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0249 Committee on Agriculture

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Report to the Colorado General Assembly:

**RECOMMENDATIONS FOR 1981
COMMITTEE ON:**

AGRICULTURE



COLORADO LEGISLATIVE COUNCIL

**RESEARCH PUBLICATION NO. 249
December, 1980**

Colorado Legislative Council
Committee on Agriculture

Colorado Legislative Council
recommendations for 1981

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OF THE
COLORADO GENERAL ASSEMBLY

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* * * * *

The Legislative Council, which is composed of six Senators, six Representatives, plus the Speaker of the House and the Majority Leader of the Senate, 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 staffing standing committees, and, upon individual request, supplying legislators with personal memoranda which provides 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.

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COLORADO LEGISLATIVE COUNCIL
RECOMMENDATIONS FOR 1981

(*Legislative Council*)
COMMITTEE ON AGRICULTURE,)

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 249
December, 1980

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To Members of the Fifty-third Colorado General Assembly:

Submitted herewith are the final reports of the Legislative Council interim committees for 1980. This year's reports of the fourteen committees are contained in nine volumes of research publications (Research Publication Nos. 249 through 257).

Respectfully submitted,

/s/ Senator Fred Anderson
Chairman
Colorado Legislative Council

FA/sh

FOREWORD

The recommendations of the Colorado Legislative Council for 1980 appear in nine separate volumes. The Legislative Council reviewed the report contained in this volume at its meeting on November 24, 1980, and voted to transmit the bills contained herein to the 1981 Session of the General Assembly.

The Agriculture Committee and the staff of the Legislative Council were assisted by Dave Doering and Marcia Baird of the Legislative Drafting Office in the preparation of bills and resolutions contained in this volume.

December, 1980

Lyle C. Kyle
Director

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**LEGISLATIVE COUNCIL
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**Dianna Martinez
Research Assistant**

The dozen measures recommended by the interim Committee on Agriculture for legislative consideration during the 1981 session are the product of fourteen full days of committee meetings. During these fourteen meetings a full hearing was given to each of the four topics assigned to the committee: issues concerning water; a review of the programs, policies, and needs of the Division of Parks and Outdoor Recreation; the inspection program of the Division of Mines; and the Sagebrush Rebellion.

SAGEBRUSH REBELLION

Numerous western states presently are involved in a controversy over the ownership and management of public lands now controlled by the federal government. Popularly called the Sagebrush Rebellion, proponents of this movement question the validity of the federal government's ownership of extensive landholdings in the western states and assert that more efficient management would be attained if these lands were placed under state control.

Federal Administration of Public Land in Colorado

Landholdings. Various agencies of the federal government own and manage approximately 36 percent of Colorado's surface land, or about 24 million acres. The Bureau of Land Management (BLM) controls approximately 8 million acres. An estimated 14.4 million acres belongs to the Forest Service (FS). Together they control approximately 22.4 million of the nearly 24 million acres of federal landholdings in the state. The remainder is controlled by some ten different federal agencies.

Receipt-sharing. Colorado is entitled to "receipt-sharing" monies from the National Forest Fund, the National Grasslands Fund, the Mineral Leasing Act, Taylor Grazing Act, Flood Control Lands Act, and Federal Lands and Materials Act. Such funds emanate from the revenues derived through several uses of public lands, including mineral leases and permits, timber and forest materials sales, land leases and sales, grazing fees and permits, road permits, and other sales and permits.

The receipt-sharing payments from the federal government are distributed to the counties from which the revenues were generated, except for certain mineral leasing monies which are distributed to designated state funds. Total receipt-sharing payments made to Colorado in the 1978 federal fiscal year totalled \$16,775,000. For fiscal 1979, the total was \$22,127,00.

With respect to the monies generated by the federal Mineral Leasing Act, Colorado law designates portions of the total amount earned to be deposited into three special funds: 25 percent to the Public School Fund; 10 percent to the Water Conservation Board Fund; and 15 percent to the Local Government Mineral Impact Fund. The

remaining 50 percent of the total amount is distributed to those counties that generate the revenues. Counties are entitled to receive no more than \$200,000 with the excess deposited into the state public school fund.

Payments in lieu of taxes. The "Payment in Lieu of Taxes Act of 1976" or PILT Act guarantees counties 75 cents for each acre of federal land within the county either through receipt-sharing or through a direct payment. If a county receives at least 65 cents or more per acre from receipt-sharing payments, the county is guaranteed an additional 10 cents per acre by the act. However, both receipt-sharing and PILT payments are subject to a limit determined by the population of the county. Colorado counties received \$7,288,000 in payments in lieu of taxes (PILT) compensation for fiscal 1978 and \$6,619,000 in fiscal 1979.

Total expenditures, revenues, and payments. Expenditures, revenues, and payments to the state, relating to public lands under federal control in Colorado in fiscal years 1978 and 1979 can be summarized as follows:

	<u>Federal FY 1978</u>		<u>Federal FY 1979</u>	
	<u>BLM</u>	<u>FS</u>	<u>BLM</u>	<u>FS</u>
1. a) Total Expenditures.....	\$13.9 M	\$69.3 M	\$17.4 M	\$68.9 M
per acre.....	\$ 1.74	\$ 4.82	\$ 2.18	\$ 4.79
b) Revenues.....	\$33.0 M	\$ 5.5 M	\$43.4 M	\$ 7.8 M
per acre.....	\$ 4.13	\$ 0.39	\$ 5.42	\$ 0.54
c) Expenditures in Excess of Revenues.....		\$44.7 M		\$35.2 M
(before paying Colorado under receipt-sharing and PILT programs)				
2. a) Receipt-sharing with Colorado <u>1/</u>	\$15.4 M	\$ 1.4 M	\$20.2 M	\$ 2.0 M
per acre.....	\$ 1.92	\$ 0.10	\$ 2.52	\$ 0.14
b) PILT Payments.....		\$ 7.3 M		\$ 6.6 M
per acre.....		\$ 0.31		\$ 0.28
c) TOTAL FUNDS PAID TO COLORADO.....		\$24.1 M		\$28.7 M

NOTE: M = Million.

Figures may not add to totals due to rounding.

1/ Includes payments by other federal agencies of \$10,000 for fiscal 1978 and \$9,000 for fiscal 1979.

Colorado's indirect earnings from federal land. In addition to the receipt-sharing and payments in lieu of taxes monies listed above, Colorado realizes a cost savings for highway projects because of federal land within the state. The net apportionment of federal aid for Colorado highways remains the same, but the matching requirement is tied to the amount of public lands within the state. In the 1980 federal fiscal year, the total federal aid apportioned for Colorado highway projects was approximately \$95.6 million. Colorado obtained this amount by matching \$14.7 million as its share of the projects. If less than five percent of the land in Colorado had been federally-owned, Colorado's share of the projects would have been approximately \$21.1 million.

School districts which have students whose parents reside and/or work on federal property (military bases and Indian reservations for the most part) are entitled to additional federal "impact" aid under Public Law 874. In 1979, impacted school districts in Colorado received approximately \$12.5 million in federal aid. A state take-over of federal lands would have little effect on the flow of P.L. 874 funds to school districts since military bases and Indian reservations would presumably never be relinquished by the federal government.

The Federal Land Policy and Management Act. The Federal Land Policy and Management Act is referred to by observers as the catalyst for the recent Sagebrush Rebellion. Supporters of the sagebrush movement take a stand against both the act's constraints on the use of public lands and the obstacles (such as withdrawals) it places before the transfer of lands to private ownership. The act was passed with the expressed purposes of setting forth both principles and objectives for the Department of the Interior's Bureau of Land Management to follow in administering public lands.

The act declares that it is the policy of the United States that:

...the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this act, it is determined that disposal of a particular parcel will serve the national interest....

With that policy in mind, the goals and objectives of federal administration focus on the principles of "multiple use" and "sustained yield", while also protecting scientific, scenic, historical, ecological, environmental, air, atmospheric, water resource, and archaeological values.

The act includes provisions for comprehensive land use planning and a new withdrawal authority for the Secretary of the Interior. Decisions by the secretary to hold or "withdraw" public lands from any of their principal uses is subject to Congressional veto. Also, all sales of public land in tracts exceeding 2,500 acres are subject to

Congressional veto. Unless accomplished through an Act of Congress, land withdrawals cannot be made for more than twenty years without first being subject to review toward the end of the twenty year period.

Current Administration of Public Lands by Colorado

Landholdings, expenditures, and revenues. The Colorado State Board of Land Commissioners holds and manages approximately three million acres of surface land and also controls the mineral rights to the ground lying below that land. In addition, the board controls the mineral rights to another one million acres of subsurface land. The expenditures and revenues of the state Board of Land Commissioners for state fiscal years 1978 and 1979 appear below. The expenditure figures represent administrative expenses while the revenue figures consist of the monies generated through royalties, leases, and various types of sales.

	<u>State FY 1978</u>	<u>State FY 1979</u>
Expenditures.....	\$ 619,689	\$ 671,646
per acre*.....	\$ 0.15	\$ 0.17
Revenues.....	\$11,435,486	\$15,108,613
per acre*.....	\$ 2.86	\$ 3.78

* surface and subsurface

Land management policy. Article IX, Section 10 of the Colorado Constitution specifies the duties of the state Board of Land Commissioners as:

...It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or other disposition of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law; and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The general assembly shall, at the earliest practicable period, provide by law that the several grants be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective

objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time; and for the faithful application of the proceeds thereof in accordance with the terms of said grants. (Emphasis added)

In accordance with this charge, Section 36-1-124, C.R.S. 1973, provides that the State Board of Land Commissioners is to "...direct the sale of any state lands, except as provided in this article, in such parcels as they shall deem for the best interest of the state and the promotion of the settlement thereof." In addition, leasing is to be accomplished in a manner that will produce optimum long term revenue.

Besides making decisions concerning the sale, lease, and use of state-owned lands, the board monitors all activities upon such property. The General Assembly has the constitutional authority to regulate the board's actions within the commissioners' constitutional grant of powers.

Measuring the Fiscal Impact of State Ownership

It is impossible to calculate how Colorado would be affected financially by gaining control over certain federal lands. There is no way to accurately predict how the state would actually utilize and manage the newly acquired property. For example, Colorado could decide to accelerate the leasing level and production pace for mining, timber, and grazing activities, as well as increase the sales of public land for those and other purposes. Under such a policy, state revenues could be substantially increased. On the other hand, Colorado could choose to decelerate the development of its resources and thereby decrease the revenues which presently accrue from the use of the land.

Pro and Con Arguments Regarding State Administration of Federal Lands

One of the main points of controversy regarding the Sagebrush movement is whether the states could effectively and efficiently manage the public lands and if, in fact, state control would be cost-beneficial to the taxpayers. Support for the movement is largely based on the belief that under state ownership there would be greater control over resource management decisions and the state would realize greater economic benefits. Officials in western states have argued that they are more efficient than the federal government and could earn more money from the land at a lower administrative cost than the federal government.

Opposition to the movement is strong among wildlife and conservation organizations. A group of fourteen national conservation associations issued a joint statement in October, 1979, regarding the Sagebrush Rebellion. That group views the movement as an "attempted

raid on public lands by big commodity interests" and questions a state's ability to manage public lands. They are also concerned that the states could not match the federal funds now appropriated for public land programs. These and other arguments on the issue are presented below.

Arguments for the Sagebrush Rebellion. The arguments of support for the Sagebrush Rebellion are as follows:

(1) Prior to the admission of the western states into statehood, unappropriated lands within the existing states had been made available for private use and ownership. Therefore, decisions by Congress to place a claim on unappropriated land within the western states as a condition to statehood were without precedent. Western states, in effect, were denied an equal footing with the other states admitted into statehood, particularly when the percentages of federal land in the western states is compared with the 4.3 percent average in the other 38 states.

(2) The intent of the framers of the United States Constitution was to guarantee to each state sovereignty over all matters within its boundaries, except for those powers specifically granted to the United States. A federal claim on unappropriated land is not a power constitutionally granted to the federal government. Therefore, federal holding of public land in the western states is not consistent with the rights assured under the United States Constitution.

(3) Federal control and management of public lands has been a burden on the people within the western states for several reasons:

(a) federal lands are not taxable, but they impose tax burdens on private property owners when revenues from their property taxes are used to provide public services to meet the needs of federal employees;

(b) federal jurisdiction over the public domain is shared among seventeen federal agencies or departments. This creates administrative and management problems and causes difficulties and confusion for state residents;

(c) federal administration of public lands has resulted in unnecessary retention of public lands and ill-advised environmental impact assessments and permit limitations which restrict the livestock and mining industries; and,

(d) exchanges of public for private lands and sales of federal land to private interests have been delayed and denied on grounds which frequently appear to be without reason. Such actions adversely affect the economy and planning activity in the western states.

In Nevada, a major argument is that the federal government has not acted on proposals to exchange or use public land. For instance, decisions have not yet been rendered on many proposals which are now

ten years old. In Colorado, controversy has centered on the Roadless Area Review and Evaluation (RARE II) study, which places certain mountain areas in the wilderness category and eliminates their potential for development as resorts, ski areas, or energy-producing sites. In Alaska, concern has focused on restrictions regarding energy development and timber harvesting on lands designated as wilderness areas.

In addition to the above, other supporters of the Sagebrush movement question the public value of land retention, multiple use, and sustained yield management as provided under the Federal Land Policy and Management Act. They ask if there isn't value in allowing private interests greater access to the natural resources in public lands. For what part of the American public are these lands being retained -- a minority or the majority? Should not economic demands on a national or local level help determine any part of the fate of public lands?

Arguments Against the Sagebrush Rebellion

Opponents of the Sagebrush Rebellion have offered the following criticisms against proposals to place federally-owned public land under state control:

(1) Federal land in the western states was set aside because Congress realized in the late 19th century that part of the American heritage was ingrained in untouched wilderness. It became evident to Congress that the American public as a whole had an interest in retaining federal land for the benefit of every citizen, rather than for a limited number of private concerns.

(2) The Federal Land Policy and Management Act will lead to better and more efficient administration of public land. Delays will be cleared up in the near future to expedite sale, use and exchange of public land.

(3) A state would have difficulty handling the financial burden required to adequately manage the vast amount of public land -- a burden now shared by all states collectively -- and might be forced to sell great amounts of land to private interests. In some cases, states might be unable to resist the pressures of private interests who want to control these lands.

(4) Large projects, such as fighting fires and maintaining vast miles of roads in difficult terrain, require the combined efforts of federal agencies in an entire region. States might be unable or unwilling to retain a staff of the scale and expertise necessary to maintain the land at an acceptable level of protection or preservation.

(5) Private interests are considered to have greater influence at the state and local levels than at the federal level, thus, state governments might well ease environmental restrictions on public land

to achieve short term gains. The result of short term gains might be harmful to the states in future years, since the land may be ruined permanently.

(6) The federal government adequately reimburses states in which large tracts of public lands are located through payments in lieu of taxes, receipt-sharing, and other revenue-sharing programs.

Individual State Action

The Nevada Legislature, upon passage of the first Sagebrush statute, gave the State Attorney General a mandate to establish authority over the unappropriated public domain lands now under the control of the federal Bureau of Land Management. The lawsuit to claim such jurisdiction and control over the state's unappropriated public lands has not yet been filed in court.

Although the Nevada Legislature initiated its challenge based on the constitutionality of federal control over public lands, there are many other legal challenges open to the western states. The intent of the various state bills which have been enacted is basically the same: to transfer, from the federal to the state government, title to federally-owned land as well as the management responsibilities and authority related to such ownership. Summarized below are individual state actions to date:

- The New Mexico Legislature has empowered the state's land office to control more than 13 million acres of land now regulated by the Bureau of Land Management. The law became effective May 14, 1980.
- The Wyoming Legislature enacted H.B. 6 which is similar to the 1979 Nevada law, except that the bill also lays claim to U.S. Forest Service lands. The law became effective March 10, 1980.
- The Arizona Legislature passed a measure, S.B. 1012, similar to the Nevada statute. Adopted by both houses of the legislature, it was vetoed by the Governor. There was a subsequent veto override by the legislature and the bill became effective July 14, 1980.
- The California Legislature has adopted AB 2302, which would establish a study to analyze the financial, legal, and land management aspects of public land ownership by the state.
- The Idaho Legislature enacted a resolution, S.C.R. 129, which directs the Attorney General to explore the feasibility of supporting Nevada's legal challenge, and to study whether Idaho should also seek control of its public lands.

- The Utah Legislature enacted a measure which is similar to Nevada's "Sagebrush Rebellion" bill. The measure became effective July 1, 1980.
- The Washington Legislature enacted S.B. 3593 and S.J.R. 132. The resolution, similar to Nevada's statute, was not approved by the voters at the November election.
- The Hawaii Legislature adopted SR 266 on April 15, 1980, which endorses and supports the efforts of western states to gain equality with other states in land management, control, and ownership.
- The Alaska Legislature has been considering H.C.R. 34 which supports Nevada on this issue. The legislature is also considering S.C.R. 42, which provides support to Nevada's legal challenge on the control of public lands.

Alternatives to a Total Transfer of Control

There are several alternatives to a total transfer of control and ownership over federal lands to the state. These options would involve some form of state management or involvement in the management of such lands. An example of this type of change in the federal-state relationship regarding public lands occurred in Utah in September, 1978. At that time, the Governor of Utah and the State Director for the federal Bureau of Land Management (BLM) developed a cooperative agreement designed to jointly identify, communicate, and coordinate actions of common concern relating to the management of state and BLM administered lands and resources. In addition, the agreement also provided a mechanism for continuing involvement in the development and revision of land use plans.

In 1976, the possibility of state management of public lands without state ownership was discussed in Nevada. The process called for the court to appoint the State of Nevada to serve as a trustee for all the public lands within its boundaries. As envisioned, the state would be entitled to payments for services rendered as trustee or manager, but the distribution of receipts from public lands would otherwise remain unchanged. Although the state would be subject to restraints imposed by federal law and judicial order, the state's advantage would be primarily in its opportunity to control and manage the land.

COMMITTEE RECOMMENDATION

State Claim to Public Lands -- Bill 1

Two full days of hearings were conducted by the committee to gain an understanding of the impact of federal land policies on Colo-

rado. As a result of the testimony presented and the research conducted for the committee, Bill 1 which provides for state control of certain public lands is recommended for adoption.

The proposal declares that all public lands in this state not previously appropriated to private ownership are the property of Colorado. Public land is defined to include all minerals on or below the surface. Exclusions from the definition are made for holdings by the U.S. departments of defense and energy, the Bureau of Reclamation when acquired by consent of the General Assembly, Indian reservations, and lands congressionally authorized for national parks, monuments, wildlife refuges, wilderness areas, or historical sites, or other lands acquired by Congress with the consent of the General Assembly.

With regards to any unresolved land claims, the measures states that:

Any land or land use claimed and filed with a court of competent jurisdiction prior to the effective date of this article by a private person under an international treaty shall continue to be the subject of judicial proceedings pursuant to existing, relevant, or controlling state or federal laws, and this article shall not affect or impair any such rights or claims.

Administration of the lands. The state Board of Land Commissioners is directed by the proposal to hold the newly acquired public lands in trust for the benefit of the people of the state and to administer and manage such lands consistent with the principles of multiple use and sustained yield. The board may sell, lease, exchange, or encumber the public lands acquired, but only when specifically authorized to do so by the General Assembly. No land proposed to be retained by the state for wildlife, parks, recreation, or other public uses is to be transferred to the administering state agency without the prior approval of the General Assembly. Proceeds of sales, fees, rents, royalties, or other moneys paid or due are to be credited to the state's General Fund.

Public land commission. To provide for an orderly transition and administration of the public lands claimed by the state, the bill creates a temporary commission. The work of the five member body would terminate on July 1, 1983. The commission is charged with the development of a plan for the transfer and management of the public lands and minerals. The plan is to consider the following:

- policies and programs for the disposal, lease, or exchange of lands;
- conservation of lands for wildlife habitat or recreational purposes;
- policies and programs regarding public access;

- programs regarding the use or transfer of land to municipalities and other governmental entities; and
- methods and formulas of providing state funding to political subdivisions for any monies due from the federal government when those payments may be reduced due to action taken by the state.

Effective date. The bill becomes effective upon signature of the Governor; however, the measure also contains a provision that no public lands acquired pursuant to the act shall be disposed of before July 1, 1983.

DIVISION OF PARKS AND OUTDOOR RECREATION

A budget review of the Division of Parks and Outdoor Recreation by the House Game, Fish, and Parks Committee during the 1980 legislative session revealed a number of matters for further legislative study. As a result, the interim Committee on Agriculture was charged by the General Assembly to: review the future plans of the division; assess current funding problems; review projected acquisition, development, and continuing operational needs; and review alternative methods of financing long-range recreational needs.

Background

The General Assembly has declared by statute that it is the policy of this state that:

... outdoor recreation areas ... are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state. It is further declared to be the policy of this state that there shall be provided a comprehensive program of outdoor recreation in order to offer the greatest possible variety of outdoor recreation opportunity to the people of this state and its visitors and that to carry out such program and policy there shall be a continuous operation of planning, acquisition, and development of outdoor recreation lands, waters, and facilities.

Specific programs are outlined in the law to implement such a policy. Among other activities, the state is to:

...develop state parks and natural environment recreation areas suitable for such recreational activities as camping, picnicking, hiking, horseback riding, sight-seeing, fishing, and water sports....

To support such a program, the state is to:

Charge a fee or require a permit for the use of any state park or natural environment recreation area where appropriate supervision and maintenance is required and when certain facilities, as determined by the board of parks and outdoor recreation, are maintained at any such area.

The focus of the presentation to the interim committee was on the division's present and future needs, and methods of funding these needs.

Funding Mechanisms

During the last several years limited funding for the state's parks system has encouraged the exploration of alternative methods for meeting the division's statutory directive. The General Assembly continues to face a policy decision regarding funding. On the one hand there is a user fee philosophy whereby the individual using the resource is identified as the person who should pay for the benefit. An opposing position is that the public receives benefits from having a quality park and recreation system and thus the system should be supported through general fund appropriations.

Historically, the division's responsibility to provide a comprehensive program of outdoor recreation has been met through an appropriation from the state's general fund. However, in the last five years there has been a shift toward cash funding. In 1974, the division operated as a 100 percent general fund agency. Currently, the division is funded 32.3 percent from the general fund and 56.8 percent from cash fund sources, namely, parks' user fees, licensing of recreational vehicles, penalties assessed in park areas, and State Land Board funds. In addition to the general fund appropriation and the cash fund revenues, the division distributes and administers federal land and water conservation funds to state and local recreation agencies.

