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0143 Explanation of Proposed Water Legislation

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no 143

Report to the Colorado General Assembly:

**EXPLANATION OF PROPOSED
WATER LEGISLATION**



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 143

December 1968

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

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Vice Chairman
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Mark Hogan,
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* * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

EXPLANATION OF PROPOSED
WATER LEGISLATION

(Draft Legislation Prepared for the
Forty-seventh General Assembly
Under Senate Bill No.
407, 1967 Session)

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 143
December, 1968

COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285
AREA CODE 303

December 11, 1968

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REP. RAYMOND WILDER

To Members of the Forty-seventh Colorado General Assembly:

In accordance with provisions of House Joint Resolution No. 1026, 1967 regular session, the Legislative Council is submitting herewith a report on water legislation prepared under legislation enacted in the 1967 session (S.B. 407, Ch. 175, Laws of 1967). The Legislative Council was directed to study problems and progress made by the Coordinator of Natural Resources in conducting studies and drafting legislation pursuant to the 1967 legislation.

The Legislative Council has accepted this report and is transmitting it to the General Assembly, without specific recommendations for legislative action.

The Legislative Council, on December 9, 1968, directed the Chairman of the Legislative Council Committee on Water, Senator Frank L. (Ted) Gill, to request that the persons responsible for these studies prepare additional legislation incorporating the Colorado Supreme Court guidelines set forth in the recent decision Fellhauer v. State of Colorado in bill form for consideration by the 1969 General Assembly.

Respectfully submitted,

/s/ Representative C. P. Lamb
Chairman

CPL/mp

COLORADO GENERAL ASSEMBLY



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REP. CARL GUSTAFSON
REP. RAYMOND WILDER

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Your Committee on Water submits its report on water studies and legislation drafted pursuant to S.B. No. 407, 1967 session.

As the report states, the committee is making no recommendations concerning the proposals drafted under S.B. No. 407 and is submitting this report only to provide a brief explanation of the major provisions of the draft proposals. The General Assembly will want to give serious consideration to the studies and draft legislation prepared under S.B. 407 of the 1967 session and described in this report.

Respectfully submitted,

/s/ Senator Frank L. (Ted) Gill
Chairman
Committee on Water

FLG/mp

FOREWORD

The Water Committee of the Colorado Legislative Council was created pursuant to Senate Joint Resolution No. 42, 1967 regular session, with the following members of the General Assembly appointed to serve on this committee:

Sen. Frank L. (Ted) Gill, Chairman	Sen. Floyd Oliver
Rep. George Fentress, Vice Chairman	Sen. Wilson Rockwell
Sen. Fred Anderson	Sen. James Thomas
Sen. Fay DeBerard	Rep. T. John Baer, Jr.
Sen. Wayne Denny	Rep. Vincent Grace
Sen. Harry Locke	Rep. Don Horst
Sen. Will Nicholson	Rep. Roy (Ole) Johnson
	Rep. Robert Schafer
	Rep. Ronald Strahle

The committee held a series of meetings since its appointment, including some consideration of the draft legislation prepared under Senate Bill No. 407. This draft legislation is described in this report, although the committee is submitting no recommendations in regard to these proposals.

Assisting the committee during the study were: James C. Wilson, Legislative Drafting Office, and Stanley Elofson, Senior Analyst, and Mitchel Beville, Senior Research Assistant, of the Legislative Council staff.

December 9, 1968

Lyle C. Kyle
Director

TABLE OF CONTENTS

	<u>Page</u>
LETTERS OF TRANSMITTAL	iii
FOREWORD	vii
COMMITTEE REPORT	1
Committee Activity	3
Draft Bill No. 1, Water Right Determination and Administration Act of 1969	6
Draft Bill No. 2, Division Water Utilization	8
Draft Bill No. 3, Management of Water (Exchange)	10
Draft Bill No. 4, Reservoirs and Other Water Storage Facilities	11
Draft Bill No. 5, Advisory Board for Each Water Division	12
Draft Bill No. 6, Division Water Advisory Committee	13
Draft Bill No. 7, Responsibilities of Water Resources Division	14
Draft Bill No. 8, Fiscal Management Section and Financing of Water Administration	15
Criticisms of the Draft Legislation	18
Summary	20
APPENDIX	21

COMMITTEE REPORT

The Committee on Water of the Colorado Legislative Council was created pursuant to Senate Joint Resolution No. 42 of the 1967 General Assembly which directed that the Legislative Council study the problems and progress made in regard to the implementation of Senate Bill No. 407, 1967 session (Chapter 175, Laws of 1967). Under this bill, the natural resources coordinator, as head of the division of natural resources, was directed to conduct studies and draft legislation concerning the following water matters:

