tribes that can afford it, he said, should pay the \$1.5 million for a typical case. Others should use Bureau of Indian Affairs lawyers, remembering that the BIA, a part of Interior, will be pulled in many directions.

A speaker for the Navajo Tribe, attorney Mike Nelson, said \$1.5 million is conservative. He estimated that four stream adjudications would cost the Navajos "well over \$10 million. Money flows off the reservation to outside lawyers and experts... We're putting in tribal money (to litigation) when there are people to feed."

Those experts spend months, sometimes years, collecting data to prove how many acres of reservation land are fertile, irrigable and won't leach poisons into runoff water. Engineers show where the reservoir sites are and how ditches could get water to the fertile soil. In the end, the experts have a plan for irrigating every arable acre on the reservation which can conceivably be reached by water out of the reservation's streams or reservoirs.

Tom Stetson, a consultant based in Capistrano Beach, California, compared the PIA process to that which the Bureau of Reclamation used. The Bureau's process was so loose, he said, it could justify the growing of "bananas on Pikes Peak" -- it built projects to irrigate high-altitude land with short growing seasons. The PIA process, with states such as Wyoming in court to prevent the Indians from getting an extra acre-foot of water, is much more demanding, he claimed.

Although the PIA process is expensive, lengthy and demanding, the Indians face even tougher problems after they receive their water right. The water they are awarded is often being used by non-Indians -- some of them the fourth generation of their family to use the water to irrigate their fields. In addition, the area's ditches, canals and headgates may be controlled by the non-Indian agricultural community.

John Gonzalez, a staffer with the All Indian Pueblo Council in Albuquerque, and a member of a Pueblo tribe involved in the Aamodt case, said the New Mexico case has created much friction. "Those ill feelings will hinder administration of the water." But there is no alternative to cooperation. "The ditches are linked."

More than friction stands in the way of cooperation. Gonzalez said, "Non-Indians have their own system of water czars. But the Indian system

'The Bureau of Reclamation could justify growing bananas on Pikes Peak -- it built projects to irrigate high-altitude land with short growing seasons.'

is all done by custom." So sharing the water means the Pueblos must create an administrative system. "But how do you tell your grandfather or great-grandfather: 'You can't irrigate your fields this way anymore?'"

Washakie of the Wind River Reservation said: "We've been in a situation in the past of not being able to talk to local (non-Indian) people. They've run the irrigation system the way they want." But when the tribes won the 500,000 acre-foot award, "Suddenly a lot of people on the projects are talking to us."

Had the Indians won these water victories 30 years ago, they might have been able to claim their share of many federal reclamation projects. Instead, the Bureau of Reclamation usually ignored Indian water rights when it built a project, simply taking

what is now recognized as Indian water for the benefit of non-Indian users.

Now the Indians are nailing down their rights in court. But the Age of Reclamation is past, and they are faced with the task of developing the water without federal dollars. If the tribes were content to leave the water in streams for fish and wildlife, there wouldn't be much of a problem. But that does not seem to be the intent. Wendell Chino of the Mescalero Apaches opened the conference by saying:

"Hydrogeneration of power is fine, but it's a non-consumptive use. We have to put it to better use than that. So far as Indian people are concerned: Use it or lose it. Our failure to utilize our water to the maximum will limit our growth and development -- endanger housing development, agri-

Tribes fight hazardous wastes

Indian reservations have the image of being isolated and undeveloped rural outposts. But a recent \$125,000 federally funded study by the Council of Energy Resource Tribes (CERT) indicates otherwise. The survey of 25 of the nation's 270 reservations turned up 1,200 hazardous waste generators, some posing "potentially acute" problems. As a result, CERT's project manager, Warner Reeser, has called on the Environmental Protection Agency to conduct a survey of the remaining 245 reservations (HCN, 5/14/85).

The report prepared by CERT, which is an organization of 40 energy tribes based in Denver, said, "Indian tribes have been generally ignored in the current processes to control hazardous wastes. This is unacceptable" because the health of Indians already lags behind that enjoyed by other Americans and because "the environment occupies a unique spiritual and cultural place in sustaining Indian well-being."

CERT wants the EPA to work with the tribes to implement two national hazardous waste laws -- the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act.

Part of the difficulty is caused by the unique status of Indian reservations. Because of their treaty relations with the federal government, most tribes consider reservations the sovereign equal of states, and they generally do not submit to state implementation of various federal

laws. Instead, they seek to implement those laws themselves.

Perhaps as a result, the states, which conducted most of the national survey of hazardous waste sites under the Superfund law, generally disregarded reservations during their survey, with CERT now attempting to fill that gap.

The CERT study of 25 reservations depended on information from the tribes themselves, and on state and federal records. Reeser said, "The most encouraging part was the super response we got from tribes." Based upon talks with tribal elders and other information, the tribes filled out questionnaires about sites on or near their lands. Moreover, many of the participating tribes have now built hazardous waste survey work into their tribal governmental activities, Reeser said.

CERT, which wants to survey all 270 federally recognized reservations, is now preparing a cost estimate. The organization said that as a result of work it has already done, it knows that six sites are particularly threatening to public health: asbestos tailings and mines on the San Carlos Apache and White River Apache reservations in Arizona; an illegal pesticide dump on the Fort Berthold Reservation in North Dakota; wood preservatives contamination on the Hoopa Valley Reservation in California; and paper wastes and agricultural chemicals on the Oneida Reservation in Wisconsin.

--Marjane Ambler

cultural development, commercial development... How best to put it to use is as diverse as our Indian tribes."

Although the awards are made on the basis of irrigation, the courts have ruled that the water can be used for anything once it is obtained. Many tribes that go through the elaborate and expensive PIA process have no intention of using the PIA plans to irrigate the land. Instead they plan to use the water for energy development, recreation or other uses.