The total amount of monies authorized by the General Assembly for each of the three revenue sources and the percentage increase or reduction for the last three fiscal years reads as follows:

Division of Parks and Outdoor Recreation
Funding From Fiscal Year 1978-79
Through Fiscal Year 1980-81

<u>Account</u>	<u>Fiscal Year</u> <u>1978-79</u>	<u>Percentage</u> <u>Increase or</u> <u>Reduction</u> <u>From FY 79</u> <u>to FY 80</u>	<u>Fiscal Year</u> <u>1979-80</u>	<u>Percentage</u> <u>Increase or</u> <u>Reduction</u> <u>From FY 80</u> <u>to FY 81</u>	<u>Fiscal Year</u> <u>1980-81</u>
General Fund	\$1,496,766	+1.16%	\$1,670,657	-5.0%	\$1,594,129
Cash Fund	2,516,578	+6.69	2,533,439	+8.8	2,755,377
Federal Funds	<u>1,176,325</u>	+5.15	<u>1,237,002</u>	-51.1	<u>580,686</u>
TOTAL APPRO- PRIATION	\$5,189,669	+4.8%	\$5,441,098	-9.3%	\$4,930,192

Recent Legislative Action

To enable the division to meet its statutory responsibility and to generate more revenue, the 1980 General Assembly, upon a recommendation from the Joint Budget Committee, transferred responsibility for the administration of Antero, Flagler, Ramah, Miramonte, and Tarryall reservoirs to the Division of Wildlife. Legislation was also enacted which increased the parks' user fee five dollars in 1981, and an additional five dollars in 1982. In addition, Amendment Number 2, a proposed constitutional amendment referred by the 1980 General Assembly was approved by the voters at the November 4th election. The amendment authorizes the establishment of a state-supervised lottery with the net proceeds to be allocated to a conservation trust fund for distribution to municipalities and counties for park, recreation, and open space purposes.^{1/}

^{1/} Based on an estimated Colorado population of 2.7 million, the following amounts of money might be raised from various per capita net revenues:

<u>Per Capita</u> <u>Net Revenues</u>	<u>Estimated Lottery</u> <u>Revenue Based on</u> <u>Population of</u> <u>2.7 million</u>
\$3.00	\$ 8.1 million
5.00	13.5 million
10.00	27.0 million

Present and Future Needs

The Division of Parks and Outdoor Recreation reports that many of the state's parks and recreational areas have reached their maximum carrying capacity. Indeed, some 5.9 million visitors were served in 1979 by the state's nine parks and eighteen recreation areas, surpassing the 5.4 million visitations for the same period to Colorado's national parks system. While the state population has increased by an overall rate of 6.7 percent from 1976 to 1980, the growth in park visitation has increased by 11.7 percent for the same period.

To meet this demand, the division utilizes approximately sixty-four percent of its personnel resources for parks management. The operation and management of state parks has been likened to the operation of small towns of 2,000 to 10,000 population. Like a town, a recreation area or state park requires streets and highways, sanitation systems, water supplies, walkways, parking lots, maintenance buildings, public buildings, vehicles, and equipment. Currently, the state has an investment approaching \$30 million, excluding the value of its landholdings, in buildings, roads, campgrounds, marine facilities, sanitation facilities, utilities, trails, fences, signs, and numerous small facilities, plus the equipment used for maintenance. The continued increase in visitors to the parks and recreation areas and accumulated age and use of facilities and equipment will mean accelerated increases in expenditures to protect the division's investment.

In response to the statutory requirement that the division provide "...a continuous operation of planning, acquisition, and development of outdoor recreation lands, water, and facilities", the division has allocated approximately fifteen percent of its personnel for planning, acquisition, and development programs. The broad goals of these programs are to identify highest priority citizen needs, provide adequate planning so that limited resources can be directed toward highest priority needs, and preserve rare or especially valuable environmental areas. Once the recreational value of an area is determined and the parcel of land acquired, actions are taken to develop it. The following are typical construction costs the division must consider in the development of a new area:

Gravel road	\$ 35,000/mile
Paved road	120,000/mile
Campsite	3,200/mile
Vault toilet	15,000/each
Visitor center (3-4,000 sq. ft.)	105/sq. ft.
Trail -- paved	51,000/mile
Trail -- natural	10,000/mile
Boat road	18,000/each
Sewage treatment plant	25,000/each
Electric lines -- underground	52,800/mile

Funding for Parks -- Bill 2

Currently the division manages approximately 177,769 acres including surface and water acres. Based on population projections, the estimated acreage needed over the next ten years is 33,450 acres or 25 acres per 1,000 people. To assist in meeting the division's needs, the committee recommends Bill 2 which amends the current nongame wildlife check-off program to provide cash funds for both the nongame wildlife program and the parks and outdoor recreation program. As approved by the General Assembly in 1977, state taxpayers are allowed to donate a portion of their state individual income tax refunds to the nongame program simply by checking a box on their tax forms. The program is administered by the state Division of Wildlife. The check-off mechanism has raised approximately \$1.5 million in three years. For calendar years 1978, 1979, and 1980 the following amounts were collected: \$350,000, \$501,000, and \$650,000.

Effective January 1, 1982, the committee recommends that the revenues collected be divided between the nongame wildlife program and the parks and outdoor recreation program. Revenues collected from the check-off program will be supplemental to any legislative appropriation to the division for planning, acquisition, development, or maintenance of outdoor recreation lands, water, and facilities.

WATER

During the interim the committee was confronted with a host of water issues. Prominent among these were: matters associated with the impact of energy development on water resources; and whether the state should modify the policies and administration of its water quality statutes. In addition, the committee examined the impact of the state's minimum stream flow law, and discussed a number of amendments to existing law affecting the state engineer's management of Colorado's water resources.

Water and Energy

Early in the interim the Colorado Energy Research Institute (CERI) presented the committee with a report on the impact of energy development on the state's water resources. The report was prepared for the institute by the University of Denver Research Institute. The research is important for several reasons: the topic is of paramount importance to the state's future; the report outlines several scenarios representing a wide range of alternative energy development levels; and the interrelation of water needs for energy development to other topics of importance to policymakers is evident.

The following excerpts summarize the report's findings:

In an average water supply year, there will be no shortfall of water in any state hydrologic region despite the most extreme amount of energy development that might be expected by the year 2000. This conclusion must immediately be qualified: (1) even though surface supplies may be overdrawn, the shortfall can be made up from groundwater withdrawals; (2) there may well be localized shortages within a hydrologic region or river basin even though the region has a surplus; and (3) new water storage facilities must be constructed.

Other conclusions that can be drawn are:

- . Most of the energy development (and associated water demand) will occur in the Colorado River Basin; this is also the region of greatest surplus in Colorado's water supply.
- . In all other hydrologic regions of Colorado, the surface water supply is either marginally adequate, or inadequate, to meet projected demands in an average year.
- . Outside the Colorado River Basin, the dry year supply (assuming surface water supply at 65 percent of average year supply) is inadequate to meet even present level demand without reliance on stored surplus supplies or groundwater, or both.
- . In the Northern High Plains, a shortage of water already exists in an average year and will continue, even though no water use is forecast for energy development. The Ogallala aquifer is depleting rapidly and even if the annual groundwater supply can be continued at its present level, costs will rise rapidly.

In the hydrologic regions of the state outside the Colorado River Basin, surface water supplies are inadequate to meet existing demand on a continuing basis. In a year of below average supplies (i.e., half of the time) in the Rio Grande, Arkansas, and South Platte, most junior water users and many, more senior water rights holders must curtail water use or resort to groundwater withdrawal. In the Northern High Plains (and in many parts of other hydrologic regions), groundwater withdrawals are regular and essential. Such mining of groundwater has several ominous aspects: (1) groundwater tables are generally declining and nowhere are rising; (2) the deeper the water table falls, the more energy (petroleum or electricity based) is needed

to pump the same quantity of water; and (3) energy costs are rising faster than the value of the product for which the water is used (e.g., irrigated agricultural crops).

A final qualification indicates that, even though the annual supply of water in a hydrologic region may be adequate to meet total demands, new water storage reservoirs will be required to assure adequate water supply throughout the year because of seasonal flow variations. Many will be needed by the year 2000. Some will be required earlier, depending on where energy facilities are sited.

Storage systems are essential for agricultural water storage and domestic water supplies, even though both have a demand peak in the summer growing season which occurs soon after the peak water supply season. In the case of energy production, there is not likely to be a seasonal variation in water demand, so an even greater proportion of water supply must be stored from the peak spring runoff to assure that supplies remain adequate throughout the year and are carried over from wet to dry years. Construction of storage systems is expensive and has significant environmental consequences. Nevertheless, supply shortfalls cannot be avoided unless new storage systems are constructed to accommodate new energy development....

With the specific qualifications noted earlier, it is possible to provide enough water in an average year to accommodate the energy development that is foreseen to the year 2000. However, considerable planning and effort must be expended to allocate the water needed by energy development, and choices must be made as to how this is done.

Alternative Methods for Managing Water Supplies

In certain hydrologic regions of Colorado, notably the Colorado River System and the North Platte and South Platte regions, some undeveloped water supplies exist. That is, Colorado has compact rights to more water than is now stored and consumed, so some Colorado water flows to downstream states for use. As Colorado develops these supplies for future use in energy development, for municipal and industrial use, or for new agricultural irrigation, the downstream states must curtail their use.

Reallocation of water to energy development, and to the increased municipal and industrial use that accompanies energy-induced population growth, will be accompa-

nied by several actions that are controversial or generally unpopular. These include:

- . Increased pumping of groundwater, particularly in those hydrologic regions where surface water supplies are inadequate to meet demand (e.g., the Arkansas and Northern High Plains).
- . Some reallocation of agricultural irrigation water to other uses, with some farm land going out of crop production. (This is a long-term trend in many parts of the West due to the relatively weak economic position of agriculture versus industry and municipal use.) Energy development will raise the price of water rights and cause numerous agricultural water users to sell their water and land to realize capital gains. However, there is no absolute shortfall of water by the year 2000 that will curtail the supply to irrigated agriculture. In fact, this study adopts the projections of the Colorado Department of Natural Resources showing an increase in agricultural water consumption, from 4.9 million acre-feet in 1979 to 5.1 million in 1985 and 6.1 million in 2000....
- . Increased pressure for selected diversions of water across river basin lines to meet rising demands. This pressure is likely to be strongest to construct further transbasin diversions from the Colorado River Basin to the South Platte for municipal and industrial use. Denver and other front range cities hold water rights in the Colorado River Basin, and have plans for future diversions. However, opposition by Colorado West interests and environmental groups make future transbasin diversions extremely doubtful....
- . The implementation of new measures that promote conservation in water use by municipal, industrial, and agricultural users. Certain agricultural conservation measures can, with little or no sacrifice of utility, reduce the volume of diversions and returns, reduce evaporative consumption, and improve water quality by reducing excessive leaching of pollutants from soil. Certain municipal conservation measures can reduce the volumes of water diverted, pretreated, and post-treated. Such measures can reduce water consumption or handling costs, or both. However, they may require a capital investment in equipment (e.g., sensors, sprinkle and trickle irrigation water application systems).
- . Innovative methods to enhance water supplies or

yields from existing precipitation, including snowfencing or forest cutting to build snowpack, and precipitation augmentation.

Construction of Storage Reservoirs

A traditional way of storing water in Colorado is in large, multiple-purpose reservoirs, often constructed at Federal expense and with major portions of the cost repaid over a period of years from power revenues and payments by municipal and industrial and agricultural water users. However, the day of these large federal dams and reservoirs is passing. The present administration's policies have eliminated funding for several authorized water resource development projects (the "Hit List"), have stressed water conservation and "nonstructural alternatives" rather than construction of facilities, and have called for state or local cost sharing for future federal projects.

It is difficult to visualize how nonstructural alternatives will store and deliver Colorado's surface water runoff to the points of need at the time needed, and buffer the variations in the hydrologic cycle. However, it is possible to consider various alternative forms of storage, including smaller single-purpose storage reservoirs as well as larger reservoirs with potential for hydroelectric power generation, recreation, fish and wildlife habitat, and flood control....

Although it seems possible for federal/state joint venture to develop water resources to accommodate energy development and population growth, the outlook is less promising for other economic sectors and water uses, e.g., agriculture, and tourism dependent on water based recreation and fish and wildlife....

Summary

In summary, there can be enough water to meet the needs of the rapid energy development and population growth of Colorado that is expected or that may occur by the year 2000. Such a pace of development will speed the day, probably early in the next century, when water needs exceed supply. And even before 2000, reallocations of water among uses must take place and substantial pumping of groundwater will occur in certain hydrologic regions. An expensive program of water resource development also must take place in the next twenty years, with major allocations of state and local capital funds to the construction of dams and reservoirs.

These priorities will inevitably cause some disruption to other water uses and users, notably irrigated agriculture and outdoor recreation. Such disruptions may be mitigated, if Colorado's decision-makers implement the water resource development program with awareness of threats to the State's future and with concern for a balance of values....

The Colorado Water Conservation Board construction program. Although significant amounts of money have been appropriated recently for the funding of water projects and a number of projects have been completed, the demand for funds continues to accelerate. Since the early 1970's, money from several sources (general fund, revenue sharing, oil shale and mineral leasing funds, and sales and use taxes) has gone to the state's water projects construction fund. From the inception of the fund through fiscal year 1979-80, thirty projects have been authorized at a cost of \$21 million. An additional eighteen projects totaling \$9.7 million were authorized by Senate Bill 67 of the 1980 Session. The water conservation board has twenty-nine project requests pending. The applications represent an estimated \$286 million in needs; however, the board will probably recommend that the General Assembly consider funding projects with a total cost of approximately \$26 million. This funding level would represent a state cost of \$14.4 million which demonstrates a board policy that either fifty percent or \$1 million, whichever is less, be the amount recommended for state participation in a project.

The director of the conservation board reports that the number of applications for irrigation and flood control projects is increasing in relationship to the number of requests for municipal and industrial projects. This shift is attributed to three actions: an increase in appropriations by the General Assembly; dwindling Bureau of Reclamation monies for water projects; and a growing need to rehabilitate old irrigation systems.

Meeting the state's total water needs. In an attempt to more fully develop the state's water resources, the General Assembly is faced with several funding issues. Traditionally, water conservation board funds have been used for small water projects. The costs of these "small" project needs are increasing at a dramatic rate. On the other hand, particularly in 1980, the General Assembly has appropriated increasing numbers of dollars to the construction fund. As a result, the General Assembly may wish to reevaluate what the state's objectives should be in this area and what the relationship should be between these needs and the more costly demands caused by energy development.

A still larger issue facing the General Assembly is that of Colorado's role in meeting the energy development demands for water and the subsequent impact on municipal, industrial, and agricultural water needs. The Colorado Energy Research Institute study identifies some fifty potential dam sites for the impoundment of water to meet

future needs. The cost of such a program is estimated at nearly \$1 billion at present costs. The role of the federal government in assisting the state in water development is uncertain and unclear and the state constitution prohibits state indebtedness, a prohibition that could prevent the state on its own from generating the required amounts of money.

Establishing the Colorado Water Resources and Power Development Authority -- Bill 3. Given the ten to fifteen year period necessary for water resource development, the committee recommends that the General Assembly make a decision during the 1981 session regarding the State's commitment to water storage projects and the financing mechanism for such projects. The committee recommends Bill 3 as an appropriate financing mechanism.

As stated in the legislative declaration, the bill establishes a water resources and power development authority

to initiate, acquire, maintain, repair, and operate projects or cause the same to be operated pursuant to a lease, sublease, or other agreement ... [and] issue its bonds and notes payable solely from revenues to pay the cost of such projects.

The authority is established not as an agency of state government, but as a political subdivision of the state. The power of the authority is vested in a nine member board appointed by the Governor with the consent of the Senate. Terms of appointment are four years. Members include one person from each of the state's major drainage districts and a person from Denver familiar with the city's water problems. Appointments to the board are to include a member who is experienced in water project financing, one member who is experienced in the engineering aspects of water projects, two members experienced in the planning and developing of water projects, and one member who is experienced in water law.

Among the powers given the board are the following:

- borrow money and issue negotiable bonds or notes;
- exercise the power of eminent domain;
- charge and collect rentals for the use or services of any project;
- plan, develop, construct, equip, maintain, manage, in projects within or without the state, and to appropriate water for such projects; and
- make loans, when recommended by the state's water conservation board, to any governmental agency for planning, designing, constructing, and equipping a project.

Approval of proposed projects. The bill directs that before a project is approved for funding, the water conservation board must "undertake a preliminary assessment ... including a determination of need and feasibility." Upon completion of the study, the conservation board is to submit a report to the General Assembly indicating its recommendations for projects to be funded. The legislature, by joint resolution, authorizes the power authority to proceed with construction. Study funds used by the conservation board are limited by the extent of moneys made available for the purpose of the General Assembly.

Bonds not a liability of the state. The proposals contain the following regarding liability of the state for bonds issued by the authority:

(8) Bonds and notes of the authority issued under the provisions of this article shall not be in any way a debt or liability of the state or of any political subdivision thereof other than the authority and shall not create or constitute any indebtedness, liability, or obligation of the state or of any such political subdivision or be or constitute a pledge of the faith and credit of the state or of any such political subdivision, but all such bonds and notes, unless funded or refunded by bonds or notes of the authority, shall be payable solely from revenues or funds pledged or available for their payment as authorized in this article. Each bond and note shall contain on its face a statement to the effect that the authority is obligated to pay the principal thereof or the interest thereon only from revenues or funds of the authority and that neither the state nor any political subdivision thereof is obligated to pay such principal or interest and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds or notes.

Annual report. The authority is required to report to the General Assembly and the Governor on an annual basis. Each report is to include a complete operating and financial statement for the year, and any request for state funding for the upcoming fiscal year. In addition, the water conservation board is directed to evaluate requests from the authority for state funds. The books of the authority are to be audited each year.

Minimum Stream Flow

A paragraph in the legislative declaration to the "Water Right Determination and Administration Act of 1969" recognized the need for minimum stream flows and lake levels for the state's 14,000 miles of streams and 2,200 lakes. The paragraph, established in the law by

Senate Bill 97 enacted by the General Assembly in 1973, gave the state authority to appropriate waters -- and thus obtain water rights and establish a legal water use -- to preserve minimum stream flows and lake levels through a joint effort of the state Division of Wildlife, the Division of Parks and Outdoor Recreation, and the state Water Conservation Board. This objective could not be attained prior to the passage of Senate Bill 97 because of a provision in the state constitution that the right to divert the unappropriated waters of any natural stream to beneficial uses cannot be denied. Thus an appropriation had to be made by a diversion and therefore could not include an instream use. Senate Bill 97 defined appropriation as the application of a certain portion of the waters of the state to a beneficial use. The new law further stated that beneficial use was to include the "appropriation by the state of Colorado in the manner prescribed by law of such minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the natural environment to a reasonable degree." Previously, beneficial uses included domestic, agricultural and manufacturing uses, and the impoundment of water for recreational purposes.

It is argued that there are two limitations in the application of Senate Bill 97: appropriations under the act are "junior" to all previous appropriations and therefore cannot injure existing water uses or water rights, and further the bill provides that:

Nothing in this article shall be construed as authorizing any state agency to acquire water by eminent domain, or to deprive the people of the state of Colorado of the beneficial use of those waters available by law and interstate compact.

Committee recommendation. The director of the Colorado Water Conservation Board reported to the interim Agriculture Committee that as of September 1, 1980, the board had made minimum stream flow and lake level filings involving nearly 4,000 miles of streams and some 466 lakes in the seven water divisions of the state. The committee concludes that the board has gone far beyond the intent of the General Assembly when it enacted Senate Bill 97. The legislature's original intent was limited to the protection of upper elevation fisheries and environment. With the growing demands on the state's supply of water, the job of balancing competing water interests will grow increasingly more difficult.

In furtherance of this position, the committee recommends Bill 4, which is a revision of Senate Bill 453 enacted by the 1977 General Assembly and subsequently vetoed by the Governor. The proposal establishes a number of principles and limitations on any appropriation made for the purposes of minimum stream flow and lake levels. Subsection (a) of the bill provides that in importing water from one water division to another, the Colorado Water Conservation Board's minimum stream flow appropriation shall not affect the right to the appropriated water; subsection (b) states that the minimum stream flow appro-

priation shall be subject to current uses by other appropriators; subsection (c) provides that the board's minimum stream flow appropriation must conform to plans of any federal reclamation projects; and the final subsection subjects the board's application to change a water right from one water division to another to statements of opposition or protest.

Water Quality

On the subject of water quality, the committee recommends two bills. Bill 5 would amend the "Colorado Water Quality Control Act". Bill 6 would provide the enabling legislation necessary for the state to assume the dredge and fill permit program contained in section 404 of the federal "Clean Water Act", currently administered by the federal government.

The Water Quality Control Act. Drafters of the state's present water quality control act did not contemplate the conflict which has evolved since 1973 between the doctrine of prior appropriation in the state constitution and the water quality requirements of federal and state law. Addressing this conflict, Bill 5 establishes the proper relationship between water quality and the constitutional right to appropriate water and apply it to beneficial use. Key expressions of this relationship are found in the legislative intent section of the bill. The expressions of intent include the following:

-- it is the policy of this state to prevent injury to beneficial uses made of state waters and to develop waters to which citizens of the state are entitled;

-- in developing the state's water, the state's policy is to achieve the maximum practical degree of water quality consistent with the welfare of the state;

-- pollution of water may constitute a menace to public health, may create public nuisance, and may impair beneficial uses of state waters; and

-- the law should not be construed to require any action which is not economically reasonable. In determining the economic reasonableness of an action consideration is to be given to the benefits derived from achieving the goals of the act and the economic, environmental, and energy impacts.

Interpretation and construction of water quality provisions. In addition to the provisions of the legislative declaration, the bill specifies that the law shall not be interpreted to supercede or abrogate the right to divert water and apply it to beneficial uses, nor shall the law be construed to supercede, abrogate, or condition the right to appropriate water nor cause material injury to water rights.