To investigate relationships in the areas where intermingled surface and ground water are commonly used in conjunction with each other on the same lands, or lands immediately adjoining, for the same purpose of irrigation; to determine the need for and content of legislation that would provide for integrated administration of all diversions and uses of water within the state; protect all vested water rights, conserve water resources for maximum beneficial use, and permit full utilization of all waters in the state; in connection with such study, to employ such technological and legal and practical assistance as may be reasonably required; to cooperate with any interim joint water committee that is established by the general assembly; to hold public hearings if necessary in any of the water divisions of the state; and to draw upon the experience of other states so far as it is applicable to conditions in Colorado.

To review existing water laws of the state of Colorado to determine their sufficiency and the need for any modifications or supplementations thereto in order to provide an effective system for administration, development, and control of water use in Colorado, and to achieve maximum utilization of water resources compatible with the requirements of the state constitution.

Senate Bill 407, as enacted in 1967, directed that the findings and recommendations, with draft legislation to implement the recommendation, be submitted to either the 1968 or the 1969 session of the General Assembly. The act also provided for the preservation of all existing uses of water, pending completion of the study, report, and proposed legislation. Pending completion of these water studies and reports, the following restrictions pertaining to the drilling of new wells and to the placement of restrictions by the state engineer on existing wells were included in the act:

No permit shall be issued for any well, other than for replacement wells and for wells drilled in a designated ground water basin as defined in section 148-18-2 (10), C.R.S. 1963, as amended, unless the state engineer or his designated representative finds after investigation that the proposed well will have no material effect upon the vested water rights of existing water users and the conditions for issuance of a permit specified in section 148-18-36, C.R.S. 1963, as amended, have been met.

The state engineer shall place no restriction upon any existing well operating under a permit from the state engineer, except as permitted by section 148-18-37, C.R.S. 1963, as amended, unless he determines that diversions from such well are causing material injury to the vested rights of other appropriators.

Copies of acts referred to above are appended to this report.

The legislation enacted in the 1967 session (S.B. 407; Ch. 175, L. 1967) included an appropriation for the project of \$50,000 for the fiscal year ending June 30, 1968. Another appropriation was provided by the 1968 General Assembly in an amount of \$160,000 for the current fiscal year (Ch. 67, L. 1968). The total appro-

priation for the studies, reports, and legislative proposals thus amounted to \$210,000.

Seven reports were prepared by water engineering consultants, copies of which are available in the Legislative Council Office and from the Division of Natural Resources:

Summary Report - Water Legislation Investigations for the Arkansas River Basin in Colorado

By W. W. Wheeler and Associates and
Woodward-Clyde & Associates,
Consulting Engineers

Comprehensive Report - Water Legislation Investigations for the Arkansas River Basin in Colorado

By W. W. Wheeler and Associates and
Woodward-Clyde & Associates,
Consulting Engineers

Summary and Conclusions - Engineering Water Code Studies for the South Platte River

By Morton W. Bittinger and Associates,
Water Resources Engineers, and
Wright Water Engineers, Engineering
Consultants

Report on Colorado Water Administration

By Clyde-Criddle-Woodward, Inc.,
Consulting Engineers

South Platte River State Line Study

By Morton W. Bittinger & Associates,
Water Resources Engineers

Water Utilization Study - Water District 2

By Morton W. Bittinger & Associates,
Water Resources Engineers

Study of Integrated Water Use - South Platte River Basin Water District No. 8

By Wright Water Engineers,
Engineering Consultants

Committee Activity

Most of the activity of the Water Committee was in following the progress of studies being conducted and other activity

pursuant to Senate Bill 407. Mr. James D. Geissinger, Denver attorney, was employed as special counsel for the coordinator of natural resources division with primary responsibilities for the coordination of the studies listed above, and for the preparation of draft legislation to implement the recommendations.

It should be noted that efforts were made by the individuals concerned with the preparation of the draft bills to obtain the ideas for legislation from water users, engineers, attorneys, and others concerned with Colorado water problems and to meet with individuals and groups throughout the state to review the drafts of bills that are to be submitted to the 1969 General Assembly. The meetings on draft bills have been held in several areas since September and will be continuing into December. Many changes in the draft bills have been made on the basis of recommendations received at these meetings.