The Navajo Nation's chairman, Peterson Zah, said his tribe should

dam up all the streams flowing off the reservation. "We ought to pick up our shovels" and build dams. "Some people may not appreciate that, but we're talking about survival."

In past conferences, the Indians debated whether they should seek immediate quantification of their rights, or wait, leaving them open-ended. (Indian water rights do not lapse through non-use or non-adjudication.) Many tribes no longer have that choice because some states are pushing for quantification. But tribes which have a choice wonder if this is a good time to proceed with a final, irreversible determination of their historic water rights.

Chino said waiting can be hazardous. "We can be overrun by Congress -- Congress can quantify our water, or condemn it and give it to the users, the same as the great hoax: 'We're going to pay you for your land.'"

For economic reasons, this does not appear a good time to quantify. Under PIA, land must not only be fertile and irrigable -- it must also be farmable at a profit. According to Keith Jewett of the Cheyenne River Sioux Tribe in Eagle Butte, South Dakota, very little agriculture is profitable today. Of the 264 Indian ranchers on his reservation, Jewett said, "60 percent are going or have

gone bankrupt. Even dryland wheat can't make it." Jewett said that of 20,000 Indian ranchers nationally, "40 percent are in trouble."

Until now, waiting has served the tribes well. Consultant Stetson said that in the 1900s it was only possible to irrigate level land along streams. In the 1920s, new pumps could lift water to land above the streams. In the 1940s, he said, avocado trees allowed very steep hillsides to be turned into irrigated groves. Each step, Stetson said, expanded the definition of irrigable land and made the Indians eligible for more water.

(Continued on page 12)

Tribes seek to finance development

BILLINGS, Mt. -- Ross Swimmer's nomination as Assistant Secretary of Interior for Indian Affairs was the best present the Council of Energy Tribes (CERT) could have gotten for its tenth birthday celebration. President Ronald Reagan announced the nomination Sept. 26, while Swimmer was chairing the CERT board meeting here. Swimmer, the principal chief of the Cherokee Tribe in Oklahoma, said he learned of the announcement on the radio although he had been expecting it for some time.

Swimmer replaces Kenneth L. Smith in the \$72,300 a year job. Smith was a member of the Wasco Tribe of Warm Springs, Oregon. Swimmer, a Tulsa banker and lawyer, is 41. He is now in charge of the federal government's programs for 1.5 million Native Americans, of whom about half live on 270 reservations. His budget is \$1 billion, administered by 15,000 employees.

In an address to CERT at its tenth birthday celebration the night before he learned of his nomination, Swimmer said the organization of 40 energy tribes is at a threshold. Formed originally to help the member tribes analyze offers and negotiate favorable agreements with energy development firms (a job the federal government was supposed to do in its role as trustee of Indian resources), CERT now confronts a world of depressed energy demand. Swimmer said, "Today, telling someone to develop energy may be like telling someone to go into farming."

That does not mean CERT is no longer needed. During this interlude, he said, tribes should strengthen their governments to prepare for future development. "We need to be ready. We got caught short before. That's why CERT was formed."

In talks and comments during a three-day meeting preceeding the board meeting, tribal leaders and staff members of the Denver-based organization referred frequently to the poor market for their tribes' coal, uranium, oil and gas. Neither industry speakers nor the CERT staff expect quick improvement, so tribes' royalty income from existing development and their opportunities for future development are dropping. As a result, the meeting focused on the tribes' ability to build, plan and diversify.

This energy downturn aggravates a perennial problem facing nearly all tribes: finding ways to finance development on capital-poor reservations often lacking paved roads, water

and sewage systems, and electricity.

In a bold attempt to improve this situation, CERT and its members are moving into the financial arena. The staff is helping three member tribes establish banks to provide both loans for reservation development projects and banking services for tribal members.

At a three-hour seminar on financing Indian projects, Leonard Atole, president of the Jicarilla Apache Tribe in New Mexico, said the tribe had succeeded in issuing tax-exempt bonds last summer for \$30.2 million to buy a 55,000-acre ranch next to the reservation. The tribe was one of the first to use the Indian Tribal Government Tax Status Act of 1982, which allows tribes to issue such bonds. The bonds are backed by income from the tribe's oil and gas wells and other assets.

The CERT staff described the advantages and disadvantages of several other financing options, including joint ventures, limited partnerships, service contracts and Farmers Home Administration loans. Eric Natwig of CERT suggested tribes might consider creating their own holding company to guarantee loans and franchise banks on reservations. The combined capital of the 40 CERT tribes offers a \$1.1 billion deposit potential, he said. Natwig is a founder of First American Capital in Los Angeles, which will specialize in lending to Indians.

An ambitious solar energy project for the Chemehuevi Tribe in California will be the first test of CERT's ability to move a project from concept to completion. The \$50 to \$80 million project would convert sunlight into five to 30 megawatts of electricity. However, the energy demand downturn could affect this project also. Utilities in the area have a power surplus, and unless they are willing to commit to buying the tribe's electricity, financing will be impossible.

The CERT meeting was marred by poor attendance at the renewable energy and the royalty management workshops. Less than a dozen people attended the royalty workshop Tuesday evening, where the Southern Ute staff explained how, for less than \$5,500, they had computerized the inventory for their 1,700 oil and gas wells.

When the staff started the project, they had been told they couldn't manipulate that much information with a microcomputer. However, the tribe has been able to discover



Leonard Atole

thousands of dollars in royalty underpayments from companies, in addition to developing a data base for use in management decisions.