Water quality control commission. The bill recommended by the committee changes the composition of the state's water quality control commission. In addition to seven citizens appointed by the Governor, the present eleven member body consists of representatives from the state board of health, the wildlife commission, the water conservation board, and the executive director of the Department of Natural Resources. Bill 5 establishes a nine member commission consisting of citizens appointed by the Governor with the consent of the Senate. Appointments to the commission are to be made to achieve geographic representation and "reflect the various interests in water in the state".

In carrying out its duties and responsibilities, the bill directs the commission to:

recognize and uphold the decisions of cities and counties regarding land use, planning, zoning, special permits, and other matters which normally are the responsibility of local government, so long as such decisions are not contrary to federal and state laws and regulations and local ordinances.

The bill carries out the theme of the legislative intent in its direction to the commission when it authorizes the commission to promulgate water quality standards in consideration of:

The degree to which any particular type of pollutant is subject to treatment; the availability, practicality, and technical and economic feasibility of treatment techniques; the impact of treatment requirements upon water quantity; and the extent to which the discharge to be controlled is significant....

Administration of water quality control programs. Currently the Division of Administration within the Department of Health is charged with the administration and enforcement of the water quality control programs adopted by the commission. Bill 5 directs that the department administer and enforce such programs, but in furtherance of such responsibility the executive director of the department is to maintain within the Division of Administration a separate water quality control agency. The bill does not contain the current statutory provision that policies and procedures followed in the administration and enforcement of the law are subject to supervision by the State Board of Health.

Permit system. The bill makes several changes in current law regarding the issuance and administration of permits required for the discharge of pollutants. These changes include the following:

-- a return flow from irrigation is exempt from the requirement that no person discharge any pollutant from a point source without first obtaining a permit (a point source is defined as a conveyance such as a pipe or

ditch from which pollutants may be discharged);

-- the commission is authorized to establish and revise a schedule of nonrefundable fees for the processing of applications for the issuance of permits. Currently such permit fees are established in the statutes;

-- a revised schedule of dates under which the commission must act on an application is detailed in addition to a provision which requires that meetings be held between the applicant and the division to discuss an application and a requirement for the holding of public hearings on applications;

-- the act specifies that diverting, carrying, and exchanging water or storing water or releasing water in the exercise of a water right are not considered to be point sources of pollution and, as a result, water quality standards are not to apply to such acts unless the commission adopts control regulations.

Construction approval for domestic wastewater treatment works.
There are several differences between existing provisions of law and the committee's recommendation in the area of state approval of domestic water treatment construction. These differences include the following:

-- Although both provide that the state shall approve the construction and site location of facilities, Bill 5 limits state contracts to funding treatment works for municipalities with populations of not more than 5,000 persons;

-- Under present law the Water Quality Control Commission administers the state grant program; the bill provides that administration be carried out by the Division of Administration (with appeal rights to the commission), and that the division may not use more than five percent of the funds appropriated for project grants for administration and management of the funds;

-- The twenty percent sharing of the project costs by local government required in the current law is not contained in the recommended bill; and

-- A twenty-five percent minimum state share of project costs mandated under current law is not contained in the bill.

Permits for Discharge of Dredged or Fill Material -- Bill 6.
The committee concludes that the state should assume the dredge and

fill permit system presently administered by the Environmental Protection Agency (EPA) and the Army Corp of Engineers pursuant to section 404 of the federal "Clean Water Act". Administration by the state would have several advantages;

- 1) persons would not encounter unreasonable delays in obtaining permits;
- 2) unique characteristics and behaviors of streams in Colorado would be recognized;
- 3) flexibility in the granting of permits in response to unexpected events could be built into the program; and
- 4) the state would be more responsive to the needs of permit applicants, and more cognizant of the kinds of problems faced by applicants in Colorado.

Bill 6 would provide the statutory authority for the State Engineer and the Division of Water Resources to assume control of the dredge and fill permit program required by section 404 of the federal "Clean Water Act". Currently, five states are seeking state assumption of 404 permit authority: Michigan, Rhode Island, Arkansas, California, and Nebraska. Federal law vests the Environmental Protection Agency with approval authority over state plans for the state assumption of a dredge and fill permit program. The EPA would also retain authority to review permits issued by the state, and have final authority regarding any permit granted.

Recommendations of the State Engineer

The State Engineer recommended for committee consideration a number of changes affecting the conduct of his statutory responsibilities. The proposals adopted by the committee for recommendation to the General Assembly are outlined below.

Duties of Water Referees -- Bill 7. With the enactment of Senate Bill 81, the Water Right Determination and Administration Act of 1969, the General Assembly established new procedures for the adjudication of water rights and for the administration of water law. One of the major concepts incorporated in the act was the establishment of a procedure for a less expensive system of determining water rights than had previously been established. Prior to 1969, the determination of water administration matters such as priorities, transfers, and abandonment had been solely the jurisdiction of district courts. Senate Bill 81, as proposed, authorizes the state engineer and the district engineers to make the initial determination of water rights, priorities, and other related matters. Out of concern that too much authority was being placed in the offices of the state and district engineers and that the duties assigned to those individuals were too burdensome, the law provided for the appointment by water judges of

water referees in each water division. Referees in each division were given the duty to rule, in the first instance, upon determinations of water rights and conditional water rights, determinations with respect to changes of water rights, plans for augmentation, approvals of reasonable diligence in the development of appropriations under conditional water rights, and determinations of abandonment of water rights or conditional water rights. The law provided that in each water division a district court judge was to sit as a water judge having exclusive jurisdiction in priority determinations, transfer proceedings, abandonment, and augmentation. A water clerk's office was established for each division and held responsible for the maintenance of water records within each division.

Two reasons are now given for eliminating the water referee system. In 1969, and for the next few years, a great many adjudications were handled by the courts and the referee system. That workload volume no longer exists and the number of filings can now be handled by the district engineers. In addition, the referee system has taken on many of the characteristics of a formal court proceeding. This was not the intent of the General Assembly.

Bill 7 removes the referee from the administrative-judicial structure established by the 1969 legislative act. Rulings and other actions currently assigned to the referee would be reassigned to the state engineer or division engineer. The reassigned duties include the following. The division engineer rather than the referee, with the approval of the state engineer, would in the first instance have authority to rule upon determinations of water rights, and other related matters. The division engineer would make a finding of reasonable diligence in the development of a proposed appropriation, and make the necessary investigations to determine whether or not statements in applications for water rights or changes in rights and statements of opposition are true. Current law provides that a ruling be made within sixty days after the filing of statements of opposition to a water right, unless the period is extended by a water judge. The law also provides a format for rulings by a referee on water rights, plans of augmentation, and the like. The law provides that copies of the ruling be mailed to the state and division engineers. In cases where statements of opposition to a water rights request have been filed, the referee can refer the matter to a water judge for decision. Bill 7 provides that rulings be made by the division engineer with or without statements of opposition but before they are entered they are to be submitted to the state engineer who may specify changes. The ruling would be subject to judicial review.

Original priority date for water exchanges -- Bill 8. Current law provides for the exchange of water when the rights of others are not injured and such an exchange is under the direction of the state engineer. For example, exchanges can be made by delivering stored water to a ditch or stream in exchange for an equal amount of water from upstream. The water may also be stored out of priority if it can be promptly made available to downstream senior storage users. The law provides that the practice of substitution or exchange may consti-

tute an appropriative right and may be adjudicated.

The exchange of water has a long history in the state. It is an effective water management tool particularly on the Platte, Arkansas, and Rio Grande rivers. However, some water attorneys question whether exchanges can be approved by the court (decreed) and receive their original seniority (priority) date for use of the water. Bill 8 allows existing exchanges that have been made to be decreed and receive their original priority dates.

Well permits -- Bill 9. Current law provides that when a person makes an application to a water referee or water judge for approval of a plan for augmentation (a plan to increase a supply of water), and such a plan requires construction of a well, a decision can be made on the application even though the state engineer has neither granted nor denied the well permit. The state engineer reports that this practice allows applications to rest in the courts for long periods of time before an applicant attempts to implement a water plan. The result is a tie-up in the use of groundwater needed by others or the applicant receives a well permit with a priority date that is senior to existing uses.

Bill 9 states that when the construction of a well is a necessary part of a plan for water augmentation, a well permit from the state engineer must accompany the application for approval of such an augmentation plan. Since well permits are valid for a period of one year (unless proof is furnished to the state engineer that water from the well has been put to beneficial use or that the well, for good cause, has not been completed) the bill also provides that the application must be filed with the water referee or water judge within the period during which the permit is in effect. The time for expiration of the permit is extended for one year from the date of the judgment and decree entered on the application.

Use of domestic wells -- Bill 10. The "Water Right Determination and Administration Act of 1969" exempts certain wells and well uses from the provisions of the groundwater administration law. Among the exemption is one for a domestic well which neither exceeds fifteen gallons per minute of production nor is used for more than three single-family dwellings. In addition, the well can not be used for other than household purposes, fire protection, and the watering of poultry, domestic animals and livestock on farms and ranches, and the irrigation of over one acre of gardens and lawns.

The State Engineer reports that the original intent of the General Assembly -- to limit the use of these wells to operating ranch headquarters and farmsteads -- has been circumvented by owners of thirty-five acre plots. These individuals apply for and, under current law, are generally granted a domestic well water permit from the state engineer. The permit is granted under the assumption that there will be no material injury to senior appropriators from a single well. Then the landowner digs a well and obtains an exemption from local subdivision regulations. The owner then divides and sells the land in

parcels to accommodate up to three dwellings. In this case water has been obtained without having to comply with the law or the rules and regulations of the State Engineer regarding both the withdrawal of groundwater and the protection of senior rights from material injury. The result, warned the State Engineer, is a proliferation of domestic wells and a potential for injury to agricultural and municipal water rights.

Bill 10 seeks to correct the misuse of the law by limiting the domestic well exemption to working farms and ranches, and to a single-family dwelling only. The committee believes that such a change will more accurately reflect original legislative intent.

DIVISION OF MINES' INSPECTION PROGRAM

Background

Colorado law charges the state Division of Mines with the inspection of metal and non-metallic mines within the state, the costs of inspection to be covered, in part, by fees paid by mine owners. The law also recognizes the federal government's role in mine inspection and directs the division to coordinate its efforts in inspection and other safety activities with those of the federal government.

The federal law of primary concern is the Federal Mine Safety and Health Amendments Act of 1977 (P.L. 95-164). Prior to the enactment of P.L. 95-164, federal mine health and safety laws consisted of two separate acts, commonly known as the metal act and the coal act. Enforcement of both laws was the responsibility of the United States Mining Enforcement and Safety Administration (MESA), an agency within the United States Department of the Interior. In addition, the Bureau of Mines was given responsibility for safety and health research and mine safety training activities.

Under the coal act, underground mines were required to be inspected no less than four times annually. Under the metal act, inspections of underground mines were to be conducted at least once every year. No minimum number of inspections of surface mines was specified in the law.

Prompted by a series of mining accidents, in 1976 the United States Senate Committee on Human Resources initiated a review of both safety acts. The result was the final adoption of P.L. 95-164. The intention of the new act was to combine the provisions of the coal act and the metal act in order to create a common federal regulatory program for all mine operators. All functions previously performed by the Secretary of the Interior in the area of mine safety and health were transferred to the Secretary of Labor. The Mining Enforcement and Safety Administration was transferred to the Department of Labor and renamed the Mine Safety and Health Administration.

P.L. 95-164 requires at least four inspections each year for all underground mines, and a minimum of two inspections a year for all surface mines. After an inspection is made, a citation may be issued indicating violations of health or safety standards. The citation must specify a time period within which the violation must be fully abated. The inspector may also issue a closure order (a sanction retained from the coal act) under certain prescribed circumstances.

Unlike the previous federal acts, P.L. 95-164 does not authorize state participation in the enforcement of the federal mine health and safety program. It would appear, however, that current federal policy is to encourage a state to adopt legislation and conduct its inspection program independent of the federal program, or turn all inspection programs over to the federal government. P.L. 95-164 does authorize grants to states to improve state workmen's compensation and occupational disease laws and programs related to coal or other mine employment, and promote federal/state coordination and cooperation in improving the health and safety conditions in coal or other mines.

In order to qualify for grant monies, a state's application must include the following assurances: the state agency has a qualified staff to conduct inspections; that the state has a provision for the extension and improvement of the state program of mine health and safety, with no provision for advance notice of inspection; and that grants will supplement, not supplant, existing state coal and other mine health and safety programs.

Recent Action by the Colorado General Assembly

Footnote No. 120 of the "Long Bill" for funding programs during fiscal year 1979-80 stated that:

In making this appropriation, it is the General Assembly's intent that, unless the federal Mine Safety and Health Inspection Law, P.L. 95-164, is amended to allow the State of Colorado to perform mine safety and health inspections using federal standards and to provide that such inspections by the State will be in place of, not in addition to, federal inspection, this is the final year for general fund support for the Division's inspection program.

The appropriation to the division for fiscal year 1979-80 totalled \$823,384. Of that amount, the General Fund appropriation was \$515,831 with \$307,553 coming from federal sources. The division was allowed 25 FTE.

The Joint Budget Committee recommendation for an appropriation to the Division of Mines for fiscal year 1980-81 totalled \$126,330, with no federal monies appropriated. The recommendation called for a staff of six FTE for the division's operations. The Long Bill narrative published by the Joint Budget Committee stated that:

Footnote 120 of the 1979-80 Long Bill stated that it was the intent of the General Assembly that unless federal law was amended to allow state inspections to replace federal inspections, no more General Fund support would be provided for Division of Mines inspection functions. The federal law has not been changed. In making its 1980-81 budget recommendation, the Joint Budget Committee examined the workload of all existing staff in the division. The recommendation provides sufficient staff to perform all of the education and training, examination and certification, accident investigation, permit processing and health surveying activities currently performed by the Division. In addition, staff is recommended to perform technical assistance and inspection work in mines that are not inspected by the federal government.

The Long Bill for fiscal year 1980-81 as adopted by the General Assembly appropriated the following for operations of the divisions:

General Funds	\$126,330 -- (6.0 FTE)
Federal Funds	\$307,553 -- (5.0 FTE)
Cash Funds	\$ 63,165 -- (3.0 FTE)
TOTAL	\$497,048 -- (14.0 FTE)

The \$63,165 appropriated was designated as a cash funded program to be supported by a permit fee system that the division was to establish and maintain. The Governor vetoed this line item, stating that "the Division of Mines does not have statutory authority to enact a permit fee system. This is an attempt at substantive legislation". The veto included the designation of three FTE for the program.

The line item appropriations for the Division of Mines in the fiscal year 1980-81 Long Bill include footnote 106 which reads as follows:

This appropriation is sufficient to perform a portion of the inspection activities and all of the education and training, examination and certification, accident investigation, permit processing, and health surveying activities currently being performed by the division.

Alternative sources of funding. As a result of an uncertain future for the division's inspection program, alternative sources of funding were explored during the 1980 legislative session. One approach was introduced as House Bill 1104 which proposed funding the Division of Mines out of monies credited to the state severance tax trust fund.

Interim Hearings

The topic of an evaluation of funding and program responsibilities for mine inspection in Colorado was assigned to the interim Committee on Agriculture by the Legislative Council at its May, 1980, organizational meeting. The Committee on Agriculture held two hearings on the Division of Mines during the legislative interim. At those hearings a number of representatives from segments of the mining industry supported a continuation of the state inspection program even though such an action will result in a duplication of inspection efforts by federal and state government.

During one of the committee's interim hearings the Executive Director of the Department of Natural Resources summarized the activities, past and present, of the division in the following manner:

In calendar year 1979, the Division of Mines had 21.0 general fund FTE and 4.0 federally funded FTE. Of this staff, 11 were inspectors (as opposed to 59 inspectors in the federal government). The state inspectors made 1,899 inspections at 565 mines, while the much larger federal staff made 1,632 inspections at 293 mines. In addition, this same state staff investigated 427 lost time accidents and 10 fatal accidents, and issued 362 explosives permits and 272 diesel permits. The state Division of Mines provides programs of both formal training and education and informal, on-site, practical training for miners and operators. In addition, it examines and certifies coal mine officials and provides information to government and industry.

The new funding level for fiscal year 1980-81 will reduce the inspection program considerably. There will be six general fund FTE: a director, chief coal mine inspector, two metal mine inspectors, and two clerks. In addition, there will be six federally funded positions: an educational coordinator, two metal mine inspectors, two coal mine inspectors, and a clerk. This staff will continue to investigate all accidents, issue diesel and explosives permits, do random sampling and recordkeeping, and continue the educational programs in the vo-tech schools. Any remaining time will be spent performing on-site training and identification of very hazardous problems, and making recommendations for corrections.

Mine inspections by the state and the federal mine safety and health administration. The Federal Division of Coal Mine Safety and Health in calendar year 1979 inspected sixty-three coal mines in Colorado. A total of 23,479 man-hours were utilized for inspection purposes. The Division of Metal and Non-metal Mine Safety and Health reports that in calendar year 1979 it inspected 141 underground metal and non-metal mines, and that a total of 6,758 man-hours were spent on

these inspections. The state Division of Mines reports that for 1979 some 686 operations were within the division's jurisdiction. The table on the following page enumerates the classification of operations in the state by number of employees. The division conducted 1,899 inspections at 565 mines during calendar year 1979.

Issue of Dual Inspection

Colorado law directs that the chief inspector of coal mines and Bureau of Mines personnel (for metal mines), to the extent that cooperation is obtainable, coordinate and cooperate with federal inspectors "to obtain the maximum degree of safety with a minimum of duplication of effort, inspections, and other safety activities". Section 34-29-135 states that the state's chief inspector of coal mines may accept federal inspection reports of coal mines if he determines that an adequate inspection has been conducted. Although the state division receives federal mine inspection reports it has not chosen to accept these reports in lieu of the annual state inspections ~~required~~ by state law.

Committee Recommendation

~~Exempt large mines from inspection -- Bill 11.~~ The committee recommends that the coal and metal mines with 100 or more employees be excluded from the mine inspection efforts of the state Division of Mines. **Bill 11 also includes a provision that where the chief inspector of coal mines determines that any mine has been adequately inspected by federal inspectors and reports of such inspections are submitted to him, he is to accept such reports** in lieu of state inspection. Finally, the bill exempts sand and gravel pit excavations and plants from state inspection.

The Division of Mines estimates that the bill will withdraw state mine inspection from thirty-seven mining operations.

Fiscal implications. License fees for the operation of coal mines were repealed with the enactment of the "Colorado Surface Coal Mining Reclamation Act" of 1979. The Division of Mines reports that it collected some \$81,000 in fees for inspections conducted during the last fiscal year. The division estimates that if their inspections had been limited to mines employing 100 or fewer, as the committee recommends, some \$42,500 of the \$81,000 would not have been collected. In addition, the exclusion of sand and gravel pit inspections would have further reduced revenues by nearly \$10,000 for 1979.

1979 CLASSIFICATION OF COLORADO MINING OPERATIONS
BY NUMBER OF EMPLOYEES

(This includes independent contractors
and itemized operators)

<u>Employees</u>	<u>Operations</u>	<u>Employees</u>	<u>Operations</u>
COAL MINES		METAL MINES	
0 - 10	33	0 - 10	209
11 - 20	7	11 - 20	20
21 - 50	14	21 - 50	10
51 - 75	4	51 - 75	--
76 - 100	1	76 - 100	1
100 +	<u>12</u>	100 +	<u>10</u>
	71		250
QUARRIES		MILLS	
0 - 10	26	0 - 10	35
11 - 20	7	11 - 20	12
21 - 50	3	21 - 50	9
51 - 75	--	51 - 75	1
76 - 100	2	76 - 100	--
100 +	<u>5</u>	100 +	<u>5</u>
	43		62
PITS & PLANTS		DRILLING	
0 - 10	175	0 - 10	35
11 - 20	15	11 - 20	1
21 - 50	5	21 - 50	--
51 - 75	--	51 - 75	--
76 - 100	2	76 - 100	--
100 +	<u>1</u>	100 +	<u>--</u>
	198		36
TUNNELS & PROJECTS		TOTAL ALL OPERATIONS	
0 - 10	7	0 - 10	520
11 - 20	2	11 - 20	64
21 - 50	6	21 - 50	47
51 - 75	3	51 - 75	8
76 - 100	4	76 - 100	10
100 +	<u>4</u>	100 +	<u>37</u>
	26		686

OTHER COMMITTEE ACTIVITIES

Predator Control

At a hearing devoted to the issue of predator control, representatives of the sheep industry reported that their inability to effectively control predators may be directly attributed to government regulations. The industry contends that the policy modification made by the United States Department of the Interior in 1979 which discontinued the use of Compound 1080, and the Environmental Protection Agency's regulation halting the interstate movement of that toxicant have resulted in substantial losses to sheep producers. Although the livestock industry as a whole is affected, an estimated loss ranging from \$2.5 million to \$6.6 million per year has been incurred by the sheep industry in Colorado. The predator causing the greatest problem to sheep is the coyote.

The predator problem and its economic impact on the livestock industry has been addressed by the Agricultural Land Conversion Study; a study authorized and funded by the 1977 General Assembly. The Agricultural Lands Advisory Committee, the group responsible for the study, viewed the predator problem as a threat to the agricultural potential of the state.

After a series of public meetings, the Agricultural Lands Advisory Committee issued a draft recommendation that the federal government authorize the use of the toxicant Compound 1080 by professional state or federal agents to help reduce livestock losses to coyotes, and that the interstate shipment of the toxicant be permitted for use by appropriate state and federal agencies.

Committee recommendation. In recognition of the predator problem and its effect on the economy of the agricultural sector, the committee recommends Bill 12, a resolution which encourages responsible federal agencies to: remove the restriction on the use of Compound 1080; and allow interstate movement of the toxicant.