Thus, while the Committee on Water has held two meetings at which the draft legislation was reviewed, the committee does not believe that it should submit any recommendations concerning the draft bills to the Legislative Council at this time. The committee believes that the persons responsible for preparing the legislation for submission to the General Assembly should continue to hold their meetings with interested persons and groups in order to make additional changes and further refinements in the draft bills during the month of December. The committee believes that the bills should be pre-filed and pre-printed for introduction on the first day of the 1969 session in order to assure an early start in legislative consideration of these bills by the

Forty-seventh General Assembly.

Since the final meeting of the committee, the Colorado Supreme Court handed down a decision of great importance to all water users in the state. This case, Fellhauer v. the State of Colorado, involved the power of the state engineer, acting under a 1965 statute (H.B. No. 1066), to shut down a junior well if it would materially injure senior appropriators who are calling for more water.

At the request of Senate Gill, Chairman of the Water Committee, the chairman was authorized by the Legislative Council to continue, with Mr. Geissinger and the office of state engineer under Senate Bill No. 407 of the 1967 session, in the preparation of draft legislation following the court's guidelines in the Fellhauer case. This legislation should be ready for consideration by the standing committees of the General Assembly when the session convenes on January 8, 1969. This request was submitted since the maximum use of water in the state is the dominant factor for the future development of Colorado and the solution of water matters is crucial to this end.

Although no recommendations are being submitted to the Legislative Council concerning the bills already drafted, the committee thought that members of the Council and the General Assembly would be interested in a brief, general outline of the bills along with some additional comments received by the committee concerning the bills. Many of the details incorporated in the first drafts of the bills are still subject to change so this outline will provide only the broad concepts used in developing the draft bills.

Draft Bill No. 1 -- Water Right Determination and Administration Act of 1969

This draft bill, as well as subsequent bills, would provide for the administration of Colorado water on a river basin concept, with strengthened administrative authority residing in the state engineer and the division engineers' offices. Water divisions would be established in seven areas of the state, although different subdivisions for priority purposes -- such as for the North Platte and Laramie Rivers in North-central Colorado -- would be established within one administrative division.

Division engineers, one appointed for each division, would continue with their present functions and, through their staffs, would perform the functions of water commissioners by administration of water rights through local field offices. While the determination of water administration matters such as priorities, transfers, and abandonment has been solely the jurisdiction of district courts, the proposed legislation would authorize the state engineer and the district engineers to make the initial determination of water rights, priorities, and other such matters.

One of the major concepts incorporated in this draft bill is the establishment of a procedure which provides due process of law, but yet provides a less expensive system of determining water rights than is provided at the present time. This goal is sought by having the division engineer, subject to the approval of the state engineer, make preliminary findings of fact that formerly were made by the court or by a referee appointed by the

court. Persons aggrieved by a ruling of the district engineer could take the matter to court.

In each water division a district court judge from a district court within that division would be designated by the Supreme Court to sit as a water judge having exclusive jurisdiction in priority determinations, transfer proceedings, abandonment, and augmentation (substituted supply). The jurisdiction in water cases of a district court judge would take priority over other judicial duties. In addition, if it should become necessary for the expeditious handling of water litigation, the Supreme Court could designate additional district judges to hear such water cases.

A water clerk's office would be established for each division and this officer would be responsible for the maintenance of water records within each water division. The water clerk is an officer of the court. The designation of a water judge and a water clerk was suggested as a means of providing a more expeditious means of handling water litigation.

The draft bill provides that the state engineer would prepare the appropriate forms for applications and for statements of opposition for persons who want to have a determination of a water right or a conditional water right, or who want to change a water right. Other administrative procedures of the state engineer and district engineers are included in the act.

Other provisions provide a timetable under which tabulations of all water rights and conditional water rights in each water division would be prepared. For example, by July 1, 1970,

the division engineers and the state engineer will have tabulated, in order of seniority, all decreed and conditional water rights in each division. Standards are included in the bill for the determination of the rights. The timetable includes provisions for: (a) the publication of the tabulation of water rights; (b) filing objections to the tabulation; and (c) revision of the tabulation by the division engineers. Following this procedure, court hearings would be conducted on protests filed, after which the court would either incorporate or modify the tabulation of the division engineer.

On July 1, 1972, and every two years thereafter, the division engineers would prepare a new tabulation of all water rights and conditional water rights in his division, bringing up to date new priorities awarded, changes of water rights, modifications of water rights abandoned in part, and omitting water rights that have been totally abandoned. Procedures for objecting to the new tabulations through the division engineer and for protesting the tabulation in court are provided in a manner similar to the objection and protesting procedures for the initial tabulation to be prepared by July 1, 1970.