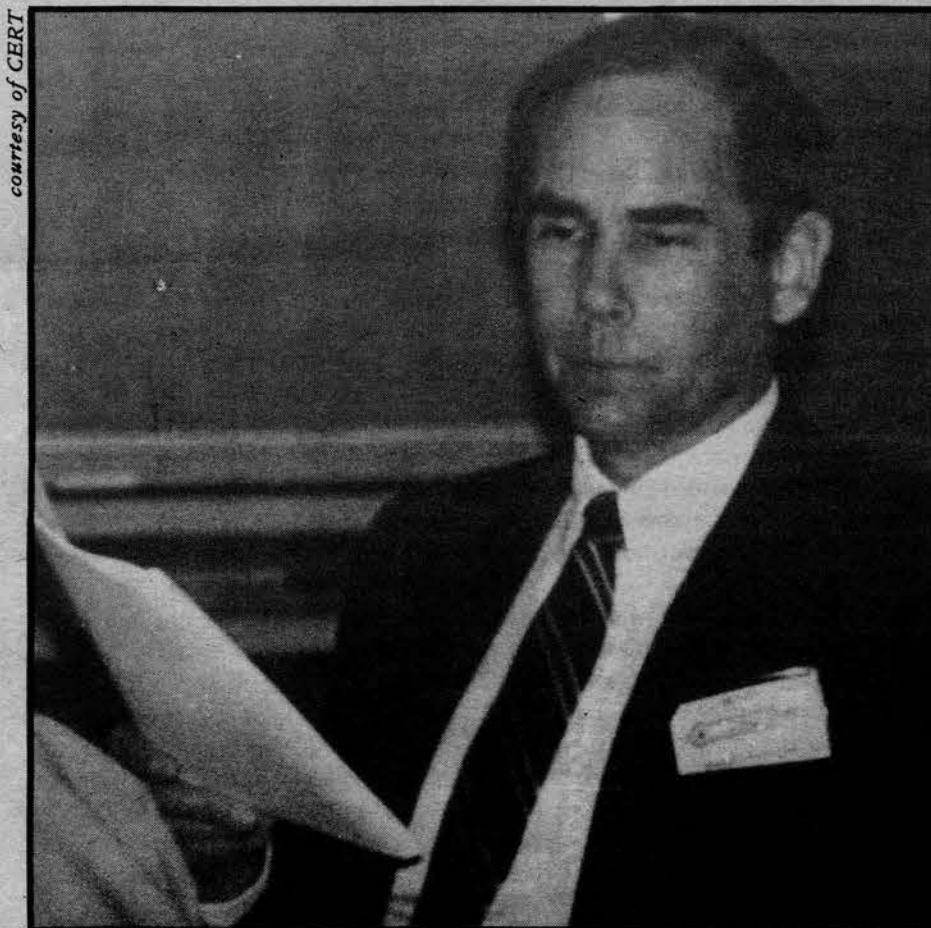
In the ceremonial part of the meeting, CERT honored several people who were instrumental in its birth 10 years ago, including La Donna Harris of the Comanche Tribe, Earl Old Person of the Blackfeet Tribe, Leonard Atole of the Jicarilla-Apache Tribe and Normal Hollow of the Assiniboine-Sioux Tribe. Many other founders have already retired, including Allen Rowland of the Northern Cheyenne Tribe, or been voted out of office by their tribes, such as Peter MacDonald of the Navajos.

Hollow, who will retire from his chairmanship at Fort Peck, Montana, next year, spoke at a reception about CERT's help in the development of personnel and of an accounting system on his reservation. "We were very dependent upon USGS and BIA (the U.S. Geological Survey and the Bureau of Indian Affairs). Every time we had to rely upon them in a fight with industry, they invariably sided with the oil and gas industry," he said.

Now, with a new centralized accounting system designed and installed by CERT, the tribe can get, within minutes, figures on the income, expenditures, and remaining balance for any project or enterprise. The management shifts did not come easily, however. After CERT had made its recommendations for management changes, "Some of my council people were upset. I told them, 'Sometimes it's difficult to swallow criticism, but if you're sincere in wanting to help your people, you must be open-minded and accept recommendations.'"

"Personally, I'm very proud of this great organization. I'm proud they have the technical resources to serve us. This great organization will put us on the same footing with industry for developing our resources."

--Marjane Ambler



Ross O. Swimmer

Indian water conference...

(Continued from page 11)



Two non-Indian speakers questioned the direction the tribes would take their water. John Folk-Williams, president of Western Network in Santa Fe, opened his talk by saying it was good to be in Colorado:

"In parts of Colorado, you can actually see the water flowing in the streams. Where I come from in the Southwest, water is so precious you never get to see it. In the Aamodt area, you see only a large empty river. When you ask where the water is, they show you a pump. The water is pumped up from underground and put in a ditch. It is lifeless -- water has to be clever there to survive."

Folk-Williams contrasted the states and their sovereign equals, the tribes. The Supreme Court's *Sporhase* decision, he said, made it legal for rich states like Texas and California to buy water in states such as New Mexico and Colorado. The threat of exportation "beyond the sphere of local economic activity, has prompted the states to act more like tribes" in

order to protect their water. "The states... are stepping into economic activity in a way they would regard as socialistic in relation to any other resource."

The Indians, he said, can exercise even more control over their water: "Indian governments are at once owners and regulators of their resources and well positioned to undertake comprehensive planning and management."

Charles Wilkinson, a law professor at the University of Oregon who has worked on many Indian water cases, asked:

"Are Indian tribes going to be different?" Are they going to look at water as a pure commodity, or are they going to look at other values: "Pollution, groundwater, stream stabilization. Will they manage the whole watershed? Will they treat the watershed as a unit?"