BILL 1

A BILL FOR AN ACT

1 CONCERNING PUBLIC LANDS, AND PROVIDING FOR STATE CONTROL AND
2 ADMINISTRATION OF CERTAIN LANDS WITHIN THE BOUNDARIES OF
3 COLORADO.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for state control of certain lands, as defined, within state boundaries. Provides that, upon transfer of public lands to the state, such lands shall be administered in accordance with principles of multiple use and sustained yield and with consideration and provisions for public access, conservation, and transfers to units of local government, and for reimbursement for receivables currently due counties from the federal government, if such payments are reduced because of state action. Directs that no disposition of public lands may occur unless authorized by the general assembly.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. Title 36, Colorado Revised Statutes 1973, as
6 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

7 ARTICLE 25

8 State Claim to Public Lands

1 36-25-101. Legislative declaration. (1) The general
2 assembly determines, finds, and declares that:

3 (a) On August 1, 1876, Colorado was admitted to statehood
4 on the condition that it forever disclaim all right and title to
5 unappropriated public land within its boundaries;

6 (b) The state of Colorado has strong moral, historical,
7 economic, and legal claims upon the public land retained by the
8 federal government within its borders;

9 (c) The fact that Colorado and other states, especially
10 western states and others admitted to statehood in recent times,
11 were forced to renounce any claim to the unappropriated lands
12 within their boundaries violates the "equal footing" doctrine,
13 because Colorado and the other states were denied admission to
14 the union on an equal footing with the original states;

15 (d) The doctrine of admission to statehood on an equal
16 footing with the other states is based on the very character and
17 purpose of the union of the states as established by the
18 constitution of the United States and is supported by very early
19 case law precedent and other governmental actions; and

20 (e) The exercise of dominion and control of the public
21 lands within the state of Colorado by the United States works a
22 severe, continuous, and debilitating hardship upon the people of
23 the state of Colorado.

24 (2) The general assembly also determines, finds, and
25 declares that the exercise by this state of control over the
26 public lands within its boundaries would greatly benefit the

1 public because the tax burden on state residents would be
2 lessened; state administration of the public lands would result
3 in a more coordinated, efficient, and fair management of public
4 lands; the availability of additional land is absolutely
5 essential to accommodate the rapidly growing population of this
6 state and would enhance the lifestyle of all state residents; and
7 the states of this union and their citizens are better equipped
8 than the federal government to make the often difficult policy
9 decisions that are necessary with respect to the appropriate uses
10 of such lands within the states.

11 36-25-102. Definitions. As used in this article, unless
12 the context otherwise requires:

13 (1) "Board" means the state board of land commissioners.

14 (2) "Commission" means the public land commission created
15 by section 36-25-107.

16 (3) "Department" means the department of natural resources.

17 (4) "Executive director" means the executive director of
18 the department of natural resources.

19 (5) "Public land" means all land located within the
20 exterior boundaries of this state and all minerals on or below
21 the surface of such land, except:

22 (a) Land to which title is held by any private person or
23 entity;

24 (b) Land which is owned or held in trust by this state, any
25 of its political subdivisions, units of local government, or
26 institutions within the state system of higher education before

1 the effective date of this article;

2 (c) Land which is controlled by the United States
3 department of defense, department of energy, or bureau of
4 reclamation and which was acquired by consent of the general
5 assembly and which meets the standards and purposes for which
6 control was authorized;

7 (d) Land reserved or held in trust as Indian reservations
8 or for Indian purposes; or

9 (e) Land located within and which meets the standards and
10 purposes of a congressionally authorized national park, national
11 monument, wildlife refuge, wilderness area, or historical site or
12 artifact or which is or was acquired by the United States
13 congress with the consent of the general assembly.

14 36-25-103. Property of the state. Subject to existing
15 rights of applicants for land, on and after the effective date of
16 this article, all public lands in this state not previously
17 appropriated to private ownership are the property of this state
18 and subject to its jurisdiction and control.

19 36-25-104. Existing rights under federal law. Until
20 equivalent measures are enacted by the general assembly, the
21 rights and privileges of the people of this state granted under
22 the provisions of existing federal law are preserved under
23 administration by the board.

24 36-25-105. Treaties and compacts. Public lands which have
25 been administered by the United States under international
26 treaties or interstate compacts shall continue to be administered

1 by the state in conformity with those treaties or compacts. Any
2 land or land use claimed and filed with a court of competent
3 jurisdiction prior to the effective date of this article by a
4 person under an international treaty shall continue to be the
5 subject of judicial proceedings pursuant to existing, relevant,
6 or controlling state or federal laws, and this article shall not
7 affect or impair any such rights or claims.

8 36-25-106. Administration - principles of multiple use and
9 sustained yield. (1) (a) Upon transfer of the public lands to
10 this state pursuant to this article, the board shall hold all
11 public land in trust for the benefit of the people of the state
12 and is vested with authority, subject to the provisions of this
13 article, to administer and manage such land in an orderly and
14 beneficial manner consistent with the public policy declared in
15 this article. The board shall administer the public lands of
16 this state acquired pursuant to this article in such a manner as
17 to conserve and preserve natural resources, wildlife habitat,
18 wilderness areas, and historical sites and artifacts and to
19 permit the development of compatible public uses for recreation,
20 agriculture, ranching, mining, and timber production and the
21 development, production, and transmission of energy and other
22 public utility services under principles of multiple use and
23 sustained yield which provide the greatest benefit to the people
24 of this state.

25 (b) (I) "Multiple use" means the management of the land in
26 a combination of balanced and diverse resource uses that takes

1 into account the long-term needs for renewable and nonrenewable
2 resources, including but not limited to recreation, range,
3 timber, minerals, watershed, wildlife, and fish; natural, scenic,
4 scientific, and historical values; and the coordinated management
5 of the resources without permanent impairment of the productivity
6 of the land or the quality of the environment, with consideration
7 being given to the relative values of the resources and not
8 necessarily to the combination of uses that will give the
9 greatest economic return or the greatest unit output in any given
10 year.

11 (II) "Sustained yeild" means the maintenance of a
12 high-level annual or regular periodic output of the various
13 renewable resources of the public lands consistent with multiple
14 use.

15 36-25-107. Public land commission. (1) A state commission
16 to be known as the public land commission is hereby created
17 within the department in order to provide for the orderly
18 transition and administration of public lands acquired pursuant
19 to this article.

20 (2) The commission shall consist of five members: The
21 executive director; the commissioner of agriculture; the register
22 of the board; and two members who are elected and serving
23 officials of local governments, appointed by the governor and
24 confirmed by the senate. Appointments to the commission shall be
25 made within sixty days after the effective date of this article.
26 A vacancy in the appointed membership shall be filled in the same

1 manner and for the remainder of such term. Each member may vote
2 on matters before the commission.

3 (3) Members shall receive no compensation for their
4 services but shall be reimbursed for their actual and necessary
5 expenses incurred in the performance of their duties under this
6 article from funds appropriated to the department.

7 (4) The executive director shall serve as chairman and he
8 shall preside over the commission.

9 (5) The department shall furnish all staff necessary to
10 assist the commission in its work.

11 (6) The work and existence of the commission shall
12 terminate on July 1, 1983.

13 (7) No public land proposed to be retained by the state for
14 wildlife, parks, recreation, or other public uses shall be
15 transferred to the administering state agency without the prior
16 approval of the general assembly.

17 36-25-108. Management plan. (1) The commission shall
18 develop a plan for the transfer and management of lands and
19 minerals subject to this article. This plan shall be submitted
20 to the governor and general assembly prior to January 1, 1983,
21 and will be subject to their approval. Such a management plan
22 shall consider:

23 (a) Management of the public lands pursuant to section
24 36-25-106;

25 (b) Policies and programs regarding the disposal, lease, or
26 exchange of any lands or resources acquired pursuant to this

1 article;

2 (c) Policies and programs regarding public access for the
3 use of such lands;

4 (d) Conservation of lands for wildlife habitat or
5 recreational purposes;

6 (e) Programs regarding the use or transfer of lands to
7 municipalities and other governmental entities for public
8 purposes; and

9 (f) Methods and formulas of providing state funding to the
10 counties of this state for any receivables due such counties or
11 any other political subdivisions from the federal government or
12 any federal agency under 31 United States Code, section 1601, et
13 seq., whose payments may be reduced due to action taken by this
14 state under this article.

15 36-25-109. Disposition of public lands - proceeds - leases.

16 (1) The board may sell, lease, exchange, or encumber the public
17 lands acquired pursuant to this article when specifically
18 authorized to do so upon approval of the general assembly and
19 under the terms and conditions set forth in this article.

20 (2) No public lands acquired pursuant to this article shall
21 be disposed of before July 1, 1983, except for any sales or
22 exchanges which were pending on the effective date of this
23 article or rights-of-way for public purposes.

24 (3) Proceeds of sales, fees, rents, royalties, or other
25 moneys paid or due the state under this article shall be
26 deposited with the state treasurer to be credited to the general

1 fund.

2 (4) Where leases of the public lands acquired pursuant to
3 this article are sought, annual fees not to exceed fair market
4 value shall be charged, with provision in each lease for tenure
5 by the lessee.

6 36-25-110. Disposition - written authorization required.

7 (1) Except as authorized by this article or by the board
8 pursuant to law, any sale, lease, exchange, encumbrance, or other
9 disposal of any parcel of, or interest in, the public lands is
10 void.

11 (2) Any person who intends to perform or carry out any act
12 with respect to the use, management, or disposal of any public
13 lands under color of any statute, ordinance, regulation, custom,
14 or usage of the United States or otherwise shall obtain written
15 authorization from the board confirming or approving the act.
16 The board shall give the written authorization only as permitted
17 under this article.

18 (3) Any person who does not obtain written authorization as
19 required under subsection (2) of this section may be enjoined in
20 an action brought by the attorney general or as provided in
21 section 36-25-111 (3) from performing or continuing to carry out
22 any act respecting the use, management, or disposal of any public
23 lands.

24 (4) Any person who receives any money or other
25 consideration for any purported sale or other disposition of any
26 public lands which was made in violation of this article is

1 liable in damages to this state for that money or the value of
2 any other consideration. The money or value of any other
3 consideration may be recovered for this state in an action
4 brought by the attorney general or as provided in section
5 36-25-111 (3).

6 36-25-111. Exclusive jurisdiction - action. (1) The state
7 of Colorado has exclusive jurisdiction to enforce the provisions
8 of this article.

9 (2) Any person claiming damage under this section or
10 section 36-25-110, either individually or as a representative of
11 a class of complainants, may file with the board a verified
12 complaint. The complaint shall set forth the alleged violation
13 and contain other information as required by the board. A
14 complaint may also be filed by a board member or the attorney
15 general with the board.

16 (3) Whenever it appears that the interest of the state, as
17 determined by the board, or a substantial number of persons may
18 be injured or otherwise adversely affected by actions complained
19 of, the board may request the attorney general to represent that
20 class in a civil action or other proper proceeding for redress,
21 and it shall be the duty of the attorney general or of competent
22 counsel appointed by the attorney general for such a purpose to
23 bring such an action or proceeding pursuant to the direction of
24 the board.

25 SECTION 2. Safety clause. The general assembly hereby
26 finds, determines, and declares that this act is necessary for

1 the immediate preservation of the public peace, health, and
2 safety.

BILL 2

A BILL FOR AN ACT

1 CONCERNING A VOLUNTARY INCOME TAX CHECK-OFF PROGRAM FOR NONGAME
2 WILDLIFE AND FOR PARKS AND OUTDOOR RECREATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Amends the nongame wildlife check-off program to provide check-off cash funds for both the nongame wildlife program and the parks and outdoor recreation program.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Part 7 of article 22 of title 39, Colorado
5 Revised Statutes 1973, as amended, is REPEALED AND REENACTED,
6 WITH AMENDMENTS, to read:

7 PART 7

8 VOLUNTARY CHECK-OFF FOR NONGAME WILDLIFE

9 AND FOR PARKS AND OUTDOOR RECREATION

10 39-22-701. Legislative declaration. (1) (a) The general
11 assembly hereby declares that wildlife species which are
12 endangered, threatened with extinction, or not commonly pursued,

1 killed, or consumed either for sport or profit, referred to in
2 this part 7 as "nongame wildlife", have need of special
3 protection and that it is in the public interest to preserve,
4 protect, perpetuate, and enhance nongame wildlife resources of
5 this state through preservation of a satisfactory environment and
6 an ecological balance. The general assembly specifically
7 recognizes that such nongame wildlife includes protected
8 wildlife, endangered and threatened wildlife, aquatic wildlife,
9 specialized habitat wildlife, both terrestrial and aquatic types,
10 and mollusks, crustaceans, and other invertebrates under the
11 jurisdiction of the division of wildlife.

12 (b) The general assembly hereby declares that it is the
13 policy of the state that there shall be provided a comprehensive
14 program of outdoor recreation in order to offer the greatest
15 possible variety of outdoor recreation opportunity to the people
16 of this state and its visitors. The general assembly
17 specifically recognizes that to implement such a program requires
18 a continuous operation of planning, acquisition, development, and
19 maintenance of outdoor recreation lands, water, and facilities.

20 (2) This part 7 is enacted to provide a means by which such
21 protection of nongame wildlife and provision of a comprehensive
22 program of outdoor recreation may be financed through a voluntary
23 check-off designation on state income tax return forms. The
24 intent of the general assembly is that this program of the income
25 tax check-off is supplemental to any funding and in no way is
26 intended to take the place of the funding that would otherwise be

1 appropriated for these purposes.

2 39-22-702. Voluntary check-off designation - procedure.

3 (1) Each Colorado state individual income tax return form shall
4 contain a designation as follows:

5 Colorado parks and outdoor recreation program and
6 nongame wildlife program. Check if you wish to designate []
7 \$1, [] \$5, [] \$10, or [] \$ (write in amount) of your tax
8 refund for these programs. If joint return, check if spouse
9 wishes to designate [] \$1, [] \$5, [] \$10, or [] \$
10 (write in amount).

11 (2) Each individual taxpayer required to file a return
12 pursuant to section 39-22-601 (1) desiring to contribute to the
13 state parks and recreation program and the state nongame wildlife
14 program may designate, by placing an "X" in the appropriate box
15 on the state income tax return form, that his contribution shall
16 be credited to said programs.

17 39-22-703. Contributions credited to nongame cash fund and
18 parks and recreation cash fund - appropriation. (1) The
19 department of revenue shall determine annually the total amount
20 designated pursuant to section 39-22-702 and shall report such
21 amount to the state treasurer. The state treasurer shall credit
22 one-half of such amount to the nongame cash fund, which is
23 hereby established in the state treasury, and shall credit the
24 other one-half of such amount to the parks and outdoor recreation
25 cash fund created by section 33-30-110, C.R.S. 1973. The
26 controller, upon presentation of vouchers properly drawn and

1 signed by the director of the division of wildlife, the director
2 of the division of parks and outdoor recreation, or an authorized
3 employee of the division of administration, shall issue warrants
4 drawn on the appropriate fund. All moneys so deposited in the
5 nongame cash fund or in the parks and outdoor recreation cash
6 fund shall remain in such fund to be used for the purposes set
7 forth in subsection (2) of this section and shall not be
8 deposited in or transferred to the general fund of the state of
9 Colorado or any other fund.

10 (2) The general assembly shall appropriate annually from
11 the nongame cash fund to the division of wildlife of the
12 department of natural resources such amount as is necessary for
13 preserving, protecting, perpetuating, and enhancing nongame
14 wildlife in this state.

15 (3) The general assembly shall appropriate annually from
16 such revenues in the parks and outdoor recreation cash fund to
17 the division of parks and outdoor recreation such amount as is
18 necessary to supplement other revenues appropriated for planning,
19 acquisition, development, or maintenance of outdoor recreation
20 lands, water, and facilities.

21 39-22-704. Effective date. This part 7 shall take effect
22 January 1, 1982, and shall apply to tax return forms filed on or
23 after said date.

24 SECTION 2. Safety clause. The general assembly hereby
25 finds, determines, and declares that this act is necessary for
26 the immediate preservation of the public peace, health, and

1 safety.

BILL 3

A BILL FOR AN ACT

1 ESTABLISHING AS A PUBLIC AUTHORITY THE COLORADO WATER RESOURCES
2 AND POWER DEVELOPMENT AUTHORITY, TO PROVIDE FINANCING FOR
3 STATE AND LOCAL PROJECTS, AND MAKING AN APPROPRIATION
4 THEREFOR.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Creates a water resources and power development authority as a political subdivision which is not an agency of the state, consisting of nine members appointed by the governor, who are representatives of the drainage basins in this state. The authority is granted extensive powers relating to the financing of water and power development projects and is to coordinate such projects with the state water conservation board. Bonds issued by the authority in financing such projects are to be repaid solely from project revenues and are not to be obligations of the state. The bonds are to be exempt from state income taxes.

5 Be it enacted by the General Assembly of the State of Colorado:

6 SECTION 1. Title 37, Colorado Revised Statutes 1973, as
7 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

1 ARTICLE 95

2 Colorado Water Resources and

3 Power Development Authority

4 37-95-101. Short title. This article shall be known and
5 may be cited as the "Colorado Water Resources and Power
6 Development Authority Act".

7 37-95-102. Legislative declaration. (1) It is hereby
8 declared to be the public policy of the state to preserve,
9 protect, upgrade, conserve, develop, utilize, and manage the
10 water resources of the state, to promote the beneficial use of
11 waters of the state for the protection and preservation of the
12 public health, safety, convenience, and welfare, to create or
13 preserve jobs and employment opportunities or to improve the
14 economic welfare of the people of the state, and to assist and
15 cooperate with governmental agencies in achieving such purposes.
16 In furtherance of such public policy, the Colorado water
17 resources and power development authority is created in this
18 article to initiate, acquire, construct, maintain, repair, and
19 operate projects or cause the same to be operated pursuant to a
20 lease, sublease, or other agreement with any person or
21 governmental agency and may issue its bonds and notes payable
22 solely from revenues to pay the cost of such projects. Any
23 project shall be determined by the Colorado water conservation
24 board to be consistent with any applicable comprehensive plan of
25 water management approved by the Colorado water conservation
26 board or in the process of preparation by the Colorado water

1 conservation board and to be not inconsistent with the standards
2 set for the waters of the state affected thereby. Any resolution
3 of the authority providing for acquiring or constructing such
4 projects shall include a finding by the authority that such
5 determinations have been made by the Colorado water conservation
6 board.

7 (2) The general assembly finds and declares that the
8 authority and powers conferred under this article and the
9 expenditures of public moneys pursuant thereto constitute a
10 serving of a valid public purpose and that the enactment of the
11 provisions set forth in this article is in the public interest
12 and is hereby so declared to be such as a matter of express
13 legislative determination.

14 (3) The general assembly further finds and declares that
15 the purposes of this article can best be served through providing
16 that the board of the authority includes representatives of the
17 several drainage basins in this state. To that end, in making
18 appointments to the board, the governor shall provide that the
19 membership of the board includes representatives of said drainage
20 basins and the senate shall evaluate the allocation of such
21 representation in considering such appointments.

22 37-95-103. Definitions. As used in this article:

23 (1) "Authority" means the Colorado water resources and
24 power development authority created by this article.

25 (2) "Beneficial use" means a use of water, including the
26 method of diversion, storage, transportation, treatment, and

1 application, that is reasonable and consistent with the public
2 interest in the proper utilization of water resources, including,
3 but not limited to, domestic, agricultural, industrial, power,
4 municipal navigational, fish and wildlife, and recreational uses.

5 (3) "Board" means the board of directors of the authority.

6 (4) "Bonds" means bonds issued by the authority pursuant to
7 this article.

8 (5) "Governmental agencies" means departments, divisions,
9 or other units of state government, special districts, water
10 conservation districts, metropolitan water districts, conservancy
11 districts, irrigation districts, municipal corporations,
12 counties, cities, and other political subdivisions, the United
13 States or any agency thereof, and any agency, commission, or
14 authority established pursuant to an interstate compact or
15 agreement.

16 (6) "Hydroelectric facilities" means facilities for the
17 production, generation, or transmission of electric power and
18 energy developed in connection with any water management
19 facility.

20 (7) "Notes" means notes issued by the authority pursuant to
21 this article.

22 (8) "Owner" includes all individuals, copartnerships,
23 associations, corporations, or governmental agencies having any
24 title or interest in any property rights, easements, and
25 interests authorized to be acquired by this article.

26 (9) "Person" means any individual, firm, partnership,

1 association, or corporation, or two or more or any combination
2 thereof.

3 (10) "Project" means any water management facility or
4 hydroelectric facility, including undivided or other interests
5 therein, acquired or constructed or to be acquired or constructed
6 by the authority under this article, including all buildings and
7 facilities which the authority deems necessary for the operation
8 of the project, including gathering, storage, treatment, and
9 transmission facilities, together with all property rights,
10 easements, and interests which may be required for the operation
11 of the project.

12 (11) "Public roads" includes all public highways, roads,
13 and streets in the state, whether maintained by the state, a
14 county, a city, or any other political subdivision.

15 (12) "Public utility facilities" includes tracks, pipes,
16 mains, conduits, cables, wires, towers, poles, and other
17 equipment and appliances of any public utility.

18 (13) "Water management facilities" means facilities for the
19 purpose of the development, use, and protection of water
20 resources, including, without limiting the generality of the
21 foregoing, facilities for water supply and treatment, facilities
22 for streamflow improvement, dams, reservoirs, and other
23 impoundments, water transmission lines, water wells and well
24 fields, pumping stations and works for underground water
25 recharge, stream-monitoring systems, facilities for the
26 stabilization of stream and river banks, and facilities for the

1 treatment of streams and rivers.

2 (14) "Water resources" means all waters of the state
3 occurring on the surface in natural or artificial channels,
4 lakes, reservoirs, or impoundments, and in subsurface aquifers,
5 which are available or may be made available to agricultural,
6 industrial, commercial, recreational, public, and domestic users.

7 (15) "Waters of the state" means all streams, lakes, ponds,
8 marshes, watercourses, waterways, wells, springs, irrigation
9 systems, drainage systems, and other bodies or accumulations of
10 water, surface and underground (natural or artificial), which are
11 situated wholly or partly within, or which border upon, this
12 state.

13 37-95-104. Establishment of authority - board of directors
14 - removal - organization - compensation - dissolution.

15 (1) There is hereby created the Colorado water resources and
16 power development authority, which shall be a body corporate and
17 a political subdivision of the state. The authority shall not be
18 an agency of state government, nor shall it be subject to
19 administrative direction by any department, commission, board,
20 bureau, or agency of the state, except to the extent provided by
21 this article.