Draft Bill No. 2 -- Division Water Utilization

The draft bill pertaining to water utilization is concerned with deriving optimum use of water within each water division, consistent with established water rights. To provide for the administration of the optimum use concept, the state engineer would be provided regulatory authority to limit the use of water to "beneficial use," which is a term defined under the

act. The draft bill would provide general standards of what is a full water supply for agricultural, municipal, and industrial purposes. General definitions of the historic water supply and of water waste are included.

The state engineer would promulgate, on a division basis, rules and regulations under the definitions provided in this act. The rules and regulations could vary for each of the seven water divisions since many differences exist in water problems and water use in each division. Advisory boards in each division, as contemplated by Draft Bills Numbered 5 and 6 submitted to the committee, would assist the state engineer in developing standards of beneficial use in each division. Written interrogatories from the state engineer³ to water users would be used as a means of obtaining information on historic and potential water use which would be helpful in the promulgation of rules and regulations for each division. The state engineer would be authorized to inspect water use under each diversion and would be authorized to enter public or private property to inspect the uses and practices involved in diversion, storage, transportation, and use of water.

In determining what is a full water supply, the state engineer would collect data relating to the classification of lands and the water requirements for all types of land. The draft bill included requirements that the results of studies and data collected by the state engineer be available in the division engineers' office and in the field offices and also available on request of the owners of water rights in each division. Protests of the classification determined by the state engineer and regu-

lations of the state engineer would be made to the water court in the manner established in the first bill.

Draft Bill No. 3 -- Management of Water (Exchange)

The central idea of this bill is to encourage the maximum use of the water supply by facilitating the exchange of water. The term "exchange" would mean the diversion of water to provide for the substitution of other water presently available for diversion, or water previously diverted and stored. Exchange would include substitution from either ground or surface water by different means of diversion.

Substitution and exchange of water rights would be permitted in four instances: (a) between water users; (b) between two points of diversion owned by the same water user; (c) through the division engineer or his agent; or (d) by determination of the division engineer under the same procedure used in Draft Bill No. 1 for change in a water right.

A formal procedure for completing an exchange, including approval of the division engineer, is provided in this bill. If the division engineer determines that an exchange will injure other water users, the exchange may be terminated. An investigation is to be completed by the division engineer within three days after an objection to a proposed exchange is filed. If an objector continues to believe that he will be injured, the division engineer would order, within ten days, a public hearing on the matter after which the exchange may be continued or may be terminated. If the objector still believes he will be injured, injunctive relief may be sought from the water court or a request

may be filed for a determination of such injury by the division engineer using procedures included in Draft Bill No. 1.

An appropriator may want to establish an exchange of water on a permanent basis. In this case the user would request such a determination under procedures of Draft Bill No. 1 using the same procedure as is used for changing a water right.

Draft Bill No. 4 -- Reservoirs and Other Water Storage Facilities

This proposed bill pertains to the rights of appropriators to store water for beneficial use at a later time, subject to the limitation that storage rights may not be initially granted or may not be changed if the right would injure other existing water rights. It is important to note that this legislation would apply only to reservoirs and water storage facilities constructed after the effective date of the act and would not affect the operation of existing reservoirs or storage facilities.

Under the draft bill, the right of an appropriator to divert water for storage in a given year would not necessarily be determined by the physical capacity of the reservoir or storage facility. The rights to store water may include the right to prevent seepage and to recapture seepage from a reservoir or other storage facility. The burden of showing that "recaptured" water is actually seepage from the reservoir or storage facility would be on the owner who is asserting the right to recapture the water. If it is proved that the water is seepage, the recaptured water would be deemed to be non-tributary to any natural stream, and would not be subject to claim or appropriation by any other person.

Division engineers would record the measurements of flow in and out of any reservoir and the storage capacity within reservoirs. The diversion of water for storage distribution would be administered in accordance with the decreed priority system and other provisions of Colorado law. The 1969 General Assembly will want to give careful consideration to this suggested legislation.

Procedures to be followed by an owner and by the division engineer for the administration of this act are included in the bill. Provision is made for a notice of preliminary intent to construct or enlarge a reservoir which may be filed with the state engineer. This notice would be admissible evidence of the owner's intent in any subsequent proceeding that may arise.