Another question was implicit

'In parts of Colorado, you can actually see the water flowing in the streams. Where I come from in the Southwest, water is so precious you never get to see it... When you ask where the water is, they show you a pump... Water has to be clever there to survive.'

throughout the conference, but never directly addressed. Most of the water has been won by a tiny team of Anglo and Indian attorneys working with tribal leaders. Now that they have done their work, what next? Are there enough Indians on the reservations capable of making use of these water rights? Or will the tribes lack the ability to organize to use the water, to

attract capital, or to strike favorable deals if the water is to be sold or leased to others?

The past history of Indian resources is not promising. The tribes' forests, minerals, oil, gas and even land has often been sold or leased for the talks fail -- will clearly hasten the

(Continued on page 13)

Idaho will negotiate water rights with tribes

On October 30, far-reaching water negotiations began in Boise between the state of Idaho and the Shoshone-Bannock tribes. The issue is the tribes' water rights in the Snake River Basin.

For four years, the state and many interested parties have struggled to define a process for future allocation and management of Snake River water. The end of surplus water in the Snake River Basin is in sight, and conflict among users and potential users is one result. After three sessions of deadlock, the 1985 Legislature acted to resolve the conflicts. It passed a law which directs a state court to determine the size and priority of all water rights in the Snake Basin. This process is called adjudication.

Enter the Shoshone-Bannock. "The tribes were the first ones here," says tribal attorney Howard Funke. "When they agreed to go to reservations, they reserved fractions of their former territory. The Supreme Court has established the *Winters Doctrine* -- that implicit in the establishment of the reservations is enough water to fulfill the purposes of the reservation." The tribes' claim is based on the 1868 Fort Bridger Treaty. It reserved for them the Fort Hall Reservation in eastern Idaho, and fishing and hunting rights in a large part of the Salmon River drainage.

At the same 1985 Legislature, the tribes initiated the proposal to negotiate rather than litigate their rights. "We looked around the West," says Funke. "When these situations go to court, they seem to settle little, cost millions, and tie up things for decades. We're trying to avoid that turmoil. And both sides have more flexibility in a negotiation." The Legislature agreed to

negotiate, perhaps because of the water victories various tribes were winning all around the West. The negotiations are expected to take two to three years.

The state is represented by Gene Gray, chairman of Idaho's Water Resources Board, and assistant Attorney General Clive Strong. The U.S. Department of the Interior, represented by Associate Solicitor Tim Vollmann, is participating in a dual role: a trustee for the tribes supporting their position, and a monitor for the Bureau of Reclamation and other affected federal agencies. The negotiations will not directly decide any non-Indian federal water rights, but its outcome will surely affect them.

Tentative agreement was reached at the first meeting to add three non-voting members to represent existing water users. Non-consumptive users will probably have one of those seats. The Water Board is bringing specific nominations to the next meeting -- December 10 in Fort Hall.

Funke expects the substantive talks to begin in January. The tribes intend to ask for minimum flows on the Blackfoot, Portneuf, and Snake Rivers -- "our boundary streams," Funke calls them. They will also request some minimum flows in the Salmon drainage -- probably in the mainstem Salmon; its Middle, East, and Yankee Forks; and the Pahsimeroi and Lemhi rivers.

The negotiations will be very difficult. "There are 170,000 permits on the Snake now," says Funke -- "state, federal, and private interests. It will be tough to keep all that together -- to make a framework work with all those interests." For example, a Snake River minimum flow at Fort Hall could well put all the

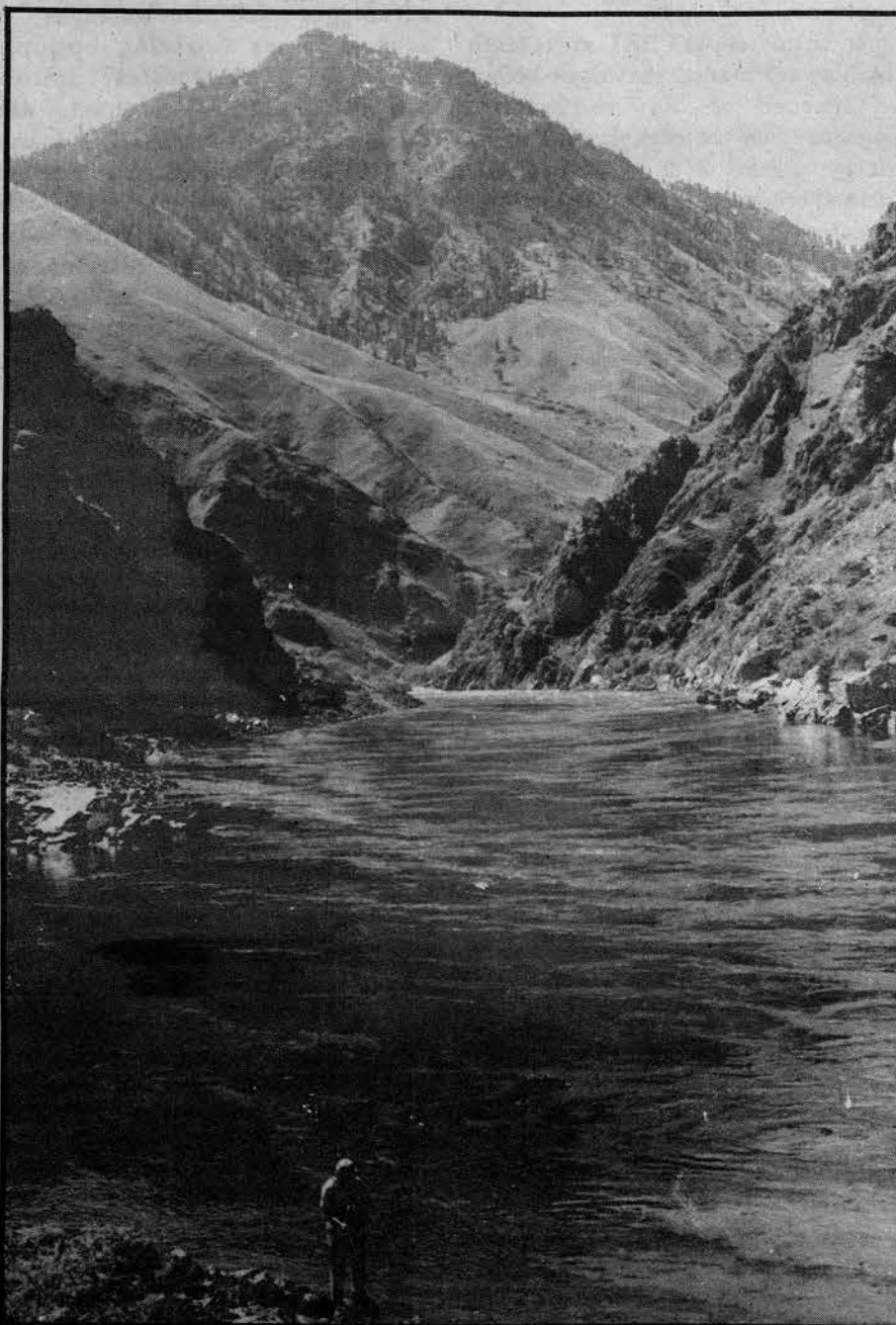
unappropriated water left in the Upper Snake River Valley off-limits, forcing irrigators and other consumptive users to buy water if they want more.