22 (2) (a) The powers of the authority shall be vested in the
23 governing body of the authority, which shall be a board of
24 directors consisting of nine members, who shall be appointed by
25 the governor, with the consent of the senate, as follows:

26 (I) One member from the Rio Grande drainage basin;

- 1 (II) One member from the North Platte drainage basin;
2 (III) One member from the Arkansas drainage basin;
3 (IV) One member from the South Platte drainage basin
4 outside the city and county of Denver;
5 (V) One member from the city and county of Denver who is
6 intimately familiar with its water problems;
7 (VI) One member from the Yampa-White drainage basins;
8 (VII) One member from the main Colorado drainage basin;
9 (VIII) One member from the Gunnison-Uncompahgre drainage
10 basins;
11 (IX) One member from the San Miguel-Dolores-San Juan
12 drainage basins.

13 (b) Appointments to the board shall be made so as to
14 include one member who shall be experienced in water project
15 financing, one member who shall be experienced in the engineering
16 aspects of water projects, two members who shall be experienced
17 in the planning and developing of water projects, and one member
18 who shall be experienced in water law.

19 (c) No more than five members of the board shall be members
20 of the same major political party.

21 (3) Members of the board shall be appointed for terms of
22 four years; except that, of the original terms commencing October
23 1, 1981, three members shall be appointed for terms of one year,
24 two members shall be appointed for terms of two years, two
25 members for terms of three years, and two members for terms of
26 four years, at the governor's discretion. Each member shall hold

- 1 (II) One member from the North Platte drainage basin;
2 (III) One member from the Arkansas drainage basin;
3 (IV) One member from the South Platte drainage basin
4 outside the city and county of Denver;
5 (V) One member from the city and county of Denver who is
6 intimately familiar with its water problems;
7 (VI) One member from the Yampa-White drainage basins;
8 (VII) One member from the main Colorado drainage basin;
9 (VIII) One member from the Gunnison-Uncompahgre drainage
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20 of the same major political party.

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23 1, 1981, three members shall be appointed for terms of one year,
24 two members shall be appointed for terms of two years, two
25 members for terms of three years, and two members for terms of
26 four years, at the governor's discretion. Each member shall hold

1 office for the term of his appointment and until his successor
2 has been appointed and has qualified. A member shall be eligible
3 for reappointment. Any vacancy in the membership occurring
4 other than by expiration of term shall be filled in the same
5 manner as the original appointment but for the unexpired term
6 only.

7 (4) Each member may be removed from office by the governor,
8 for cause, after a public hearing and may be suspended by the
9 governor pending the completion of such hearing. Each member,
10 before entering upon his duties, shall take and subscribe an oath
11 to perform the duties of his office faithfully, impartially, and
12 justly to the best of his ability. A record of all such oaths
13 shall be filed in the office of the secretary of state.

14 (5) The members of the board shall elect a chairman and a
15 vice-chairman. The members of the board shall also elect a
16 secretary and a treasurer who need not be members, and the same
17 person may be elected to serve as both secretary and treasurer.
18 The powers of the board shall be vested in the members thereof in
19 office from time to time, and five members of the board shall
20 constitute a quorum at any meeting thereof. Action may be taken
21 and motions and resolutions adopted by the board at any meeting
22 thereof by the affirmative vote of at least five members of the
23 authority. No vacancy in the membership of the board shall
24 impair the right of a quorum of the members to exercise all the
25 powers and perform all the duties of the board.

26 (6) Each member of the board not otherwise in full-time
27 employment of the state shall receive a per diem of fifty dollars

1 for each day actually and necessarily spent in the discharge of
2 official duties, and all members shall receive traveling and
3 other necessary expenses actually incurred in the performance of
4 official duties.

5 (7) The authority may be dissolved by an act passed by the
6 general assembly on condition that the authority has no debts or
7 obligations outstanding or that provision has been made for the
8 payment or retirement of such debts or obligations. Upon any
9 such dissolution of the authority, all property, funds, and
10 assets thereof shall be vested in the state.

11 37-95-105. Records and meetings of board - disclosure of
12 interests required. (1) All resolutions and orders shall be
13 recorded and authenticated by the signature of the chairman and
14 the secretary of the board. Every legislative act of the board
15 of a general or permanent nature shall be by resolution. The
16 book of resolutions, corporate acts, and orders shall be a public
17 record. A public record shall also be made of all other
18 proceedings of the board, minutes of the meetings, annual
19 reports, certificates, contracts, and bonds given by officers,
20 employees, and any other agents of the authority. The account of
21 all moneys received by and disbursed on behalf of the authority
22 shall also be a public record. Any public record of the
23 authority shall be open for inspection by any citizen. All
24 records shall be subject to uniform budget and audit laws, as set
25 forth in article 1 of title 29, C.R.S. 1973, and shall be
26 subject to regular audits, as provided therein.

27 (2) All meetings of the board shall be open to the public.

1 No business of the board shall be transacted except at a regular
2 or special meeting at which a quorum is present.

3 (3) Any board member, employee, or other agent or adviser
4 of the board who has a direct or indirect interest in any
5 contract or transaction with the authority shall disclose this
6 interest to the board. This interest shall be set forth in the
7 minutes of the board, and no board member, employee, or other
8 agent or adviser having such interest shall participate on behalf
9 of the board in the authentication of any such contract or
10 transaction.

11 37-95-106. Authority - powers. (1) Except as otherwise
12 limited by this article, the authority, acting through the board,
13 has the power:

14 (a) To have the duties, privileges, immunities, rights,
15 liabilities, and disabilities of a body corporate and political
16 subdivision of the state;

17 (b) To sue and be sued;

18 (c) To have an official seal and to alter the same at
19 pleasure;

20 (d) To make and alter bylaws for its organization and
21 internal management and for the conduct of its affairs and
22 business;

23 (e) To maintain an office at such place or places within
24 the state as it may determine;

25 (f) To acquire, hold, use, and dispose of its income,
26 revenues, funds, and moneys;

1 (g) To charge, alter, and collect rentals or other charges
2 for the use or services of any project, to contract in the manner
3 provided in this article with one or more persons or governmental
4 agencies or combinations thereof desiring the use or services
5 thereof, and to fix the terms, conditions, rentals, or other
6 charges for such use or services;

7 (h) To acquire, lease as lessee or lessor, rent, hold, use,
8 and dispose of real or personal property, including water rights,
9 for its purposes;

10 (i) To deposit any moneys of the authority in any banking
11 institution within or outside the state;

12 (j) To fix the time and place or places at which its
13 regular and special meetings are to be held;

14 (k) To plan, develop, acquire, construct, reconstruct,
15 enlarge, extend, improve, furnish, equip, maintain, repair,
16 manage, operate, dispose of, and participate in one or more
17 projects within or without the state, and to appropriate water
18 for said projects, with the review and approval of the Colorado
19 water conservation board, to designate the Colorado water
20 conservation board or, with said board's permission, one or more
21 other persons or governmental agencies participating in a project
22 to act as its agent, in connection with the planning,
23 acquisition, construction, operation, maintenance, repair,
24 extension, or improvement of such projects, and to establish
25 rules and regulations for the use of such projects;

26 (l) To make available the use or services of any project to

1 one or more persons, one or more governmental agencies, or any
2 combination thereof;

3 (m) To borrow money and to issue its negotiable bonds or
4 notes in furtherance of its purposes and to provide for the
5 rights of the holders thereof;

6 (n) To exercise the power of eminent domain; except that
7 the authority shall not have or exercise the power of eminent
8 domain over or by means thereof acquire the title to or
9 beneficial use of vested water rights;

10 (o) To contract with any person or governmental agency
11 within or without the state for the construction of any project,
12 or for the sale of the output of any project, or for any interest
13 therein or any right to capacity thereof, on such terms and for
14 such period of time as the board shall determine;

15 (p) To purchase, sell, exchange, transmit, or distribute
16 the output of any project within or without the state, in such
17 amounts as it shall determine to be necessary and appropriate to
18 make the most effective use of its powers and to meet its
19 responsibilities, and to enter into agreements with any person or
20 governmental agency with respect to such purchase, sale,
21 exchange, transmission, or distribution on such terms and for
22 such period of time as the board shall determine;

23 (q) To make loans, when recommended by the Colorado water
24 conservation board, to any governmental agency for the planning,
25 designing, acquiring, constructing, reconstructing, improving,
26 equipping, and furnishing of a project, which loans may be

1 secured by loan and security agreements, leases, or any other
2 instruments, upon such terms and conditions as the board shall
3 deem reasonable, including provisions for the establishment and
4 maintenance of reserve and insurance funds, and to require the
5 inclusion, in any lease, contract, loan and security agreement,
6 or other instrument, of such provisions for the construction,
7 use, operation, maintenance, and financing of a project as the
8 board may deem necessary or desirable;

9 (r) To make and enter into all contracts, leases, and
10 agreements which are necessary or incidental to the performance
11 of its duties and the exercise of its powers under this article;

12 (s) To sell, convey, or lease to any person or governmental
13 agency all or any portion of a project for such consideration and
14 upon such terms as the board may determine to be reasonable;

15 (t) To make surveys, maps, and plans for, and estimates of
16 the cost of, any project, with the review and approval of the
17 Colorado water conservation board;

18 (u) To acquire in the name of the authority, by purchase or
19 otherwise, on such terms and conditions and in such manner as it
20 may deem proper, or, except with respect to the state, by the
21 exercise of the power of eminent domain (except where such use of
22 eminent domain would impinge upon the rights of an existing water
23 project, including projects which have been approved and for
24 which funds have been committed, and where the consent of the
25 governmental body having ownership and control of the existing
26 project is not secured), any land and other property which it may

1 determine is reasonably necessary for the project or for the
2 relocation or reconstruction of any highway by the authority and
3 any and all rights, title, and interest in such land and other
4 property, including public lands, reservations, highways, or
5 parkways, owned by or in which the state or any county,
6 municipality, city and county, public corporation, or other
7 political subdivision of the state has any right, title, or
8 interest, or parts thereof or rights therein, and any fee simple
9 absolute or any lesser interest in private property, and any fee
10 simple absolute in or easements upon or the benefit of
11 restrictions upon abutting property to preserve and protect the
12 project;

13 (v) To adopt rules and regulations, for the purpose of
14 establishing board policies and consistent with the policies
15 established by the Colorado water conservation board, necessary
16 to protect the augmented flow of waters of the state, to the
17 extent augmented by a project, from depletion so it will be
18 available for beneficial use and to provide standards for the
19 withdrawal from waters of the state of the augmented flow created
20 by a project which is not returned to the waters of the state so
21 augmented and to establish reasonable charges therefor if deemed
22 necessary by the authority;

23 (w) Subject to any agreement with bondholders or
24 noteholders, to invest moneys of the authority not required for
25 immediate use, including proceeds from the sale of any bonds or
26 notes, in such obligations, securities, and other investments as

1 the authority deems prudent;

2 (x) To contract for and to accept any gifts or grants or
3 loans of funds or property or financial or other aid in any form
4 from the United States or any agency or instrumentality thereof,
5 or from the state or any governmental agency thereof, or from any
6 other source and to comply, subject to the provisions of this
7 article, with the terms and conditions thereof;

8 (y) Subject to any agreements with bondholders or
9 noteholders, to purchase bonds or notes of the authority out of
10 any funds or moneys of the authority available therefor and to
11 hold, cancel, or resell such bonds or notes;

12 (z) To employ accountants, attorneys, financial advisers,
13 underwriters, and other experts and such other persons to act as
14 agents and employees as may be required and to determine their
15 qualifications, terms of office, duties, and compensation, all
16 without regard to the provisions of the state personnel system;
17 except that the authority shall utilize the services of the
18 officers, personnel, and consultants of the Colorado water
19 conservation board to perform all activities specified in
20 paragraphs (k) to (t) of this subsection (1);

21 (aa) To do and perform any acts and things authorized by
22 this article under, through, or by means of its officers, agents,
23 or employees or by contracts with any person, firm, or
24 corporation;

25 (bb) To procure insurance against any losses in connection
26 with its property, operations, or assets in such amounts and from

1 such insurers as it deems desirable;

2 (cc) To do any and all things necessary or convenient to
3 carry out its purposes and exercise the powers given and granted
4 in this article.

5 37-95-107. Study of proposed projects - general assembly
6 approval. (1) In order for projects to receive consideration
7 for funding by the authority, the Colorado water conservation
8 board shall first undertake a preliminary assessment of the
9 projects, including a determination of need and feasibility.

10 (2) Upon the completion of such study, the Colorado water
11 conservation board shall submit to the general assembly a report
12 indicating its recommendations for projects to be funded. The
13 general assembly shall, by means of a joint resolution, authorize
14 the authority to proceed with the construction of such projects
15 if it deems them to be to the advantage of the people of the
16 state of Colorado.

17 (3) Where such studies are initiated by the Colorado water
18 conservation board, the said board shall incur and pay expenses
19 for such purposes, but only to the extent that moneys are made
20 available to the Colorado water conservation board for such
21 expenses by the general assembly. The Colorado water
22 conservation board shall keep proper records and accounts showing
23 the amounts so expended and charged to a project. Where such
24 studies are requested by the authority, the authority shall
25 reimburse the Colorado water conservation board for the cost of
26 such studies.

1 (4) Upon receipt of the findings and recommendations of the
2 Colorado water conservation board and the general assembly, the
3 authority shall proceed to develop and initiate detailed plans
4 for the financing of such projects, consistent with the
5 specifications and requirements developed by the said board and
6 approved by the general assembly.

7 (5) Upon the sale of bonds or notes, the funds so expended
8 by the Colorado water conservation board, with the approval of
9 the authority and in connection with such projects, shall be
10 reimbursed to the Colorado water conservation board from the
11 proceeds of such bonds or notes.

12 37-95-108. Change of location of highways, railroads, or
13 public utilities - regulation of public utility facilities on a
14 project. (1) When the authority finds it necessary to change
15 the location of any portion of any public road, state highway,
16 railroad, point of diversion, or public utility facility in
17 connection with the construction of a project, it shall cause the
18 same to be reconstructed at such location as the unit of
19 government having jurisdiction over such road, highway, railroad,
20 or public utility facility deems most favorable. Such
21 construction shall be of substantially the same type and in as
22 good condition as the original road, highway, railroad, or public
23 utility facility. The cost of such reconstruction, relocation,
24 or removal and any damage incurred in changing the location of
25 any such road, highway, railroad, or public utility facility
26 shall be paid by the authority as a part of the cost of such

1 project.

2 (2) If the authority finds it necessary in connection with
3 the undertaking of any project to change the location of any
4 portion of any public highway or road, it may contract with any
5 governmental agency or any public or private corporation which
6 may have jurisdiction over said public highway or road to cause
7 said public highway or road to be constructed. The cost of such
8 reconstruction and any damage incurred in changing the location
9 of any such highway shall be ascertained and paid by the
10 authority as a part of the cost of the project. Any public
11 highway affected by the construction of the project may be
12 vacated or relocated by the authority in the manner now provided
13 by law for the vacation or relocation of public roads, and any
14 damages awarded on account thereof shall be paid by the authority
15 as a part of the cost of the project. In all undertakings
16 authorized by this subsection (2), the authority shall consult
17 with and obtain the approval of the state department of highways.

18 (3) The authority and its authorized agents and employees
19 may enter upon any lands and premises for the purpose of making
20 such surveys, soundings, drillings, and examinations as it may
21 deem necessary or convenient for the purposes of this article,
22 all in accordance with due process of law, and such entry shall
23 not be deemed a trespass nor shall an entry for such purpose be
24 deemed an entry under any condemnation proceedings which may be
25 then pending. The authority shall make reimbursement for any
26 actual damages resulting to such lands and premises as a result

1 of such activities.

2 (4) The authority also has the power to make reasonable
3 regulations for the installation, construction, maintenance,
4 repair, renewal, relocation, and removal of railroad and public
5 utility facilities in, on, along, over, or under any of its
6 projects. Whenever the authority determines that it is necessary
7 that any such public utility and railroad facilities which now
8 are, or hereafter may be, located in, on, along, over, or under
9 any project be relocated in any project or should be removed
10 therefrom, the public utility or railroad owning or operating
11 such facilities shall relocate or remove the same in accordance
12 with the order of the authority, but the cost and expenses of
13 such relocation or removal, including the cost of installing such
14 facilities in a new location, and the cost of any lands, or any
15 rights or interests in lands, and any other rights acquired to
16 accomplish such relocation or removal shall be ascertained and
17 paid by the authority as a part of the cost of the project. In
18 the case of any such relocation or removal of facilities, the
19 public utility or railroad owning or operating the same or its
20 successors or assigns may maintain and operate such facilities,
21 with the necessary appurtenances, in the new location for as long
22 a period and upon the same terms and conditions as it had to
23 maintain and operate such facilities in their former location.

24 37-95-109. Bonds or notes - issuance - terms. (1) The
25 authority has the power and is hereby authorized from time to
26 time to issue its bonds or notes in such principal amounts as in

1 the opinion of the board are necessary to provide sufficient
2 funds for any of its corporate purposes, including the payment,
3 funding, or refunding of the principal of, or interest or
4 redemption premiums on, any bonds or notes issued by it, whether
5 the bonds or notes or interest to be funded or refunded have or
6 have not become due, and including the establishment or increase
7 of such reserves to secure or to pay such bonds or notes or
8 interest thereon and all other costs or expenses of the authority
9 incident to and necessary to carry out its corporate purposes and
10 powers.

11 (2) Except as may be otherwise expressly provided in this
12 article or by the authority, every issue of bonds or notes shall
13 be special obligations payable out of any revenues or funds of
14 the authority, subject only to any agreements with the holders of
15 particular bonds or notes pledging any particular revenues or
16 funds. The authority may issue such types of bonds or notes as
17 it may determine, including, without limiting the generality of
18 the foregoing, bonds or notes as to which the principal and
19 interest are payable:

20 (a) Exclusively from the revenues and receipts of the part
21 of the project financed with the proceeds of such bonds or notes;

22 (b) Exclusively from the revenues and receipts of certain
23 designated parts of the project, whether or not the same are
24 financed in whole or in part from the proceeds of such bonds or
25 notes; or

26 (c) From its revenues and receipts generally.

1 (3) Any such bonds or notes may be additionally secured by
2 a pledge of any grant, subsidy, or contribution from the United
3 States or any agency or instrumentality thereof, or the state or
4 any governmental agency thereof, or any person, firm, or
5 corporation or by a pledge of any income or revenues, funds, or
6 moneys of the authority from any source whatsoever.

7 (4) Whether or not the bonds and notes are of such form and
8 character as to be negotiable instruments under the terms of the
9 "Uniform Commercial Code", title 4, C.R.S. 1973, the bonds and
10 notes are hereby made negotiable instruments within the meaning
11 of and for all the purposes of said title 4, subject only to the
12 provisions of the bonds and notes for registration.

13 (5) Bonds or notes of the authority shall be authorized by
14 a resolution or resolutions of the board, and may be issued in
15 one or more series, and shall bear such date or dates, mature at
16 such time or times, bear interest at such rate or rates of
17 interest per annum, be in such denomination or denominations, be
18 in such form, either coupon or registered, carry such conversion
19 or registration privileges, have such rank or priority, be
20 executed in such manner, be payable from such sources in such
21 medium of payment at such place or places within or without the
22 state, and be subject to such terms of redemption (with or
23 without premium) as such resolution or resolutions may provide.

24 (6) Bonds or notes of the authority may be sold at public
25 or private sale at such price or prices and in such manner as the
26 board shall determine.

1 (7) Bonds or notes may be issued under the provisions of
2 this article without obtaining the consent of any department,
3 division, commission, board, bureau, or agency of the state and
4 without any other proceeding or the happening of any other
5 conditions or other things than those proceedings, conditions, or
6 things which are specifically required by this article.

7 (8) Bonds and notes of the authority issued under the
8 provisions of this article shall not be in any way a debt or
9 liability of the state or of any political subdivision thereof
10 other than the authority and shall not create or constitute any
11 indebtedness, liability, or obligation of the state or of any
12 such political subdivision or be or constitute a pledge of the
13 faith and credit of the state or of any such political
14 subdivision, but all such bonds and notes, unless funded or
15 refunded by bonds or notes of the authority, shall be payable
16 solely from revenues or funds pledged or available for their
17 payment as authorized in this article. Each bond and note shall
18 contain on its face a statement to the effect that the authority
19 is obligated to pay the principal thereof or the interest thereon
20 only from revenues or funds of the authority and that neither the
21 state nor any political subdivision thereof is obligated to pay
22 such principal or interest and that neither the faith and credit
23 nor the taxing power of the state or any political subdivision
24 thereof is pledged to the payment of the principal of or the
25 interest on such bonds or notes.

26 (9) All expenses incurred in carrying out the provisions of

1 this article shall be payable solely from revenues or funds
2 provided or to be provided under the provisions of this article,
3 and nothing in this article shall be construed to authorize the
4 authority to incur any indebtedness or liability on behalf of or
5 payable by the state or any political subdivision thereof.

6 37-95-110. Power to make covenants to secure payment.