Draft Bill No. 5 -- Advisory Board for Each Water Division

Five member advisory boards composed of water users or representatives thereof would be established under this bill for each of the water divisions established under Draft Bill No. 1 -- "The Water Right Determination and Administration Act of 1969." These boards would act in an advisory capacity to each of the division engineers and to the state engineer "...with respect to all matters pertaining to water rights and the administration of water rights..." and would be directed to review the actions and policies of the state engineer and the division engineers in regard to these matters. The members of the advisory boards are nominated by the directors of the department of natural resources and the Colorado water conservation board. The

state engineer and the governor shall appoint members from the nominations submitted.

The chief activities of the advisory boards may be summarized as follows:

(a) Hold public hearings for the consideration of existing or proposed rules, regulations, and determinations concerning water use from the state engineer or the respective division engineer and to submit recommendations thereon to these officials.

(b) Make recommendations to the state engineer or to the respective division engineer with respect to the administration and other matters under the "Water Right Determination and Administration Act of 1969."

(c) Sponsor public forums for the discussion and better understanding of water problems within each water division.

(d) Hear and consider grievances of water users concerning the administration of water rights within the division under the "Water Right Determination and Administration Act of 1969."

Draft Bill No. 6 -- Division Water Advisory Committee

An alternative approach to the structure of the advisory committee concept in Draft Bill No. 5 is provided in this draft bill. Advisory committees under Draft Bill No. 6 would consist of one member from each county in the various water divisions. Each county would thus receive one vote in its advisory committee. Committee members would be designated by the county commissioners in counties outside of Denver and by the Denver Water Board. Counties in two water divisions would be in the division

in which the greater geographical area of the county is located, with the exception that seven counties are specifically designated as being in specific water districts for purposes of appointment of the advisory committees.

With one exception, the major activities specified for advisory boards under this bill are the same as those listed for advisory boards under Draft Bill No. 5. This exception is that advisory boards would not be directed to hear and consider grievances of water users concerning the administration of water rights within each division, which is a responsibility of advisory boards included in Draft Bill No. 5.

The other major duties of advisory committees -- holding hearings, making recommendations to the state and to the district engineer, and sponsoring public forums concerning water problems -- are the same in Bill No. 6 as in Bill No. 5.

Draft Bill No. 7 -- Responsibilities of Water Resources Division

The purpose of this proposed bill is to clarify the relationship of the office of the state engineer with respect to several areas of administration. The bill would designate the state engineer as the executive officer in charge of supervising the work of all division engineers, water commissioners, and state employees responsible to these officials. The state engineer would be responsible for: (a) the administration of water well licensing, a fiscal section, a hearing section, a project section, and the keeping and preparation of records and investigations; (b) for the discharge of the state's obligations imposed

by compact or judicial order on the office; (c) for construction contracts, professional and technical consultants, and other contracts related to the operation of the water resources division; (d) for coordinating the work of the natural resources division with other departments of the state government and with the related local government authorities and with municipal and quasi-municipal corporations; and (e) for the supervision of the deputy state engineer and other personnel in the office of the division of natural resources.

Also provided in this draft bill is an outline of the administrative relationship between division engineers, water commissioners, and other employees under the supervision of the state engineer. The proposed bill includes a job description of the office of state engineer by a listing of the subjects of which the state engineer would be expected to have a working knowledge in order to perform the duties of his office.

Draft Bill No. 8 -- Fiscal Management Section and Financing of Water Administration

There are two major ideas for legislation included in this draft bill. First, a fiscal management section under the supervision of the state engineer would be created for the purposes of preparing annual budgets and overseeing expenditures of the division of water resources. Detailed budgeting of all aspects of the state engineer's office and of water projects throughout the state would be provided under these provisions. A project under this bill could include the creation of alluvial or other storage reserves, flood control facilities, or projects or programs of water salvage.

The second major concept included in this bill concerns the methods of financing water administration and water projects. Revenues for the financing of water projects and administration would be derived from three sources:

(1) State general fund. Costs of the general overhead and the administration of the division of natural resources, the state engineer's office, and the division engineers' office would be paid from appropriations made by the General Assembly from the state general fund. These offices are considered to have state-wide interests and, therefore, should be financed through state appropriations from the general fund.

(2) Water distribution fee. The direct costs of distributing waters among the appropriators in each irrigation division was recommended to be derived from uniform charges -- a "water distribution fee" -- imposed as a uniform charge based on each acre foot of water diverted or stored for each appropriator. The amount charged would be an amount necessary in each irrigation division to fund anticipated distribution costs. This recommendation is based on the argument that only the persons benefiting from the water appropriation system should pay for the costs of diversion, storage, and distribution of water from which only these persons benefit.