The negotiation -- or litigation if

the talks fail -- will clearly hasten the end of free water in southern Idaho. The question: by how much?

--Pat Ford

Ernie Day



The Snake River in Hells Canyon

Indian water conference...

(Continued from page 12)



a pittance, or stolen outright. The hopeful sign is that many of the tribes are now aggressive toward their resources. They have renegotiated contracts, they keep better track of the oil and gas royalties due them, and fight in the courts for their sovereign right to tax natural resources.

So the tribes are in transition -- Wendell Chino said they have been in transition since the first boats arrived from Europe -- and it is possible that Indian water will not meet the same fate as so many of their resources.

A conference in the posh Marriott Hotel in downtown Denver attended by tribal leaders and their experts is not the best basis for judging the future course of Indian water matters.

But conferences can tell as much about the people putting them on as about the subject, and this one was revealing.

It was not obsessed with time -- on both days, meetings started up to an hour late for no observable reason. But that temporal laxness was made up for by the quality of the speakers -- there were almost no duds. Even the specialists created a context and talked in terms understandable to an audience of non-specialists. And the Indian speakers appeared to follow the lead of keynote speaker Wendell Chino, who said, "There are more attorneys than Indians here, but I'm going to speak anyway," which apparently meant he was going to talk

as if he were talking to other Indians.

Unlike their counterparts in the non-Indian agricultural or water development communities, the Indians engaged in no bashing of bureaucrats. They certainly have a right to reflexive criticism of federal and state officials, but they didn't indulge themselves.

The Indian speakers made it clear that they resent the money that must be spent on non-Indian experts in the PIA process. But the tribal leaders also appeared to have excellent working relations with their experts.

At first glance, it appears that much of the money spent on PIA planning will be totally wasted, except as a legal tool to get water for other uses. But the PIA process has made many tribes familiar with planning and with experts. And planning may be a feature of non-Indian culture that will fit in well with the communal ethic of reservations.

By comparison, most non-Indian communities in the West have never consciously accepted their almost total dependence on the centralized planning and administration done by the Bureau of Reclamation, the Forest

Service and the BLM. The public rhetoric in these communities and at conferences of cattlemen or the Farm Bureau or even of water planners is: "If the feds would only let us alone, everything would be fine."

Now, of course, the feds are about to "let them alone," as the budgets of the Bureau and the land management agencies are cut ever deeper. The futures of those communities may depend on how well they can substitute their own planning and administration for that formerly supplied by the feds.

From that perspective, some tribes have leads over some Anglo communities in the economic horse-race ahead for the New West. Of course, like the non-Indian communities, they too are losing federal help. But the Bureau of Indian Affairs has never represented a clear plus for the tribes.

The conference, titled "Building Homelands on 19th Century Promises," was organized by the American Indian Lawyer Training Program, whose executive director is Richard Trudell. Its address is: 319 MacArthur Blvd., Oakland, CA 94610.

An Indian water victory creates turmoil in Wyoming

The Domino Theory may or may not hold in Southeast Asia. But it certainly holds in Wyoming's Big Horn River basin.

There, court decisions giving the Wind River Reservation almost 500,000 acre-feet of water (see accompanying story) could remake the area's economy and way of life. In a dry year, the Indians' new water rights could leave Lander's municipal water system and 100,000 acres of land now irrigated by non-Indian ranchers without sufficient water. The shift of water from the non-Indian to the Indian community in the area around Riverton is a shift in their relative ability to survive in the arid region.

The state of Wyoming is fighting the award to the Arapahoe and Shoshone tribes. It has appealed the case to the Wyoming Supreme Court, and is prepared to go to the U.S. Supreme Court.

Two years ago, Gov. Ed Herschler, D, initiated negotiations with the tribes and the federal government. According to Jeff Fassett, Wyoming's deputy state engineer, the goal of the negotiations is "to keep everyone whole."

In a sense, the Indians are already "whole" since they have a huge amount of water with the earliest priority date in the region: 1868. That means they have a right to take their water out of the area's streams, reservoirs and rivers before anyone else gets a drop. In a wet year, priority won't matter. In a dry year, the Indians will get their water while others go dry.