7 (1) In any resolution of the board authorizing or relating to
8 the issuance of any bonds or notes, the authority, in order to
9 secure the payment of such bonds or notes and in addition to its
10 other powers, has the power by provisions therein which shall
11 constitute covenants by the authority and contracts with the
12 holders of such bonds or notes:

13 (a) To pledge all or any part of its rents, fees, revenues,
14 or receipts to which its right then exists or may thereafter come
15 into existence, and the moneys derived therefrom, and the
16 proceeds of any bonds or notes;

17 (b) To pledge any lease or other agreement or the rents or
18 other revenues thereunder and the proceeds thereof;

19 (c) To covenant against pledging all or any part of its
20 rents, fees, revenues, or receipts, or its leases or agreements
21 or rents or other revenues thereunder, or the proceeds thereof;
22 or against mortgaging all or any part of its real or personal
23 property then owned or thereafter acquired; or against permitting
24 or suffering any lien on any of the foregoing;

25 (d) To covenant with respect to limitations on any right to
26 sell, lease, or otherwise dispose of any project or any part

1 thereof or any property of any kind;

2 (e) To covenant as to any bonds and notes to be issued and
3 the limitations thereon and the terms and conditions thereof and
4 as to the custody, application, investment, and disposition of
5 the proceeds thereof;

6 (f) To covenant as to the issuance of additional bonds or
7 notes or as to limitations on the issuance of additional bonds or
8 notes and on the incurring of other debts by it;

9 (g) To covenant as to the payment of the principal of or
10 interest on the bonds or notes, or any other obligations, as to
11 the courses and methods of such payment, as to the rank or
12 priority of any such bonds, notes, or obligations with respect to
13 any lien or security, or as to the acceleration of the maturity
14 of any such bonds, notes, or obligations;

15 (h) To provide for the replacement of lost, stolen,
16 destroyed, or mutilated bonds or notes;

17 (i) To covenant against extending the time for the payment
18 of bonds or notes or interest thereon;

19 (j) To covenant as to the redemption of bonds or notes and
20 privileges of exchange thereof for other bonds or notes of the
21 authority;

22 (k) To covenant as to the rates to be established and
23 charged and the amount to be raised each year or other period of
24 time by such charges and as to the use and disposition to be made
25 thereof;

26 (l) To covenant to create or authorize the creation of

1 special funds or moneys to be held in pledge or otherwise for
2 construction, operating expenses, payment or redemption of bonds
3 or notes, reserves, or other purposes and as to the use,
4 investment, and disposition of the moneys held in such funds;

5 (m) To establish the procedure, if any, by which the terms
6 of any contract or covenant with or for the benefit of the
7 holders of bonds or notes may be amended or abrogated, the amount
8 of bonds or notes the holders of which must consent thereto, and
9 the manner in which such consent may be given;

10 (n) To covenant as to the construction, improvement,
11 operation, or maintenance of its real and personal property, the
12 replacement thereof, the insurance to be carried thereon, and the
13 use and disposition of insurance moneys;

14 (o) To provide for the release of property, leases, or
15 other agreements;

16 (p) To provide for the rights and liabilities and the
17 powers and duties arising upon the breach of any covenant,
18 condition, or obligation and to prescribe the events of default
19 and the terms and conditions upon which any or all of the bonds,
20 notes, or other obligations of the authority shall become or may
21 be declared due and payable before maturity and the terms and
22 conditions upon which any such declaration and its consequences
23 may be waived;

24 (q) To vest in a trustee or trustees within or without the
25 state such property, rights, powers, and duties in trust as the
26 authority may determine, including the right to foreclose any

1 mortgage, and to limit the rights, duties, and powers of such
2 trustee;

3 (r) To execute all bills of sale, conveyances, deeds of
4 trust, and other instruments necessary or convenient in the
5 exercise of its powers or in the performance of its covenants or
6 duties;

7 (s) To pay the costs or expenses incident to the
8 enforcement of such bonds or notes or of the provisions of such
9 resolution or of any covenant or agreement of the authority with
10 the holders of its bonds or notes;

11 (t) To limit the powers of the authority to construct,
12 acquire, or operate any structures, facilities, or properties
13 which may compete or tend to compete with the project;

14 (u) To limit the rights of the holders of any bonds or
15 notes to enforce any pledge or covenant securing bonds or notes;
16 and

17 (v) To make covenants other than those expressly authorized
18 in this section, of like or different character, and to make such
19 covenants to do or refrain from doing such acts and things as may
20 be necessary, or convenient and desirable, in order to better
21 secure bonds or notes or which, in the absolute discretion of the
22 authority, will tend to make bonds or notes more marketable,
23 notwithstanding that such covenants, acts, or things may not be
24 enumerated in this section.

25 37-95-111. Pledge of revenues, funds, or other property -
26 lien. Any pledge of revenues, moneys, funds, or other property

1 made by the authority shall be valid and binding from the time
2 when the pledge is made; the revenues, moneys, funds, or other
3 property so pledged and thereafter received by the authority
4 shall immediately be subject to the lien of such pledge without
5 any physical delivery thereof or further act, and the lien of any
6 such pledge shall be valid and binding as against all parties
7 having claims of any kind in tort, contract, or otherwise against
8 the authority, irrespective of whether such parties have notice
9 thereof. Neither the resolution nor any other instrument by which
10 a pledge of revenues, moneys, or funds is created need be filed
11 or recorded, except in the records of the authority.

12 37-95-112. Personal liability. Neither the members of the
13 board nor any person executing bonds or notes issued pursuant to
14 this article shall be liable personally on such bonds or notes by
15 reason of the issuance thereof.

16 37-95-113. Special funds. (1) The board may, by
17 resolution, establish one or more special funds, referred to in
18 this section as "debt service reserve funds", and may pay into
19 such debt service reserve funds:

20 (a) Any moneys appropriated and made available by the state
21 for the purposes of such debt service reserve funds;

22 (b) Any proceeds from the sale of notes or bonds to the
23 extent provided in the resolutions of the board authorizing the
24 issuance thereof; and

25 (c) Any moneys which may be made available to the authority
26 from any other sources for the purposes of such debt service

1 reserve funds.

2 (2) All moneys held in any debt service reserve fund,
3 except as otherwise required in this section, shall be used
4 solely for the payment of the principal of the bonds or of the
5 sinking fund payments mentioned in this section with respect to
6 such bonds, the purchase or redemption of such bonds, the payment
7 of interest on such bonds, or the payment of any redemption
8 premium required to be paid when such bonds are redeemed prior to
9 maturity; except that moneys in any such fund shall not be
10 withdrawn at any time in such amount as would reduce such fund to
11 less than the debt service reserve fund requirement, except for
12 the purpose of making with respect to such bonds principal,
13 interest, redemption premium, and sinking fund payments for the
14 payment of which other moneys of the authority are not available.

15 (3) Any income or interest earned by, or increment to, any
16 debt service reserve fund due to the investment thereof may be
17 transferred to other funds or accounts of the authority to the
18 extent it does not reduce the amount of such debt service reserve
19 fund below the debt service reserve fund requirement.

20 (4) The chairman of the board shall, on or before January 1
21 of each year, make and deliver to the governor his certificate,
22 stating the sum, if any, required to restore each debt service
23 reserve fund to the debt service reserve fund requirement. The
24 governor may transmit to the general assembly a request for the
25 amount, if any, required to restore each debt service reserve
26 fund to the debt service reserve fund requirement. The general

1 assembly may, but shall not be required to, make any such
2 appropriations so requested. All sums appropriated by the
3 general assembly for such restoration and paid shall be deposited
4 by the authority in each such debt service reserve fund. Nothing
5 provided in this section shall create or constitute a debt or
6 liability of the state.

7 (5) The board may create such other funds as may be
8 necessary or desirable for the corporate purposes of the
9 authority.

10 (6) Any moneys appropriated by the general assembly for the
11 purposes of any of the debt service reserve funds established
12 pursuant to this section shall not revert to the general fund of
13 the state at the end of any fiscal year.

14 37-95-114. Guarantee by state not to limit or alter rights
15 or powers vested in authority. The state of Colorado does hereby
16 pledge to and covenant and agree with the holders of any bonds or
17 notes issued pursuant to the powers set forth in this article
18 that the state will not limit or alter the rights or powers
19 vested by this article in the authority to acquire, construct,
20 maintain, improve, repair, and operate the project in any way
21 that would jeopardize the interest of such holders, or to perform
22 and fulfill the terms of any agreement made with the holders of
23 such bonds or notes, or to fix, establish, charge, and collect
24 such rents, fees, rates, or other charges as may be convenient or
25 necessary to produce sufficient revenues to meet all expenses of
26 the authority and fulfill the terms of any agreement made with

1 the holders of such bonds and notes, together with interest
2 thereon, with interest on any unpaid installments of interest,
3 and all costs and expenses in connection with any action or
4 proceedings by or on behalf of such holders, until the bonds,
5 together with interest thereon, are fully met and discharged or
6 provided for.

7 37-95-115. Exemption of bonds from taxation. Any bonds
8 issued by the authority under the provisions of this article,
9 their transfer, and the income therefrom (including any profit
10 made on the sale thereof) shall at all times be free from
11 taxation by the state or any political subdivision or other
12 instrumentality of the state.

13 37-95-116. Annual report - annual audit. On or before the
14 last day of February in each year, the authority shall make an
15 annual report of its activities for the preceding calendar year
16 to the governor and to the general assembly. Each such report
17 shall set forth a complete operating and financial statement
18 covering its operations during the year. Included within such
19 report shall be detailed financial data setting forth the manner
20 in which any previously appropriated state funds have been used.
21 Further, the authority shall include in its report any requests
22 for state funds for the upcoming state fiscal year, detailing the
23 purposes for which said funds are to be utilized. In addition,
24 any requests for state funds by the authority shall be included
25 as a part of the annual budget request document submitted by the
26 Colorado water conservation board, together with any comments

1 regarding the request by that board. The authority shall cause
2 an audit of its books and accounts to be made at least once in
3 each year by certified public accountants, and the cost thereof
4 shall be considered as expenses of the authority, and a copy
5 thereof shall be filed with the state treasurer.

6 37-95-117. Services by state officers, departments, boards,
7 agencies, divisions, and commissions. All officers, departments,
8 boards, agencies, divisions, and commissions of the state are
9 hereby authorized and empowered to render any and all of such
10 services to the authority as may be within the area of their
11 respective governmental functions as fixed or established by law
12 and as may be requested by the authority. The cost and expense
13 of any such services shall be met and provided for by the
14 authority.

15 37-95-118. Bonds eligible for investment. Bonds issued
16 under the provisions of this article are hereby made securities
17 in which all public officers and public bodies of the state and
18 its political subdivisions and all insurance companies, trust
19 companies, banking associations, savings and loan associations,
20 investment companies, executors, administrators, trustees, and
21 other fiduciaries may properly and legally invest funds,
22 including capital, in their control or belonging to them. Such
23 bonds are hereby made securities which may properly and legally
24 be deposited with and received by any state or municipal officer
25 or any agency or political subdivision of the state for any
26 purpose for which the deposit of bonds, notes, or obligations of

1 the state is authorized by law.

2 37-95-119. Charges for use of service of projects. Rentals
3 or other charges with respect to a project shall not be subject
4 to supervision or regulation by any other authority, commission,
5 board, bureau, or agency of the state, and such contract with
6 respect to a project may provide for acquisition by such person
7 or governmental agency of all or any part of such project for
8 such consideration, payable over the period of the contract or
9 otherwise, as the authority in its sole discretion determines to
10 be appropriate, but subject to the provisions of any resolution
11 authorizing the issuance of bonds or notes of the authority or
12 any trust agreement securing the same.

13 37-95-120. Agreements with governmental agencies.
14 (1) Governmental agencies may enter into lease, sale, or loan
15 agreements with the authority with respect to any project, and
16 governmental agencies may also enter into purchase agreements
17 with the authority for the purchase of the capacity use or
18 service of any project. Such lease, sale, loan, or purchase
19 agreements may be for a term covering the life of a project, or
20 for any other term, or for an indefinite period. Pursuant to any
21 such agreements, such governmental agencies may obligate
22 themselves to make payments in amounts which shall be sufficient
23 to enable the authority to meet its expenses, the interest and
24 principal payments (whether at maturity or upon sinking fund
25 redemption) for its bonds, its reasonable reserves for debt
26 service, operation and maintenance, and renewals and

1 replacements, and the requirements of any rate covenant with
2 respect to debt service coverage contained in any resolution,
3 trust indenture, or other security instrument.

4 (2) Purchase agreements between the authority and any
5 governmental agency may contain such other terms and conditions
6 as the authority and the purchasers may determine, including
7 provisions whereby the purchaser is obligated to pay for the
8 output, capacity, or use of any project irrespective of whether
9 such output, capacity, or use is produced or delivered to the
10 purchaser or whether any water development project contemplated
11 by any such agreement is completed, operable, or operating, and
12 notwithstanding suspension, interruption, interference,
13 reduction, or curtailment of the output, use, or service of such
14 project. Such purchase agreements may also provide that if one
15 or more of the purchasers defaults in the payment of its
16 obligations under any such purchase agreement, the remaining
17 purchasers which also have such agreements shall be required to
18 accept and pay for, and shall be entitled proportionately to use
19 or otherwise dispose of, the output, capacity, or use of the
20 project contracted for by the defaulting purchaser.

21 (3) The obligations of a governmental agency under an
22 agreement with the authority or arising out of the default by any
23 other purchaser with respect to such an agreement shall not be
24 construed to constitute debt of the governmental agency. To the
25 extent provided in agreements with the authority, such
26 obligations shall constitute special obligations of the

1 governmental agency, payable solely from the revenues and other
2 moneys derived by the governmental agency from its utility
3 systems, and shall be treated as expenses of operating such
4 systems.

5 37-95-121. Effect on inconsistent acts and rules and
6 regulations adopted thereunder. It is the intent of the general
7 assembly that, in the event of any conflict or inconsistency in
8 the provisions of this article and any other statutes pertaining
9 to matters established or provided for in this article or in any
10 rules and regulations adopted under this article or under said
11 other statutes, to the extent of such conflict or inconsistency,
12 the provisions of this article and the rules and regulations
13 adopted under this article shall be enforced, and the provisions
14 of such other statutes and rules and regulations adopted
15 thereunder shall be of no force and effect; except that nothing
16 in this article shall be construed to amend or affect any
17 existing water law.

18 37-95-122. Severability. If any provision of this article
19 or the application thereof to any person or circumstances is held
20 invalid, such invalidity shall not affect other provisions or
21 applications of the article which can be given effect without the
22 invalid provision or application, and to this end the provisions
23 of this article are declared to be severable.

24 37-95-123. Construction of article. This article shall be
25 construed liberally to effectuate the legislative intent and the
26 purposes of this article as the complete and independent

1 authority for the performance of each and every act and thing
2 authorized in this article, and all the powers granted in this
3 article shall be broadly interpreted to effectuate such intent
4 and purposes and shall not be interpreted as a limitation of such
5 powers.

6 SECTION 2. Appropriation. There is hereby appropriated,
7 out of any moneys in the state treasury not otherwise
8 appropriated, for the fiscal year commencing July 1, 1981, to the
9 debt service reserve fund established pursuant to section
10 37-95-113, Colorado Revised Statutes 1973, the sum of
11 _____ dollars (\$_____), or so much thereof as may be
12 necessary, pursuant to section 37-95-113, Colorado Revised
13 Statutes 1973, for engineering and planning activities of the
14 authority under this act. This appropriation to the debt
15 service reserve fund shall not revert to the general fund but
16 shall remain in such debt service reserve fund for the uses
17 specified in this act.

18 SECTION 3. Effective date. This act shall take effect July
19 1, 1981.

20 SECTION 4. Safety clause. The general assembly hereby
21 finds, determines, and declares that this act is necessary for
22 the immediate preservation of the public peace, health, and
23 safety.

LILL 4

A BILL FOR AN ACT

1 CONCERNING COURT PROCEEDINGS INVOLVING CHANGES OF WATER RIGHTS BY
2 THE COLORADO WATER CONSERVATION BOARD FOR THE PRESERVATION
3 OF THE NATURAL ENVIRONMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that appropriations of water rights by the Colorado water conservation board to protect the natural environment are subject to specified principles and limitations.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. 37-92-102(3), Colorado Revised Statutes 1973, is
6 amended to read:

7 37-92-102. Legislative declaration. (3) Further
8 recognizing the need to correlate the activities of mankind with
9 some reasonable preservation of the natural environment, the
10 Colorado water conservation board is hereby vested with the
11 authority, on behalf of the people of the state of Colorado, to
12 appropriate in a manner consistent with sections 5 and 6 of

1 article XVI of the state constitution, or acquire, such waters of
2 natural streams and lakes as may be required to preserve the
3 natural environment to a reasonable degree. Prior to the
4 initiation of any such appropriation, the board shall request
5 recommendations from the division of wildlife and the division of
6 parks and outdoor recreation. Nothing in this article shall be
7 construed as authorizing any state agency to acquire water by
8 eminent domain, or to deprive the people of the state of Colorado
9 of the beneficial use of those waters available by law and
10 interstate compact. ANY APPROPRIATION MADE PURSUANT TO THIS
11 SUBSECTION (3) SHALL BE SUBJECT TO THE FOLLOWING PRINCIPLES AND
12 LIMITATIONS:

13 (a) ANY SUCH APPROPRIATION WHICH IS BASED UPON WATER
14 IMPORTED FROM ONE WATER DIVISION TO ANOTHER BY SOME OTHER
15 APPROPRIATOR SHALL NOT, AS AGAINST THE APPROPRIATOR OF SUCH
16 IMPORTED WATER OR HIS SUCCESSOR IN INTEREST, CONSTITUTE A CLAIM,
17 BAR, OR USE FOR ANY PURPOSE WHATSOEVER.

18 (b) ANY SUCH APPROPRIATION SHALL BE SUBJECT TO THE USES OR
19 EXCHANGES OF WATER BEING MADE BY OTHER WATER USERS PURSUANT TO
20 PRACTICES IN EXISTENCE ON THE DATE OF SUCH APPROPRIATION, WHETHER
21 OR NOT PREVIOUSLY CONFIRMED BY COURT ORDER OR DECREE, AND, IF NOT
22 PREVIOUSLY CONFIRMED, AS MAY BE CONFIRMED BY THE COURT IN THE
23 DEGREE GRANTING SUCH MINIMUM STREAM FLOW OR LAKE LEVEL
24 APPROPRIATION.

25 (c) ANY SUCH DECREE SHALL BE SUBJECT TO AND IN CONFORMITY
26 WITH THE PLANS AND PROPOSED WATER SUPPLY OF ANY FEDERAL

1 RECLAMATION PROJECT AUTHORIZED BY CONGRESS, AS SUCH PLANS AND
2 WATER SUPPLY ARE ACTUALLY DETERMINED WHEN, IN THE OPINION OF THE
3 COLORADO WATER CONSERVATION BOARD, SUCH AUTHORIZED FEDERAL
4 RECLAMATION PROJECT BECOMES FULLY OPERATIONAL.

5 (d) ANY SUCH APPROPRIATION SHALL NOT ENTITLE ANY PERSON TO
6 FILE, OR BE THE BASIS FOR, A STATEMENT OF OPPOSITION OR PROTEST
7 TO AN APPLICATION OTHER THAN A STATEMENT OF OPPOSITION OR PROTEST
8 TO AN APPLICATION RAISING THE ISSUE OF ABANDONMENT PURSUANT TO
9 SECTION 37-92-301 (b).

10 SECTION 2. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

BILL 5

A BILL FOR AN ACT

1 CONCERNING WATER QUALITY.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Declares that the policy of the state is to obtain the highest practical level of water quality consistent with the welfare of the state. Provides that no water quality statute shall be construed to supersede the state constitutional right to appropriate waters and apply them to beneficial uses. Prohibits the imposition of a permit or fee requirement for the diversion of water from natural surface streams. Requires senate confirmation of members of the water quality control commission in the department of health.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. Article 8 of title 25, Colorado Revised Statutes
4 1973, as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to
5 read:

6 ARTICLE 8

7 Water Quality Control

8 PART 1

9 GENERAL PROVISIONS

1 25-8-101. Short title. This article shall be known and may
2 be cited as the "Colorado Water Quality Control Act".

3 25-8-102. Legislative declaration. (1) In order to foster
4 the health, welfare, convenience, and comfort of the inhabitants
5 of the state of Colorado and to facilitate the enjoyment and use
6 of the scenic and natural resources of the state, it is declared
7 to be the policy of this state to prevent injury to beneficial
8 uses made of state waters and to develop waters to which Colorado
9 and its citizens are entitled and, within this context, to
10 achieve the maximum practical degree of water quality in the
11 waters of the state consistent with the welfare of the state. It
12 is further declared that pollution of state waters may constitute
13 a menace to public health and welfare, may create public
14 nuisances, may be harmful to wildlife and aquatic life, and may
15 impair beneficial uses of state waters and that the problem of
16 water pollution in this state is closely related to the problem
17 of water pollution in adjoining states.

18 (2) It is further declared to be the public policy of this
19 state to conserve state waters and to protect, maintain, and
20 improve, where necessary and reasonable, the quality thereof for
21 public water supplies, for protection and propagation of wildlife
22 and aquatic life, for domestic, agricultural, industrial, and
23 recreational uses, and for other beneficial uses, taking into
24 consideration the requirements of such uses; to provide that no
25 pollutant be released into any state waters without first
26 receiving the treatment or other corrective action necessary to

1 reasonably protect the legitimate and beneficial uses of such
2 waters; to provide for the prevention, abatement, and control of
3 new or existing water pollution; and to cooperate with other
4 states and the federal government in carrying out these
5 objectives.

6 (3) It is further declared that protection of the quality
7 of state waters and the prevention, abatement, and control of
8 water pollution are matters of statewide concern and affected
9 with a public interest, and the provisions of this article are
10 enacted in the exercise of the police powers of this state for
11 the purpose of protecting the health, peace, safety, and general
12 welfare of the people of this state.

13 (4) This article and the agencies authorized under this
14 article shall be the final authority in the administration of
15 water pollution prevention, abatement, and control.
16 Notwithstanding any other provision of law, no department or
17 agency of the state, and no municipal corporation, county, or
18 other political subdivision, having jurisdiction over water
19 pollution prevention, abatement, and control, shall issue any
20 authorization for the discharge of pollutants into state waters
21 unless authorized to do so in accordance with this article.

22 (5) It is further declared that the general assembly
23 intends that this article not be construed to require any action
24 which is not economically reasonable and that such determination
25 of the economic reasonableness of an action shall include
26 consideration of the benefits derived from achieving the goals of

1 the action and of the economic, environmental, and energy
2 impacts.

3 25-8-103. Definitions. As used in this article, unless the
4 context otherwise requires:

5 (1) "Commission" means the water quality control commission
6 created by section 25-8-201.

7 (2) "Control regulation" means any regulation promulgated
8 pursuant to section 25-8-205.

9 (3) "Discharge of pollutants" means the introduction or
10 addition of a pollutant into state waters.

11 (4) "Division" means the division of administration of the
12 department of health.

13 (5) "Domestic wastewater treatment works" means a system or
14 facility for treating, neutralizing, stabilizing, or disposing of
15 domestic wastewater which system or facility has a designed
16 capacity to receive more than two thousand gallons of domestic
17 wastewater per day. The term "domestic wastewater treatment
18 works" includes appurtenances such as outfall and outlet sewers,
19 pumping stations, interceptors, collection lines, and related
20 equipment.

21 (6) "Effluent limitation" means any restriction or
22 prohibition established under this article or federal law on
23 quantities, rates, and concentrations of chemical, physical,
24 biological, and other constituents which are discharged from
25 point sources into state waters, including, but not limited to,
26 standards of performance for new sources, toxic effluent

1 standards, and schedules of compliance.

2 (7) "Executive director" means the executive director of
3 the department of health.

4 (8) "Federal act" means the "Federal Water Pollution
5 Control Act", commonly referred to as the "Clean Water Act".