(3) Special assessments. Water conservation projects constructed, operated, and maintained by the state engineer would be paid by special assessments levied against appropriators in proportion to the benefits received by the appropriators in each irrigation division where water projects are located. The spe-

cial assessments would be based on a "variable unit charge" for each acre foot of water diverted within the irrigation division. The assessments would reflect the proportionate benefits conferred with respect to each appropriator, varying from a minimum unit charge (for the least benefited senior appropriation) to a maximum unit charge (for the most benefited junior appropriation).

Variable unit charges would be based on the concept that the construction, operation, and maintenance costs for water conservation projects should be paid by appropriators in proportion to the benefits received from the project. It is assumed that the junior appropriators would receive the greatest benefits and would pay higher special assessments than would the senior appropriators who would have less need for water conservation projects. In the determination of special assessments for a water conservation project all appropriations in an irrigation division, as a general rule, would be presumed to be benefited by the project. However, exceptions may be made to this rule by excluding particular appropriators from the payment of the special assessments if it was determined that they would not receive "definable benefits" from the project.

If it appears to the state engineer that it is necessary or desirable to provide state or local funds for the capital cost of a water development project, a development and financing plan would be prepared by the state engineer for consideration by the General Assembly. Such a plan could include provision for establishing a state revolving fund, use of state matching funds to complement local funds, or the creation of public entities to levy taxes or to issue revenue bonds.

Finally, the draft bill provides the procedure to be used by the state engineer, and by a newly created water conservation project section in his office, for the development of water conservation projects. In addition, appropriator's conservancy districts, irrigation districts, and ground water management districts would have procedural steps provided for the initiation of water conservation projects, subject to public hearings and the approval by the state engineer.

Criticisms of the Draft Legislation

As has been noted, a series of meetings is being held throughout the state in which these draft bills are being discussed and recommendations for change are being submitted to the bill drafters. In view of these meetings, the Committee on Water has not attempted to hold public hearings in regard to the draft bills. However, some comments have been received by the committee and there was some committee discussion in regard to the proposed bills. Some of the comments in the committee meetings may reflect the areas of greatest concern in regard to the draft bills.

First, it was noted that the draft bills do not meet one of the major problems of water use in the state. Specifically, the draft bills, for the most part, do not attempt to deal with the relationship of the use of underground water to the use of surface water within the context of the priority system for water use. In reply to this statement, the approach of this legislation was described as an attempt to obtain optimum use of

Colorado water by devising schemes permitting the use and reuse of water. The concepts of beneficial use and the exchange and substitution of water were mentioned as ideas that assist the state in obtaining maximum use of Colorado's water supply. In answer to a question of how the proposed legislation would assist a person who was in danger of having a water well shut down, Mr. Geissinger told the committee that the proposed bills would add some "plus factors", such as less waste of water, to the existing supply. These "plus factors" were said to be to the benefit of persons who have late decrees and who have no decrees.

Another major criticism of the draft legislation appears to be in the area of the strengthened state administration, particularly in the powers provided to the state engineer and to the seven district engineers. For example, the state engineer's power to establish water requirements for various classes of irrigated land has been questioned on the basis that such determinations would be unfeasible because the cost would be too high; the state would not fund such a costly program.

Also, the state engineer's authority to establish reasonable water use standards has been questioned on the ground that such a determination could be made better at the local level. Thus, some criticisms involve the issue of state or local control of water administration. The issue of state or local administration is involved in the advisory board or advisory committee concept which could only submit recommendations, rather than establish water policy in their areas.

On the other hand, it is argued that the proposals draw a balance between state and local control through the establishment of advisory boards. Further, it is argued that the effective administration of water law will be achieved through a strengthening of the office of state engineer and the division engineers. The role of the advisory boards would be to provide communication between water users and the division engineers. The bills also provide for the development of different rules and regulations, where necessary, to account for local situations in each of the seven water divisions.

Summary

In summary, the committee did not believe that it could submit any recommendations either favoring or opposing the draft legislation. It appears to the committee that the approach being used in discussing the water legislation with interested persons and organizations will be beneficial in informing the people of the proposals and in securing their comments and suggestions in regard to changes in the bills. No doubt, criticism has been submitted on several aspects of the draft bills in addition to the issues briefly noted in this report. This procedure, plus additional draft legislation based on the guidelines of the Fellhauer case, should assist the 1969 General Assembly in achieving early consideration of these bills.