However, the tribes do not have the money to put their water to work, and that makes a compromise possible. According to Fassett, the two years of negotiations produced the broad outlines of an agreement. The key is \$100 million in state, federal and tribal money to build reservoirs to capture spring runoff that now flows downstream unused and to build irrigation systems to bring new Indian land under cultivation. The reservoirs

will make the existing non-Indian users whole. The new irrigation systems will reward the tribes for compromises they will make in the amount and location of their water rights.

The state is offering to put up about \$40 million (the estimates are based on the "practically irrigable acreage" process the tribes went through to get water) to build the reservoirs. And it is asking the federal government and the tribes to put up \$60 million to build the Indians' new irrigation systems.

According to Thomas Fredericks, a Boulder attorney and member of the Mandan Hidatsa Tribe in North Dakota, who represents the Arapahoe, the agreement is in danger of unravelling. He said the non-Indian water users are now trying to chip away at the benefits the tribes got out of the negotiations. "We're not going to stand for that."

The deal can only work if Congress is willing to come up with a good part of the \$100 million. But according to Fredericks, the Wyoming congressional delegation (Rep. Dick Cheney and Sens. Malcolm Wallop and Alan Simpson) won't introduce a bill until the tribes and the non-Indian water users are in agreement. Fredericks says the impasse may not be broken unless the delegation shows leadership.

"Leadership," in Fredericks' view, means getting tough with the non-Indian water users. Most of the irrigators get their water from three large irrigation projects around Riverton: The Midvale, LeClair and Riverton Valley districts.

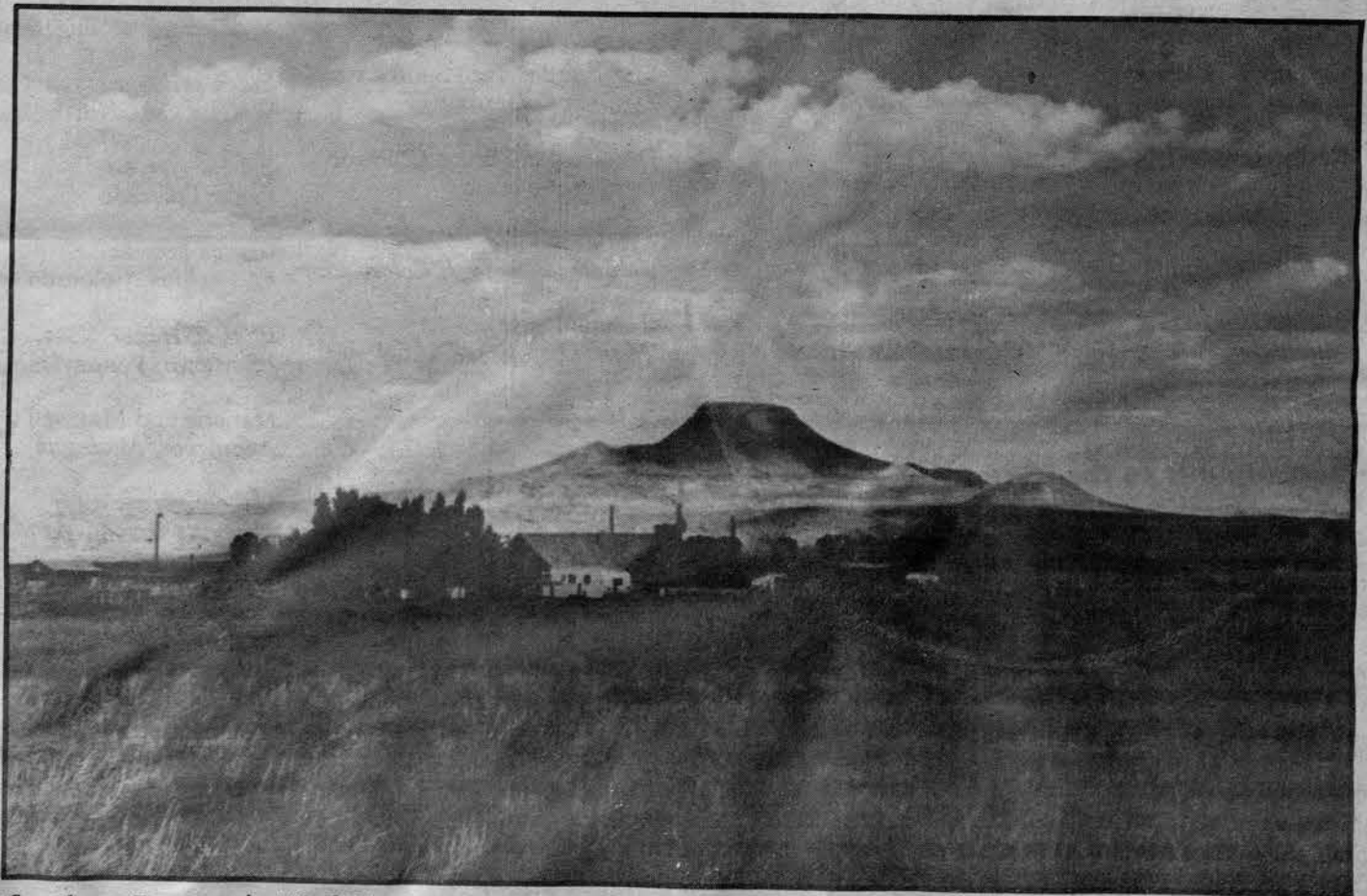
The need for cooperation between the Indians and non-Indians goes beyond a united approach to Congress. Fassett says the region is a checkerboard of Indian and non-Indian land and water rights. They share the

same ditches and reservoirs, which means that at times they will be in a relationship closer than marriage. Without cooperation in the operation of canals and reservoirs, the area could be in a permanent state of chaos.