6 (9) "Irrigation return flow" means tailwater, tile
7 drainage, or surfaced groundwater flow from irrigated land in a
8 system operated by individuals or public or private
9 organizations.

10 (10) "Issue" or "issuance" means the mailing of any order,
11 permit, determination, or notice, other than notice by
12 publication, by certified mail to the last address furnished to
13 the agency by the person subject thereto or personal service on
14 such person, and the date of issuance of such order, permit,
15 determination, or notice shall be the date of such mailing or
16 service or such later date as is stated in the order, permit,
17 determination, or notice.

18 (11) "Municipality" means any regional commission, county,
19 metropolitan district offering sanitation service, sanitation
20 district, water and sanitation district, water conservancy
21 district, metropolitan sewage disposal district, service
22 authority, city and county, city, town, Indian tribe or
23 authorized Indian tribal organization, or any two or more of them
24 which are acting jointly in connection with a sewage treatment
25 works.

26 (12) "Permit" means a permit issued pursuant to part 5 of

1 this article.

2 (13) "Person" means an individual, corporation,
3 partnership, association, state or political subdivision thereof,
4 federal agency, state agency, municipality, commission, or
5 interstate body.

6 (14) "Point source" means any discernible, confined, and
7 discrete conveyance, including, but not limited to, any pipe,
8 ditch, channel, tunnel, conduit, well, discrete fissure,
9 container, rolling stock, concentrated animal feeding operation,
10 or vessel or other floating craft, from which pollutants are or
11 may be discharged. "Point source" does not include irrigation
12 return flow.

13 (15) "Pollutant" means dredged spoil, dirt, slurry, solid
14 waste, incinerator residue, sewage, sewage sludge, garbage,
15 trash, chemical waste, biological nutrient, biological material,
16 radioactive material, heat, wrecked or discarded equipment, rock,
17 sand, or any industrial, municipal, or agricultural waste.

18 (16) "Pollution" means the man-made, man-induced, or
19 natural alteration of the physical, chemical, biological, and
20 radiological integrity of water.

21 (17) "Promulgate" means and includes authority to adopt,
22 and from time to time amend, repeal, modify, publish, and put
23 into effect.

24 (18) "Schedule of compliance" means a schedule of remedial
25 measures and times including an enforceable sequence of actions
26 or operations leading to compliance with any control regulation

1 or effluent limitation.

2 (19) "State waters" means any and all surface and
3 subsurface waters which are contained in or flow in or through
4 this state, but does not include waters in sewage systems, waters
5 in treatment works of disposal systems, waters in potable water
6 distribution systems, and all water withdrawn for use until use
7 and treatment have been completed.

8 (20) "Water quality standard" means any standard
9 promulgated pursuant to section 25-8-204.

10 25-8-104. Interpretation and construction of water quality
11 provisions. No provision of this article shall be interpreted so
12 as to supersede or abrogate rights to divert water and apply
13 water to beneficial uses in accordance with the provisions of
14 sections 5 and 6 of article XVI of the constitution of the state
15 of Colorado, compacts entered into by the state of Colorado, or
16 the provisions of articles 80 to 93 of title 37, C.R.S. 1973, or
17 Colorado court decrees with respect to the determination and
18 administration of water rights. Nothing in this article shall be
19 construed, enforced, or applied so as to supersede, abrogate, or
20 condition the right to appropriate water nor so as to cause or
21 result in material injury to water rights. The general assembly
22 recognizes that this article may result in the imposition upon
23 dischargers of water quality requirements which may result in
24 consumptive types of treatment techniques. Under such
25 circumstances, the discharger must comply with all of the
26 applicable provisions of articles 80 to 93 of title 37, C.R.S.

1 1973, and shall specifically be obliged to augment any material
2 water loss caused by such treatment techniques. This section
3 shall not be interpreted so as to prevent the issuance of a
4 permit pursuant to sections 25-8-501 to 25-8-503 which is
5 necessary to protect public health. Nothing in this article
6 shall be construed to allow the commission or the division to
7 require minimum stream flows for water quality purposes.

8 25-8-105. Regional wastewater management plans. (1)

9 (a) Regional wastewater management plans, which include plans
10 known for purposes of the federal act as "208 Plans", may be
11 developed by designated planning agencies or by the state for
12 nondesignated areas or for statewide purposes.

13 (b) Before submitting a proposed plan to the division, the
14 designated planning agency shall hold a hearing on the plan.

15 (c) The division shall hold a hearing on any plan developed
16 by the state.

17 (d) Notice of a hearing to be held pursuant to this
18 subsection (1) shall be given by at least one publication in a
19 newspaper of general distribution in the area of the proposed
20 plan. Such notice shall advise of the opportunity for interested
21 persons to appear and submit written or oral comments on the
22 proposed plan. The agency holding the hearing shall receive and
23 consider all comments submitted on the proposed plan.

24 (2) Each regional wastewater management plan and each
25 amendment to such a plan must be either developed or reviewed by
26 the division.

1 (3) (a) The commission shall approve, conditionally
2 approve, or reject proposed regional wastewater management plans
3 and amendments thereto. The commission shall approve,
4 conditionally approve, or reject a plan or an amendment developed
5 by a planning agency within one hundred eighty days after
6 submittal of the plan or amendment by the planning agency to the
7 division. A regional wastewater management plan may be adopted
8 as a regulation or may be approved in whole or in part as a
9 policy statement, which statement shall not have regulatory
10 effect. Any plan or portion thereof which is adopted as a
11 regulation by the commission shall be binding on regulatory
12 decisions, including, but not limited to, site approvals,
13 construction grants, or point or nonpoint source control
14 decisions. The adoption of a regional wastewater management plan
15 as a regulation shall comply with the provisions of section
16 24-4-103, C.R.S. 1973, and only those plans or portions thereof
17 which are adopted by the commission as regulations shall be
18 binding under section 313 of the federal act.

19 (b) Notwithstanding the provisions of paragraph (a) of this
20 subsection (3), the commission may delegate to the division the
21 authority to approve, conditionally approve, or reject
22 nonrulemaking amendments to regional wastewater management plans.
23 If the commission delegates such authority, the division shall
24 issue notice of its decision on an amendment to the commission
25 and to anyone who has requested notice of amendments to the
26 affected plan. Upon a request by any affected person, the

1 commission shall review the division's decision. The decision of
2 the division shall be final unless modified or rejected by the
3 commission within forty-five days after issuance of notice of the
4 decision has been given.

5 (4) The governor may certify to the federal environmental
6 protection agency a regional wastewater management plan or an
7 amendment thereto which has been approved by the commission or an
8 amendment thereto which has become final after approval by the
9 division. The governor may designate planning agencies and
10 management agencies for the purposes of the federal act.

11 PART 2

12 WATER QUALITY CONTROL COMMISSION

13 25-8-201. Water quality control commission created.

14 (1) (a) There is hereby created in the department of health a
15 water quality control commission which shall exercise its powers
16 and perform its duties and functions as if it were transferred to
17 said department by a type 1 transfer. The commission shall
18 consist of nine citizens of the state who shall be appointed by
19 the governor, with the consent of the senate, for terms of three
20 years each. Members of the commission shall be appointed so as
21 to achieve geographical representation and to reflect the various
22 interests in water in the state.

23 (b) Appointed members of the commission serving on July 1,
24 1981, shall continue to serve the remainder of the terms to which
25 they were appointed. On and after July 1, 1981, appointments
26 shall be made in accordance with the provisions of this

1 subsection (1).

2 (c) Whenever a vacancy exists, the governor shall appoint a
3 member for the remaining portion of the unexpired term created by
4 the vacancy, subject to confirmation by the senate.

5 (2) (a) The governor may remove any appointed member of the
6 commission for malfeasance in office, failure to regularly attend
7 meetings, or for any cause that renders such a member incapable
8 or unfit to discharge the duties of his office; and any such
9 removal, when made, shall not be subject to review.

10 (b) If any member of the commission is absent from two
11 consecutive meetings, the chairman of the commission shall
12 determine whether the cause of such absences was reasonable. If
13 he determines that the cause of the absences was unreasonable, he
14 shall so notify the governor, who may remove such member and
15 appoint a qualified person for the unexpired portion of the
16 regular term, subject to confirmation by the senate.

17 (3) Each member of the commission not otherwise in
18 full-time employment of the state shall receive a per diem of
19 forty dollars for each day actually and necessarily spent in the
20 discharge of official duties, not to exceed twelve hundred
21 dollars in any one year; and each member shall receive traveling
22 and other necessary expenses actually incurred in the performance
23 of his official duties as a member of the commission.

24 (4) The governor shall appoint the chairman from among the
25 membership of the commission. The commission shall select from
26 its own membership a vice-chairman and a secretary. The

1 commission shall keep a record of its proceedings.

2 (5) The commission shall hold regular public meetings and
3 may hold special meetings on the call of the chairman or
4 vice-chairman at such other times as deemed necessary. Written
5 notice of the time and place of each meeting shall be mailed to
6 each member at least five days in advance.

7 (6) All members shall have a vote. Two-thirds of the
8 commission shall constitute a quorum, and the concurrence of a
9 majority of the quorum in any matter within its powers and duties
10 shall be required for any determination made by the commission.

11 25-8-202. Duties of the commission. (1) The commission
12 shall develop and maintain a comprehensive and effective program
13 for prevention, control, and abatement of water pollution and for
14 water quality protection throughout the entire state and, in
15 connection therewith, shall:

16 (a) Classify state waters in accordance with section
17 25-8-203;

18 (b) Promulgate water quality standards in accordance with
19 section 25-8-204;

20 (c) Promulgate control regulations in accordance with
21 section 25-8-205;

22 (d) Promulgate permit regulations in accordance with
23 sections 25-8-501 to 25-8-505;

24 (e) Perform duties assigned to the commission in part 7 of
25 this article with respect to the location, design, construction,
26 financing, and operation of domestic wastewater treatment plants;

1 (f) Review applications for underground detonations and
2 discharges in accordance with section 25-8-504;

3 (g) Review from time to time, at intervals of not more than
4 three years, classification of waters, water quality standards,
5 and control regulations which it has promulgated;

6 (h) Promulgate regulations and adopt priority ranking for
7 the administration of federal and other public source
8 construction loans or grants, which loans or grants shall not be
9 expended for any purpose other than that for which they were
10 provided;

11 (i) Advise and consult and cooperate with other agencies of
12 the state, the federal government, and other states, and with
13 groups, political subdivisions, and industries affected by the
14 provisions of this article and the policies or regulations of the
15 commission;

16 (j) Exercise all incidental powers necessary or proper for
17 carrying out the purposes of this article including the powers to
18 issue and enforce rules and orders, but, except as otherwise
19 provided in this article, the commission shall not act as an
20 appellate body to review determinations of the division;

21 (k) Perform such other duties as may lawfully be assigned
22 to it.

23 (2) The commission's authority shall be broad and flexible
24 to the end that the policy of this state as declared in section
25 25-8-102 shall be implemented.

26 (3) The commission shall hold a public hearing during the

1 month of October of each year in order to hear public comment on
2 water pollution problems within the state, alleged sources of
3 water pollution within this state, and the availability of
4 practical remedies therefor; and at such hearing the commission,
5 administrator, and division personnel shall answer reasonable
6 questions from the public concerning administration and
7 enforcement of the various provisions of this article, as well as
8 rules and regulations promulgated under the authority of this
9 article.

10 (4) The commission shall employ an administrator and shall
11 delegate to such administrator such duties and responsibilities
12 as it may deem necessary, including acting as a hearing officer
13 for the commission; but no authority shall be delegated to such
14 administrator to promulgate standards or regulations, or to make
15 determinations, or to issue or countermand orders of the
16 commission. Such administrator shall have appropriate practical,
17 educational, and administrative experience and shall be employed
18 pursuant to section 13 of article XII of the state constitution.
19 The individual employed as technical secretary pursuant to
20 section 25-8-202 (3), as that section existed prior to July 1,
21 1981, shall be employed as the initial administrator under this
22 subsection (4).

23 (5) On or before November 1 of each year, the commission
24 shall report to the governor on the effectiveness of the
25 provisions of this article in carrying out the legislative
26 intent, as declared in section 25-8-102, and shall include in

1 such report such recommendations as it may have with respect to
2 any legislative changes that may be needed or desirable.

3 (6) The commission is hereby designated as the state water
4 pollution control agency for this state for all purposes of the
5 federal act and is hereby authorized to take all action necessary
6 and appropriate to secure to this state, its municipalities, or
7 intermunicipal or interstate agencies the benefits of said act.

8 (7) In fulfilling its duties and responsibilities, the
9 commission shall recognize and uphold the decisions of cities and
10 counties regarding land use, planning, zoning, special permits,
11 and other matters which normally are the responsibility of local
12 government, so long as such decisions are not contrary to federal
13 and state laws and regulations and local ordinances.

14 25-8-203. Classification of state waters. (1) The
15 commission shall classify all state waters in accordance with the
16 legislative intent, as declared in section 25-8-102.

17 (2) The types of classes shall be determined by regulations
18 and may be based upon or intended to indicate or describe any
19 relevant characteristic, such as:

20 (a) The existing extent of pollution or the maximum extent
21 of pollution to be tolerated as a goal;

22 (b) Whether or not pollution arises from natural sources;

23 (c) Present uses of the water, the uses for which the water
24 is suitable in its present condition, or the uses for which it is
25 to become suitable as a goal;

26 (d) The character and uses of the land area bordering the

1 water;

2 (e) The need to protect the quality of the water for
3 beneficial uses such as domestic purposes, agricultural uses, the
4 protection and propagation of wildlife and aquatic life,
5 recreation, and drinking water and the need to minimize negative
6 impacts on water rights;

7 (f) The type and character of the water, such as surface or
8 subsurface, lake, stream or ditch, together with volume, flow,
9 depth, stream gradient, temperature, surface area involved, and
10 daily or seasonal variability of any of such characteristics.

11 (3) The particular class into which any particular segment
12 of state waters is placed shall be determined by regulation.

13 25-8-204. Water quality standards. (1) Water quality
14 standards shall be promulgated by the commission by regulations
15 which describe water characteristics or the extent of
16 specifically identified pollutants for state waters.

17 (2) Water quality standards may be promulgated with respect
18 to any measurable characteristic of water, including, but not
19 limited to:

20 (a) Toxic substances;

21 (b) Suspended solids, colloids, and combinations of solids
22 with other suspended substances;

23 (c) Bacteria, fecal coliform, fungi, viruses, and other
24 biological constituents and characteristics;

25 (d) Dissolved oxygen, and the extent of oxygen demanding
26 substances;

- 1 (e) Phosphates, nitrates, and other dissolved nutrients;
2 (f) pH and hydrogen compounds;
3 (g) Chlorine, heavy metals, and other chemical
4 constituents;
5 (h) Salinity, acidity, and alkalinity;
6 (i) Trash, refuse, oil and grease, and other foreign
7 material;
8 (j) Taste, odor, color, and turbidity;
9 (k) Temperature.

10 (3) Water quality standards may be promulgated for use in
11 connection with any one or more of the classes of state waters
12 established by the commission pursuant to section 25-8-203 and
13 may be made applicable with respect to any designated portion of
14 state water or to all state waters.

15 (4) In promulgating water quality standards, the commission
16 shall consider:

17 (a) The need for standards which regulate specified
18 pollutants;

19 (b) The degree to which any particular type of pollutant is
20 subject to treatment; the availability, practicality, and
21 technical and economic feasibility of treatment techniques; the
22 impact of treatment requirements upon water quantity; and the
23 extent to which the discharge to be controlled is significant;

24 (c) The continuous, intermittent, or seasonal nature of the
25 pollutant to be controlled;

26 (d) The existing extent of pollution or the maximum extent

1 of pollution to be tolerated as a goal;

2 (e) Whether the pollutant arises from natural sources.

3 25-8-205. Control regulations. (1) The commission shall
4 promulgate control regulations for the following purposes:

5 (a) To describe prohibitions, standards, concentrations,
6 and effluent limitations on the extent of specifically identified
7 pollutants, including, but not limited to, those mentioned in
8 section 25-8-204, that any person may discharge into any
9 specified class of state waters;

10 (b) To describe pretreatment requirements, prohibitions,
11 standards, concentrations, and effluent limitations on wastes any
12 person may discharge into any specified class of state water from
13 any specified type of facility, process, activity, or waste pile
14 including, but not limited to, all types specified in Section 306
15 (b) (1) (A) of the federal act;

16 (c) To describe precautionary measures, both mandatory and
17 prohibitory, that must be taken by any person owning, operating,
18 conducting, or maintaining any facility, process, activity, or
19 waste pile that does cause or could reasonably be expected to
20 cause pollution of any state waters in violation of control
21 regulations or that does cause the quality of any state waters to
22 be in violation of any applicable water quality standard;

23 (d) To adopt toxic effluent standards and pretreatment
24 standards for pollutants which interfere with, pass through, or
25 are otherwise incompatible with sewage treatment works.

26 (2) In the formulation of each control regulation, the

1 commission shall consider the following:

2 (a) The need for regulations that control discharges of
3 specified pollutants that are the subject of water quality
4 standards for the receiving state waters;

5 (b) The need for regulations that specify treatment
6 requirements for various types of discharges;

7 (c) The degree to which any particular type of discharge is
8 subject to treatment, the availability, practicality, and
9 technical and economic feasibility of treatment techniques, and
10 the extent to which the discharge to be controlled is
11 significant;

12 (d) Control requirements promulgated by agencies of the
13 federal government;

14 (e) The continuous, intermittent, or seasonal nature of the
15 discharge to be controlled;

16 (f) Whether a regulation that is to be applicable to
17 discharges into flowing water should be written in such a way
18 that the degree of pollution tolerated or treatment required will
19 be dependent upon the volume of flow of the receiving water or
20 the extent to which the discharge is diluted therein, or the
21 capacity of the receiving water to assimilate the discharge; and

22 (g) The need for specification of safety precautions that
23 should be taken to protect water quality including, but not
24 limited to, requirements for the keeping of logs and other
25 records, requirements to protect subsurface waters in connection
26 with mining and the drilling and operation of wells, and

1 requirements as to settling ponds, holding tanks, and other
2 treatment facilities for water that will or might enter state
3 waters.

4 (3) Control regulations may be promulgated for use in
5 connection with any one or more of the classes of state waters
6 authorized pursuant to section 25-8-203 and may be made
7 applicable with respect to any designated portion of state waters
8 or to all state waters.

9 (4) The commission shall coordinate and cooperate with the
10 state engineer, the Colorado water conservation board, the oil
11 and gas conservation commission, the state board of health, and
12 other state agencies having regulatory powers in order to avoid
13 adopting control regulations that would be either redundant or
14 unnecessary.

15 (5) The commission shall not adopt control regulations
16 which require agricultural nonpoint source dischargers to utilize
17 treatment techniques which require additional consumptive or
18 evaporative use which would cause material injury to water
19 rights.

20 (6) The division may issue a variance from a control
21 regulation of general applicability for the life of a controlled
22 activity or for a specified time, based upon a determination that
23 the benefits derived from meeting the control regulation do not
24 bear a reasonable relationship to the economic, environmental, or
25 energy impacts or other costs which are unique to the applicant
26 in complying with the control regulation.

1 25-8-206. Prior acts validated. (1) All acts, hearings,
2 orders, rules, regulations, and standards adopted by the water
3 pollution control commission as constituted and empowered by the
4 laws of this state prior to July 6, 1973, shall be deemed and
5 held to be legal and valid in all respects, as though issued by
6 the commission under the authority of this article, and no
7 provision of this article shall be construed to repeal or in any
8 way invalidate any actions, orders, rules, regulations, or water
9 quality standards adopted by said commission prior to said date.

10 (2) All acts, hearings, orders, rules, regulations, and
11 standards adopted by the water quality control commission as
12 constituted and empowered by the laws of this state prior to July
13 1, 1981, shall be deemed and held to be legal and valid in all
14 respects, as though issued by the commission under the authority
15 of this article, and no provision of this article shall be
16 construed to repeal or in any way invalidate any actions, orders,
17 rules, regulations, or water quality standards adopted by said
18 commission prior to said date.

19 PART 3

20 ADMINISTRATION

21 25-8-301. Administration of water quality control programs.

22 (1) The department of health shall administer and enforce the
23 water quality control programs adopted by the commission.

24 (2) In furtherance of such responsibility of the
25 department, the executive director shall maintain within the
26 division a separate water quality control agency.

1 (3) The director of said water quality control agency shall
2 be employed pursuant to section 13 of article XII of the state
3 constitution. He shall be a registered professional engineer or
4 have a graduate degree in engineering or other specialty dealing
5 with the problems of pollution and shall also have appropriate
6 practical and administrative experience related to such problems.
7 Such person shall not be the administrator employed pursuant to
8 section 25-8-202(4).

9 (4) The division shall act as staff to the commission in
10 commission proceedings other than adjudicatory or appellate
11 proceedings where the division seeks party status.

12 25-8-302. Duties of the division. (1) The division shall:

13 (a) Carry out the enforcement provisions of this article,
14 including the seeking of criminal prosecution of violations and
15 such other judicial relief as may be appropriate;

16 (b) Administer the permit system as provided in sections
17 25-8-501 to 25-8-505;

18 (c) Monitor waste discharges and the state waters as
19 provided in section 25-8-303;

20 (d) Submit an annual report to the commission as provided
21 in section 25-8-305;

22 (e) Maintain a mailing list of persons requesting notice of
23 actions by the division or by the commission and notify persons
24 on the list of such actions, for which service the division shall
25 assess a fee to cover the costs thereof;

26 (f) Perform such other duties as may lawfully be assigned

1 to it.

2 25-8-303. Monitoring. (1) The division shall take such
3 samplings as may be necessary to enable it to determine the
4 quality of every reasonably accessible segment of state waters.
5 In sampling such waters the division shall give consideration to
6 characteristics such as those listed in section 25-8-204 (2), but
7 if pollution is suspected the sampling shall not be limited or
8 restricted by reason of the fact that no water quality standard
9 has been promulgated for the suspected type of pollution.

10 (2) As to every segment of state waters so sampled, the
11 division shall endeavor to determine the nature and amount of
12 each pollutant, whether a new or different water quality standard
13 is needed, the source of each pollutant, the place where each
14 such pollutant enters the water, and the names and addresses of
15 each person responsible for or in control of each entry.