APPENDIX

From: Session Laws of 1967, Chapter 175
(S.B. 407) (Sections 148-2-9 Through
148-2-12, C.R.S. 1963, 1967 Supp.)

Section 1. Water study. -- (1) (a) The natural resources coordinator as head of the division of natural resources is hereby directed:

(b) To investigate relationships in the areas where intermingled surface and ground water are commonly used in conjunction with each other on the same lands, or lands immediately adjoining, for the same purpose of irrigation; to determine the need for and content of legislation that would provide for integrated administration of all diversions and uses of water within the state, protect all vested water rights, conserve water resources for maximum beneficial use, and permit full utilization of all waters in the state; in connection with such study, to employ such technological and legal and practical assistance as may be reasonably required; to cooperate with any interim joint water committee that is established by the general assembly; to hold public hearings if necessary in any of the water divisions of the state; and to draw upon the experience of other states so far as it is applicable to conditions in Colorado.

(c) To review existing water laws of the state of Colorado to determine their sufficiency and the need for any modifications or supplementations thereto in order to provide an effective system for administration, development, and control of water use in Colorado, and to achieve maximum utilization of water resources compatible with the requirements of the state constitution.

(d) To report its findings and recommendations to the second regular session of the forty-sixth, and or first regular session of the forty-seventh general assembly, and accompany said report with drafts of legislation necessary to implement the recommendations made.

Section 2. Maintenance of status quo. -- (1) (a) Pending completion of the study, report, and proposed legislation described in section 1 of this act, the state engineer shall preserve all existing uses of water in the following manner:

(b) No permit shall be issued for any well, other than for replacement wells and for wells drilled in a designated ground water basin as defined in section 148-18-2 (10), C.R.S. 1963, as

amended, * unless the state engineer or his designated representative finds after investigation that the proposed well will have no material effect upon the vested water rights of existing water users and the conditions for issuance of a permit specified in section 148-18-36, C.R.S. 1963, as amended, have been met.

(c) The state engineer shall place no restriction upon any existing well operating under a permit from the state engineer, except as permitted by section 148-18-37, C.R.S. 1963, as amended, [see following pages] unless he determines that diversions from such well are causing material injury to the vested rights of other appropriators.

Section 3. Adjudication. -- Appropriators of water from wells may, but shall not be required to adjudicate their rights in adjudication proceedings now pending or hereafter initiated under article 9 of chapter 148, C.R.S. 1963. The priority date of a ground water appropriation shall not be postponed to a time later than its true date of initiation by reason of failure to adjudicate such right in any such adjudication proceeding.

Section 4. Exemption. -- The provisions of this act shall not apply in designated ground water basins as such basins are defined in section 148-18-2 (10), C.R.S. 1963, as amended.

Section 5. Appropriation. -- There is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to the natural resources coordinator, the sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, for the study report, and legislative proposals directed to be made and submitted by this act. Said appropriation shall become available upon the effective date of this act and shall remain available until the end of the fiscal year ending June 30, 1968.

Section 6. Safety clause. -- The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 19, 1967.

*Section 148-18-2 (10), C.R.S. 1963, as amended, defines a designated ground water basin. "Designated ground water basin as used in this article is that area established by the ground water commission in accordance with section 148-18-5." [See the following pages for 148-18-5.]

From: "Colorado Ground Water Management Act", C.R.S. 1963, as Amended

148-18-5. Determination of designated ground water basins.

-- (1) (a) The commission shall, from time to time as adequate factual data becomes available, determine designated ground water basins and subdivisions thereof by both geologic and geographic description, and as future conditions require and factual data justify, shall alter the boundaries or description thereof. In making such a determination the commission shall make the following findings:

(b) The name or names of the water bearing geological member or members of a defined formation;

(c) The boundaries of each formation or member being considered;

(d) The estimated quantity of water stored in each formation or member;

(e) The estimated annual rate of recharge;

(f) The estimated use of the ground water in the area;

(g) The estimated projected use of the ground water in the succeeding fifty years at ten-year intervals;

(h) If the source is an area of use exceeding fifteen years as defined in section 148-18-2 (3), the commission shall list those users who have been withdrawing water in excess of the fifteen-year period, the use made of the water, the average annual quantity of water withdrawn, and the year in which the user began to withdraw water.