At present, the Indians are irrigating approximately 40,000 acres of the 100,000 acres of land to which the courts have awarded water. If Congress agrees, some of the uncultivated 60,000 acres will be irrigated while the rest of the Indian water will sit in Boysen Reservoir, awaiting a buyer or some other tribal use.

Thus far, the case has cost Wyoming \$7 million in expert and legal fees. The tribes and the federal government have spent several million more. That money could have dug a lot of ditches and poured a lot of concrete.

--Ed Marston



Crowheart Butte on the Wind River Reservation

LETTERS

DICK CARTER RESPONDS

Dear HCN,

Ray Wheeler's two-part story, "Last Stand for the Colorado Plateau," (HCN, 10/14/85, 10/28/85) literally covered a great deal of ground. And it was a story that described many of the issues we are facing both on the plateau and within our own environmental community.

Differences in BLM wilderness proposals do exist. And differences in how to pursue the designation of elusive BLM wilderness also exist. And differences existed on the

importance of the Utah Wilderness Act, the Wyoming Wilderness Act, the California Wilderness Act and individual areas within those bills.

Regardless of these very typical differences, prior to the Utah Wilderness Act, Utah harbored a total of 29,000 acres of wilderness. Now we can boast of 800,000 acres of wilderness which we no longer have to worry about designating.

The HCN article implied that the Utah Wilderness Association "opposed" designation of a couple of Forest Service areas that were included in the Utah Wilderness Act. One was Mt. Timpanogos. Timp is a seven-mile-long mountain reaching 11,000 feet in elevation. The Utah Wilderness Act designated the small 10,750-acre

mountain as wilderness. In 1961, Timp was protected as a scenic area and closed to all motorized activities and mineral entry. Recognizing the Utah delegation was overwhelmingly acreage conscious and always looking for small and simple areas to designate, we suggested adding this acreage to the low elevation wildlife habitat on the massive North Slope of the Uintas, which is threatened by oil and gas development. Timp simply faced no threats.

While differences do exist with respect to BLM wilderness, many of them along the lines of the differences that existed on Timp, one goal which no one will lose sight of is the preservation of one of the most unique landscapes in this country. To some,

this country represents an intense anthropocentric religious experience. To others it is a biological marvel with survival parameters so tight it is a wonder life exists on the Colorado Plateau. Whatever the emphasis, the battle to preserve the plateau is not the last stand. We have been protecting endangered wildlands for two decades after the Wilderness Act.

The history of preservation of the plateau did not start recently. With a measured and distant vision, the development of the plateau's wildlands may be facing the last stand.

Dick Carter, Coordinator
for the Utah Wilderness Association
Salt Lake City, Utah

Digging deep, supporters of the HCN Research Fund have contributed \$16,669 so far. Thank you!

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GUEST ESSAY

How will Indians use their water?

by Jeanne Englert

As part of its federal trust responsibility, the Bureau of Indian Affairs is charged with maintenance of Indian reservation lands. For years, the Southern Utes of southwestern Colorado had put up with the torpid BIA bureaucracy, just as they put up with filling out a form in triplicate to requisition a pencil.

Then, in 1975, the Southern Ute Tribe hired a young planner/engineer who was impatient with bureaucratic mores. After the tribal natural resources department had repeatedly asked the BIA over a period of two weeks to make some repairs at the tribally owned Lake Capote without result, the planner said, "Why are we waiting for the BIA? Why don't we do the job ourselves? What does the BIA have that we don't except a backhoe?"

They went to see the tribal vice chairman, and he agreed. "Get your backhoe over here pronto," he told the BIA over the telephone.

Twenty-four hours later, the tribal crew returned the backhoe to the federal agency, the Lake Capote repairs completed. The Indians had taken charge.

The Indians certainly have. What struck me most at the Indian water rights conference I attended in Denver Sept. 26 was not so much *what* was said as *who* was saying it. Gone were the white BIA and Bureau of Reclamation bureaucrats, the white specialists and lawyers. In their stead were Indian planners and lawyers and department heads and tribal council members and chairmen talking about how they were going to manage their water.

"Sometimes we Indian people stand back and depend too much on the lawyers," said Navajo Chairman Peterson Zah, himself a lawyer. Zah said that under his leadership, the Navajo Tribe had formed a tribal department of water resources and adopted a tribal water code. He advocated arming his fellow tribesmen with shovels and bulldozers to dam reservation tributaries to capture the 250,000 acre-feet the tribe is legally entitled to, but that now flows off the reservation for others to use.

At last some talk about Indian rights which goes beyond Winters Doctrine buzzwords and catch phrases of "irrigable acreage," Akin decision, Arizona v. California, Cappaert v. United States. No longer are Indian water rights theoretical, arcane, legal and abstract. Whether the tribes obtain those rights through litigation or negotiation or a combination of both, within the

next ten years Indian governments will be controlling substantial blocks of water. The important question to ask now is: what are the Indians going to do with the stuff?

Will the tribes be wise stewards of the water or will they act the same way that greedy, rapacious whites did in the past? Even more critical, are the tribes financially and technically capable of taking on the burden of management and administration of their water?

What I heard at the conference sounded promising. Speakers said Indian control will include water for fish and wildlife, recreation and preservation of riverine habitat. The Fort Peck Compact between the Indians and the state of Montana, for example, provides for instream flow protection to maintain biological integrity for aquatic species. Other non-consumptive uses the Fort Peck Indian planner mentioned included preservation of historical, cultural, natural and environmental values "without," he said, "making similar environmental mistakes our non-Indian neighbors have done."