(2) Before determining or altering the boundaries of a designated ground water basin or subdivisions thereof, the state engineer shall prepare and file in his office a map clearly showing all lands included therein, together with a written description thereof sufficient to apprise interested parties of the boundaries of the proposed basin or subdivisions thereof. The commission shall publish the same and hold a hearing thereon. Following such hearing, the commission shall enter an order to either create the proposed designated ground water basin, to include modification of the proposed boundaries, if any, or dismiss the original proposal, according to the factual information presented or available. (C.R.S. 1963, 1965 Supp.)

148-18-36. Permits to construct wells outside designated areas - fees - permit not ground water right - evidence. -- (1) From and after the date this article becomes effective, no new wells shall be constructed outside the boundaries of a designated

ground water basin, nor the supply of water from existing wells outside the boundaries of a designated ground water basin increased or extended, unless the user shall make an application in writing to the state engineer for a "permit to construct a well", in a form to be prescribed by the state engineer. The applicant shall specify the particular designated aquifer or aquifers from which the water is to be diverted, the beneficial use to which it is proposed to apply such water, the location of the proposed well, the name of the owner of the land on which such well will be located, the average annual amount of water applied for in acre-feet per year, the proposed maximum pumping rate in gallons per minute, and if the proposed use is irrigation, a description of the land to be irrigated and the name of the owner thereof, together with such other reasonable information as the state engineer may designate on the form prescribed. (C.R.S. 1963, 1965 Supp.)

(2) Upon receipt of an application for a replacement well or a new, increased, or additional supply of ground water from an area outside the boundaries of a designated ground water basin, accompanied by a filing fee of twenty-five dollars, the state engineer shall make a determination as to whether or not the exercise of the requested permit will materially injure the vested water rights of others. If the state engineer shall find that the vested water rights of others will not be materially injured, and can be substantiated by hydrological and geological facts, he shall issue a "permit to construct a well", but not otherwise; except that no permit shall be issued unless the location of the proposed well will be at a distance of more than six hundred feet from an existing well; but if the state engineer, after a hearing, finds that circumstances in a particular instance so warrant, he may issue a permit without regard to the above limitation. The permit shall set forth such conditions for drilling, casing, and equipping wells and other diversion facilities as are reasonably necessary to prevent waste, pollution, or material injury to existing rights. The state engineer shall endorse upon the application the date of its receipt, file, and preserve such application and make a record of such receipt and the issuance of the permit in his office so indexed as to be useful in determining the extent of the uses made from various ground water sources. (C.R.S. 1963, 1967 Supp.)

(3) A "permit to construct a well" shall not have the effect of granting nor conferring a ground water right upon the user, nor shall anything in this section be so construed. Nevertheless, the permit shall be a necessary prerequisite for the initiation of a new or additional supply and shall be prima facie evidence of the date and extent thereof. (C.R.S. 1963, 1965 Supp.)

(4) Any permit to construct a well, issued on or after the effective date of this subsection, shall expire one year after the issuance thereof, unless the applicant to whom such permit

was issued shall furnish to the state engineer, prior to such expiration, evidence that the water from such well has been put to beneficial use, or unless prior to such expiration the state engineer, upon good cause shown, shall have extended such permit for an additional period certain, not to exceed one year. (C.R.S. 1963, 1967 Supp.)

148-18-37. Waste - well logs - license - bond - violations - penalties. -- (1) The state engineer in cooperation with the commission shall have power to regulate the drilling and construction of all wells in the state of Colorado to the extent necessary to prevent the waste of water and the injury to or destruction of other water resources, and shall require well drillers and private drillers to file a log of each well drilled whether or not exempt by virtue of section 148-18-4. The state engineer shall adopt such rules and regulations as are necessary to accomplish the purposes of this section.

(2) If the state engineer finds any well to have been drilled or maintained in a manner or condition contrary to any of the provisions of this article or the regulations issued hereunder, he shall immediately notify the user in writing of such violation and give him such time as may reasonably be necessary, not to exceed sixty days, to correct deficiencies. If the user fails or refuses to make the changes within the allowed time the state engineer is authorized to enter upon his land and do whatever is necessary that the user comply with the provisions of this article or regulations issued hereunder.

(3) No well driller or private driller shall drill a new well or otherwise do work on any well requiring authority from the state engineer until a permit with respect thereto shall have been secured for such work. Any structure which would fall in the classification of a "well" as defined in section 148-18-2 (8) except for the fact that the same is made for the purpose of a test only shall be completely filled within thirty days after completion of the test, and if not so filled shall be deemed a "well" as defined in said subsection (8). (C.R.S. 1963, 1965 Supp.)