The theme of non-consumptive use of water was reiterated by John Platte, president of the Oregon Wildlife Federation. He described how Indian treaty rights to water are helping to maintain an adequate flow of the Columbia River so that the salmon can migrate to the ocean after spawning.

But before concluding that Indian control of water will usher in a new era of conservation and river protection in the West, the following caveat must be given: you cannot generalize about Indian tribes. You cannot assume that the word "Indian" automatically connotes an individual who shares conservation values. Indian tribes vary greatly. They have different languages, different traditions, different cultures, different histories. In some tribes, such as the Hopis in Arizona, traditional ways dominate. Others, such as the Oklahoma Comanches, are totally integrated into white society (so well integrated, in fact, their chairman has blue eyes).

Environmentalists should also know that Indian governments vary. Some are better than others for the same reason that some county governments and state legislatures are superior to others. Nor are they immune to the faults and defects of non-Indian governing bodies: incompetence, corruption, venality, entrenched establishments, etc.

Above all, environmentalists must discard naive and sentimental kneejerk guilt reactions. Certainly we all want to see the Indians get justice, but what if the price is destruction of those other



natives: the fish and wildlife, free-flowing rivers, the land itself?

I think in most cases the environmentalists and the Indian tribes will be natural allies. Indian management of water may have an overall beneficial effect, especially where the amount of water is large, as in the million acre-feet the Fort Peck Reservation got in the compact.

What worries me is whether the tribes will be given the financial and technical resources to do a good job. The Fort Peck planner admitted that the tribe will need "quite a bit of internal infrastructure development." And the Navajo told how they had to earn the money to buy a \$250,000 computer by drilling wells for the Indian Health Service.

If the tribes are not given the resources they need to manage and administer their Winters Doctrine water, it won't matter how noble their water policies may be, nor how well-crafted their tribal water codes, nor how sincere their desire to be wise stewards of their water. Will tribes be forced to market their water to energy companies to get the revenues to manage the resource? Will they be forced into water development as the only way to pay those costs?

By way of analogy, let's assume (for a wild, fantastic moment) that the major environmental organizations were each granted a million acre-feet of Western water. Nature Conservancy might be able to afford stewardship of that water, or the National Wildlife Federation, but could Friends of the Earth, which is barely managing to survive as an organization, afford to do so?

I am confident that, with a few exceptions, the tribes intend to be good stewards of their water. It flows across their land. The only way the Indian tribes can guarantee posterity is to protect and preserve their lands from despoliation, which will require conservation of their water resources. As in the case of the Southern Utes repairing Lake Capote, I know the tribes have the spirit, the willingness, and the ability to take charge of their water. But, you see, it was the BIA which had the backhoe.

□

Jeanne Englert is a writer and citizen water activist based in Lafayette, Colorado.

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An uneasy balance

by John Wahl

A chilly rain has been sulking over Ely, Nevada for a couple of days now, the low overcast occasionally torn between storms to reveal startling white mountains. Fall snow, and the urge for hiking in high places, weather permitting.

Next morning early the weather not only permits, it insists. Silence as I follow a canyon path upwards, purple-blue sky igniting overhead. Breath turns to slush rather than ice in my beard and frosty tree ornaments rain down in soft plops with the sun's loosening warmth -- it will be mild later on. Threads of meltwater and awakening scents. But upstairs we have a different story. Unfelt but very real wind is whipping out a scarf of crystals from land's end above me. Looks cold.

Pushing against the altitude, I'm soon resting every few steps. Lungs grasp for purchase on this razor air,

which seems to sparkle straight into the bloodstream. Drifts begin swallowing my legs. A big chunk of Nevada stretches westward, expanding at the edges as lesser ridgelines and peaks fall slowly away. The pure definition of space and distance, freedom for the eyes. If so inclined I could pick out valleys where some of my younger hours were spent, surveying for oil and gas from the lurch of a 4x4, sneezing through clouds of crushed sagebrush. That good smell and that kind of work still have a firm grip on my life: the West and the chance to travel around in it for pay.

Ah, pollution. Nothing washes clean anymore. On the horizon, seeming to brush summit after summit, is a line of discouraging haze. It just squats there, rather like the hypocrisy in my choice of occupations. Doesn't begin to spoil things, though. Perhaps it should.

Getting gusty now, as I finally rise



toward a look to the east. Beyond infant cornices the world is an abyss, and walking near the edge sends a glitter of powder rushing to windy oblivion. Far below, a lake spreads lazily over the soft colors of yet another valley, and then up jumps Snake Range. My gaze follows it south to where Wheeler Peak should be. I recall a distant spring day, snow melting mahogany over weather-peeled bristlecones, while I prowl the mountain's lap on snowshoes, awkward and amazed. But now a scap of cloud hangs nearby like an afterthought, turning my view.

The top pulls but doesn't hold. Guess it's time to start down. A hawk

owns this sky, the pattern of its feathers beautifully intricate. By way of contrast I'm falling frequently on my butt, in a steep descent through aspen and sprung deer. Things grow warmer and wetter. Soon I'll be at the pickup, on the road, back to town. Wonder where the work will take me this winter.

John Wahl is based in Duncan, Oklahoma, but his work for a geophysical survey company involved in oil and gas exploration takes him throughout the West.

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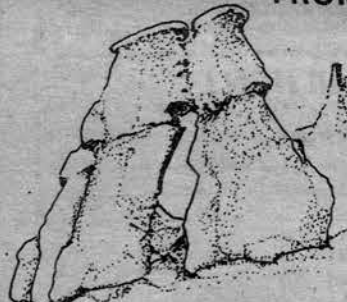
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