16 (3) As to each separate pollution source identified, the
17 division shall:

18 (a) Determine what control regulations are applicable, if
19 any;

20 (b) Determine whether the discharge is covered by a permit
21 and whether or not any condition of the permit is being violated;

22 (c) Determine what further control measures with respect to
23 such pollution source are practicable.

24 (4) The division shall inform the commission of any unusual
25 problem which creates difficulties in abating pollution.

26 25-8-304. Monitoring, recording, and reporting. (1) The

1 owner or operator of any facility, process, or activity from
2 which a discharge of pollutants is made into state waters or into
3 any municipal domestic wastewater treatment works shall, in such
4 form and in accordance with such specifications as the division
5 may require:

- 6 (a) Establish and maintain records;
- 7 (b) Make reports;
- 8 (c) Install, calibrate, use, and maintain monitoring
9 methods and equipment, including biological monitoring methods;
- 10 (d) Sample discharges;
- 11 (e) Provide additional reasonably available information
12 relating to discharges into domestic wastewater treatment works.

13 25-8-305. Annual report. On or before October 1 of each
14 year, the division shall report to the commission on the
15 effectiveness of the provisions of this article and shall include
16 in such report such recommendations as it may have with respect
17 to any regulatory or legislative changes that may be needed or
18 desired. Such report shall include the then current information
19 that has been obtained pursuant to section 25-8-303.

20 25-8-306. Authority to enter and inspect premises and
21 records. (1) The division has the power, upon presentation of
22 proper credentials, to enter and inspect at any reasonable time
23 and in a reasonable manner any property, premise, or place for
24 the purpose of investigating any actual, suspected, or potential
25 source of water pollution, or ascertaining compliance or
26 noncompliance with any control regulation or any order

1 promulgated under this article. Such entry is also authorized
2 for the purpose of inspecting and copying records required to be
3 kept concerning any effluent source.

4 (2) In the making of such inspections, investigations, and
5 determinations, the division, insofar as practicable, may
6 designate as its authorized representatives any qualified
7 personnel of the department of agriculture. The division may
8 also request assistance from any other state or local agency or
9 institution.

10 (3) If such entry or inspection is denied or not consented
11 to, the division is empowered to and shall obtain, from the
12 district or county court for the judicial district or county in
13 which such property, premise, or place is located, a warrant to
14 enter and inspect any such property, premise, or place prior to
15 entry and inspection. The district and county courts of the
16 state of Colorado are empowered to issue such warrants upon a
17 proper showing of the need for such entry and inspection.

18 25-8-307. Emergencies. Whenever the division determines,
19 after investigation, that any person is discharging or causing to
20 be discharged or is about to discharge into any state waters,
21 directly or indirectly, any pollutant which in the opinion of the
22 division constitutes a clear, present, and immediate danger to
23 the health or livelihood of members of the public, the division
24 shall issue its written order to said person that he must
25 immediately cease or prevent the discharge of such pollutant into
26 such waters and thereupon such person shall immediately

1 discontinue such discharge. Concurrently with the issuance of
2 such order, the division may seek a restraining order or
3 injunction pursuant to section 25-8-607.

4 25-8-308. Additional authority and duties of the division.

5 (1) In addition to the authority specified elsewhere in this
6 article, the division has the power to:

7 (a) Conduct or cause to be conducted studies, research, and
8 demonstrations with respect to water pollution and the control,
9 abatement, or prevention thereof, as requested by the commission;

10 (b) Furnish technical advice and services relating to water
11 pollution problems and control techniques;

12 (c) Designate one or more persons or agencies in any area
13 of the state as a water quality control authority, as agent of
14 the division, to exercise and perform such powers and duties of
15 the division as may be specified in such designation;

16 (d) Administer, in compliance with regulations and the
17 priority ranking adopted by the commission, construction loans
18 and grants from the federal government and from other public
19 sources;

20 (e) Advise, consult, cooperate, and enter into agreements
21 with other agencies of the state, the federal government, other
22 states, and interstate agencies, and with groups, political
23 subdivisions, and industries affected by the provisions of this
24 article and the policies of the commission; but any such
25 agreement involving, authorizing, or requiring compliance in this
26 state with any standard or regulation shall not be effective

1 unless or until the commission has held a hearing with respect to
2 such standard or regulation and has adopted the same in
3 compliance with this article;

4 (f) Certify, when requested, the existence of any facility,
5 land, building, machinery, equipment, treatment works, or sewage
6 or disposal systems as have been acquired, constructed, or
7 installed in conformity with the purposes of this article;

8 (g) Take such action in accordance with rules and orders
9 promulgated by the commission as may be necessary to prevent,
10 abate, and control pollution.

11 (2) All fees and penalties collected by the division shall
12 be transmitted to the state treasurer for deposit to the credit
13 of the general fund.

14 PART 4

15 PROCEDURES

16 25-8-401. Authority and procedures for hearings. (1) The
17 commission or the division may hold public hearings, issue notice
18 of hearings, issue subpoenas requiring the attendance of
19 witnesses and the production of evidence, administer oaths, take
20 such testimony as is deemed necessary, make findings and
21 determinations, and issue orders, all in conformity with article
22 4 of title 24, C.R.S. 1973, and with this article.

23 (2) The commission may adopt such rules and regulations
24 governing procedures and hearings before the commission or
25 division as may be necessary to assure that such procedures and
26 hearings will be fair and impartial.

1 (3) At any hearing subject to the "State Administrative
2 Procedure Act", any person who is affected by the proceeding and
3 whose interests are not already adequately represented shall have
4 the opportunity to be a party thereto upon prior application to
5 and approval by the commission or division, as the case may be,
6 and such person shall have the right to be heard and to
7 cross-examine any witness.

8 (4) After due consideration of the written and oral
9 statements, the testimony, and the arguments presented at any
10 such hearing, the commission or division shall enter its written
11 findings and final order, based upon evidence in the record.

12 (5) In all proceedings before the commission or the
13 division with respect to any alleged violation of any control
14 regulation, permit, or order, the burden of proof shall be upon
15 the division.

16 (6) The commission or division may designate a hearing
17 officer pursuant to part 10 of article 30 of title 24, C.R.S.
18 1973, subject to appropriations made to the department of
19 administration, who shall have the power to issue notices of
20 hearing, to issue subpoenas requiring the attendance of witnesses
21 and the production of evidence, to administer oaths, and to take
22 such testimony as may be necessary or in conformity with article
23 4 of title 24, C.R.S. 1973; and such hearing officer shall
24 certify and file recommended findings and conclusions and a
25 proposed order with the commission or division, as appropriate,
26 for adoption or modification by such commission or division. The

1 hearing officer may be an employee of the division or the
2 administrator of the commission.

3 25-8-402. Procedures to be followed in setting standards
4 and control regulations. (1) Prior to promulgating any water
5 quality standard or any control regulation authorized in this
6 article, the commission shall conduct a public hearing thereon as
7 provided in section 24-4-103, C.R.S. 1973. Notice of any such
8 hearing shall conform to the requirements of section 24-4-103,
9 C.R.S. 1973, but such notice shall be given at least sixty days
10 prior to the hearing, shall include each proposed standard or
11 regulation, and shall be mailed to all persons who have filed
12 with the commission a written request to receive such notices.

13 (2) Any person desiring to propose a standard or regulation
14 differing from the standard or regulation proposed by the
15 commission shall file such other written proposal with the
16 commission not less than twenty days prior to the hearing, and,
17 when on file, such proposal shall be open for public inspection.

18 (3) Witnesses at the hearing shall be subject to
19 cross-examination by or on behalf of the commission and by or on
20 behalf of persons who have proposed standards or regulations
21 pursuant to subsection (2) of this section.

22 (4) Standards or regulations promulgated pursuant to this
23 section shall take effect as provided in section 24-4-103 (5),
24 C.R.S. 1973.

25 25-8-403. Administrative reconsideration. During the time
26 permitted for seeking judicial review of any final order or

1 determination of the commission or division, any party directly
2 affected by such order or determination may apply to the
3 commission or division, as appropriate, for a hearing or
4 rehearing with respect to, or reconsideration of, such order or
5 determination. The determination by the commission or division
6 of whether to grant or deny the application for a hearing,
7 rehearing, or reconsideration shall be made within ten days after
8 receipt by the commission or division of such application. Such
9 determination by the commission may be made by telephone or mail
10 or at a meeting, but in any event shall be confirmed at the next
11 meeting of the commission. If the application for a hearing,
12 rehearing, or reconsideration is granted, the order or
13 determination to which such application pertains shall not be
14 considered final for purposes of judicial review, and the
15 commission or the division may affirm, reverse, or modify, in
16 whole or in part, the pertinent order or determination;
17 thereafter such order or determination shall be final and not
18 subject to stay or reconsideration under this section.

19 25-8-404. Enforcement hearings - judicial review. (1) Any
20 final order or determination by the division or the commission
21 (including classification of state waters, approval of areawide
22 waste treatment management plans, promulgation of water quality
23 standards, and promulgation of control regulations) shall be in
24 writing and subject to judicial review in accordance with the
25 provisions of this article and the provisions of article 4 of
26 title 24, C.R.S. 1973. Any enforcement order or similar

1 determination shall be supported by written findings.

2 (2) Any proceeding for judicial review of any final order
3 or determination of the division or commission shall be filed in
4 the district court for the district in which the pollution source
5 affected is located. Any such proceeding for judicial review
6 shall be filed within thirty days after said order or
7 determination has been issued to the party affected. Notice of a
8 final order or determination shall be mailed to all parties and
9 to those who have requested such notice. Such period shall be
10 stayed while any application for a hearing, rehearing, or
11 reconsideration is pending pursuant to section 25-8-403, and the
12 period during which any such application is pending shall extend
13 the time for filing a proceeding for judicial review an equal
14 length of time.

15 (3) (a) Except with respect to emergency orders issued
16 pursuant to section 25-8-307, any person to whom a cease and
17 desist order, clean-up order, or other order has been issued by
18 the division or commission, or against whom an adverse
19 determination has been made, may petition the district court for
20 a stay of the effectiveness of such order or determination. Such
21 petition shall be filed in the district court in which the
22 pollution source affected is located.

23 (b) Such petitions may be filed prior to any such order or
24 determination becoming final or during any period in which such
25 order or determination is under judicial review.

26 (c) Such stay shall be granted by the court if there is

1 probable cause to believe that refusal to grant a stay will cause
2 serious harm to the affected person or any other person, and:

3 (I) That the alleged violation or activity to which the
4 order or determination pertains will not continue, or if it does
5 continue, any harmful effects on state waters will be alleviated
6 promptly after the cessation of the violation or activity; or

7 (II) That the refusal to grant a stay would be without
8 sufficient corresponding public benefit.

9 (4) Any party may move the court to remand the case to the
10 division or the commission in the interests of justice, for the
11 purpose of adducing additional specified and material evidence,
12 and findings thereon; but such party shall show reasonable
13 grounds for the failure to adduce such evidence previously before
14 the division or the commission.

15 (5) If the court does not stay the effectiveness of an
16 order of the commission or division, the court shall enforce
17 compliance with that order by issuing a temporary restraining
18 order or injunction at the request of the commission or division.

19 25-8-405. Samples, secret processes. (1) If samples of
20 water or water pollutants are taken for analysis and a violation
21 of any permit or control regulation is suspected, a
22 representative portion of the sample shall be furnished upon
23 request to the person who is believed to be responsible for such
24 suspected violation. A representative portion of such sample
25 shall be furnished to any suspected violator whenever any
26 remedial action is taken with respect thereto by the division. A

1 duplicate of every analytical report pertaining to such sample
2 shall also be furnished as soon as practicable to such person.

3 (2) Any information relating to any secret process, method
4 of manufacture or production, or sales or marketing data, which
5 may be acquired, ascertained, or discovered, whether in any
6 sampling investigation, emergency investigation, or otherwise,
7 shall not be publicly disclosed by any member, officer, or
8 employee of the commission or the division, but shall be kept
9 confidential. Any person seeking to invoke the protection of
10 this subsection (2) in any hearing shall bear the burden of
11 proving its applicability. This section shall never be
12 interpreted as preventing full disclosure of effluent data.

13 25-8-406. Rules of civil procedure - applicability. Except
14 as otherwise specified in this article, service of process,
15 notices, and other papers shall be in accordance with the
16 Colorado rules of civil procedure.

17 PART 5

18 PERMIT SYSTEM

19 25-8-501. Permits required for discharge of pollutants -
20 administration. (1) No person shall discharge any pollutant into
21 any state water from a point source without first having obtained
22 a permit from the division for such discharge. Each application
23 for a permit duly filed under the federal act shall be deemed to
24 be a permit application filed under this article, and each permit
25 issued pursuant to the federal act shall be deemed to be a
26 temporary permit issued under this article which shall expire

1 upon expiration of the federal permit.

2 (2) The division shall examine applications for and may
3 issue, suspend, revoke, modify, deny, and otherwise administer
4 permits for the discharge of pollutants into state waters. Such
5 administration shall be in accordance with the provisions of this
6 article and regulations promulgated by the commission.

7 (3) The commission shall promulgate such regulations as may
8 be necessary and proper for the orderly and effective
9 administration of permits for the discharge of pollutants, which
10 regulations shall include, but not be limited to, procedures for
11 the issuance of a variance pursuant to section 25-8-503 (4).
12 Such regulations shall be consistent with the provisions of this
13 article and with federal requirements, shall be in furtherance of
14 the policy contained in section 25-8-102, and may pertain to and
15 implement, among other matters, permit and permit application
16 contents, procedures, requirements, and restrictions with respect
17 to the following:

18 (a) Identification and address of the owner and operator of
19 the activity, facility, or process from which the discharge is to
20 be permitted;

21 (b) Location and quantity and quality characteristics of
22 the permitted discharge;

23 (c) Effluent limitations and requirements for treatment
24 prior to discharge;

25 (d) Equipment and procedures required for mandatory
26 monitoring as well as record-keeping and reporting requirements;

1 (e) Schedules of compliance;

2 (f) Procedures to be followed by division personnel for
3 entering and inspecting premises;

4 (g) Submission of pertinent plans and specifications for
5 the facility, process, or activity which is the source of a waste
6 discharge;

7 (h) Restrictions on transfers of the permit;

8 (i) Procedures to be followed in the event of expansion or
9 modification of the process, facility, or activity from which the
10 discharge occurs or the quality, quantity, or frequency of the
11 discharge;

12 (j) Duration of the permit, not to exceed five years, and
13 renewal procedures;

14 (k) Authority of the division to require changes in plans
15 and specifications for control facilities as a condition for the
16 issuance of a permit;

17 (l) Identification of control regulations over which the
18 permit takes precedence and identification of control regulations
19 over which a permit may never take precedence;

20 (m) Notice requirements of any intent to construct,
21 install, or alter any process, facility, or activity that is
22 likely to result in a new or altered discharge;

23 (n) Effectiveness under this article of permit applications
24 submitted to and permits issued by the federal government under
25 the federal act.

26 (4) Nothing in any permit shall ever be construed to

1 prevent or limit the application of any emergency power of the
2 division.

3 (5) Every permit issued for a sewage treatment works shall
4 contain such terms and conditions as the division determines to
5 be necessary or desirable to assure continuing compliance with
6 applicable control regulations. Such terms and conditions may
7 require that whenever deemed necessary by the division to assure
8 such compliance the permittee shall:

9 (a) Require pretreatment of effluent from industrial,
10 governmental, or commercial facilities, processes, and activities
11 before such effluent is received into the gathering and
12 collection system of the permittee;

13 (b) Prohibit any connection to any municipal permittee's
14 interceptors and collection system that would result in receipt
15 by such municipal permittee of any effluent other than sewage
16 required by law to be received by such permittee;

17 (c) Include specified terms and conditions of its permit in
18 all contracts for receipt by the permittee of any effluent not
19 required to be received by a municipal permittee;

20 (d) Initiate engineering and financial planning for
21 expansion of the sewage treatment works whenever throughput and
22 treatment reaches eighty percent of design capacity;

23 (e) Commence construction of such sewage treatment works
24 expansion whenever throughput and treatment reaches ninety-five
25 percent of design capacity or, in the case of a municipality,
26 either commence such construction or cease issuance of building

1 permits within such municipality until such construction is
2 commenced; except that building permits may continue to be issued
3 for any construction which would not have the effect of
4 increasing the input of sewage to the sewage treatment works of
5 the municipality involved.

6 (6) Inclusion of the requirements authorized by paragraph
7 (d) of subsection (5) of this section shall be presumed
8 unnecessary to assure compliance upon a showing that the area
9 served by a governmental sewage treatment works has a stable or
10 declining population; but this provision shall not be construed
11 as preventing periodic review by the division should it be felt
12 that growth is occurring or will occur in the area.

13 (7) Every permit issued for a discharge from any facility,
14 process, or activity that includes any dam, settling pond, or
15 hazard within or related to its system shall include such terms
16 and conditions as the division determines necessary to prevent or
17 minimize the discharge of any pollutant into any state waters in
18 potentially dangerous quantities.

19 25-8-502. Application - definitions - fees - public
20 participation. (1) (a) For the purposes of this section:

21 (I) "Discharge" means discharge of pollutants as defined in
22 section 25-8-103 (3), and also includes land application.

23 (II) "Land application" is any discharge being applied to
24 the land for treatment purposes.

25 (III) "Major industrial discharge" is one in which the
26 discharge from the facility:

1 (A) Has a total volume of more than fifty thousand gallons
2 on any one day of the year from one or more discharge points; or

3 (B) Contains or may contain toxic pollutants.

4 (IV) "Major municipal discharge" is a discharge from a
5 publicly owned wastewater treatment plant which:

6 (A) Discharges a total volume of more than five million
7 gallons on any one day of the year;

8 (B) Serves a population in excess of ten thousand persons;
9 or

10 (C) Receives waste from an industrial user and such wastes
11 have a total volume of more than fifty thousand gallons on any
12 day of the year or have a total volume which constitutes more
13 than five percent of the volume of the total discharge from the
14 facility on any day of the year.

15 (V) "Minor industrial discharge" is one which does not
16 discharge over fifty thousand gallons in the aggregate on any one
17 day of the year from one or more discharge points and which does
18 not contain toxic pollutants.

19 (VI) "Minor municipal discharge" is a discharge from a
20 publicly owned wastewater treatment plant which is less than all
21 cases in subparagraph (IV) of this paragraph (a).

22 (b) The commission shall establish and, as necessary, may
23 revise a schedule of nonrefundable fees for the processing of
24 applications for the issuance of permits under this section
25 sufficient to cover the reasonable costs of processing,
26 administering, and enforcing such permits. The moneys collected

1 under this paragraph (b) shall be remitted to the state treasurer
2 for deposit to the credit of the general fund.

3 (2) (a) A complete and accurate application for all
4 discharges shall be filed with the division not less than one
5 hundred eighty days prior to the date proposed for commencing the
6 discharge; except that an application for a major industrial
7 discharge shall be filed with the division not less than two
8 hundred seventy days prior to the date proposed for commencing
9 the discharge.

10 (b) The application shall contain such relevant plans,
11 specifications, water quality data, and other information as the
12 division may reasonably require. Prior to submitting an
13 application for a permit, the applicant may request and, if so
14 requested, the division shall grant a planning meeting with the
15 applicant. At such meeting, the division shall advise the
16 applicant of the applicable permit requirements, including the
17 information, plans, specifications, and data required to be
18 furnished with the permit application.

19 (c) An applicant shall be advised not more than forty-five
20 days after the receipt of an application by the division if, and
21 in what respects, the application is incomplete. Upon failure of
22 the division to so advise the applicant, the application shall be
23 deemed complete. If additional information is requested by the
24 division within said forty-five day period, the division shall
25 have fifteen days from the date the additional information is
26 submitted to determine whether the additional information which

1 was submitted satisfies the request and to advise the applicant
2 if, and in what respects, the additional information does not
3 satisfy the request. Upon failure of the division to so advise
4 the applicant, the application shall be deemed complete.

5 (3) (a) The division shall evaluate permit applications to
6 determine whether the proposed discharge will comply with all
7 applicable federal and state statutory and regulatory
8 requirements.

9 (b) Public notice of a permit application and the
10 division's preliminary analysis thereof shall be given as
11 provided in subsection (4) of this section. Such notice shall
12 advise of the opportunity for interested persons to submit
13 written comments on the permit application and the division's
14 preliminary analysis or to request, for good cause shown, a
15 public meeting on the application and analysis. Such a request
16 shall be made within twenty days of the initial public notice of
17 the permit application and the division's preliminary analysis
18 thereof. If a public meeting is requested and the division, in
19 its discretion and for good cause shown, grants such request, the
20 division shall hold such meeting not more than fifty days after
21 the initial public notice. The division shall provide notice as
22 provided in subsection (4) of this section of the public meeting
23 not less than fifteen days prior to the date of such meeting.

24 (c) The period for public comment shall close thirty days
25 from the date of notice of the permit application and the
26 division's preliminary analysis thereof; except that, if a public

1 meeting is held of the application and analysis, the period for
2 public comment shall close sixty days from the date of notice of
3 the application and analysis.

4 (4) Public notice of every permit application and the
5 division's preliminary analysis thereof shall be circulated in a
6 manner designed to inform interested and potentially interested
7 persons of the application and analysis. Procedures for the
8 circulation of such public notice or a notice regarding a public
9 meeting concerning an application and analysis shall be
10 established by the commission and shall include at least the
11 following:

12 (a) Notice shall be given by at least one publication in a
13 newspaper of general circulation which is distributed within the
14 geographical areas of the proposed discharge.

15 (b) Notice shall be mailed to any person or group upon
16 request.

17 (c) The division shall add the name of any person or group
18 upon request to a mailing list to receive copies of notices for
19 all discharge permit applications within the state or within a
20 certain geographical area.

21 (d) The division shall also, during the period from the
22 date of the initial public notice of the application and analysis
23 to the close of the public comment period, maintain in the office
24 of the county clerk and recorder of the county in which the
25 proposed discharge, or a part thereof, is to occur a copy of its
26 preliminary analysis and a copy of the permit application with

1 all accompanying data for public inspection.

2 (5) (a) (I) Except as provided in this subsection (5), if
3 the division has not finally issued or denied a permit within one
4 hundred eighty days after receipt of the permit application, a
5 temporary permit shall be issued; except that, in the case of an
6 application for a major industrial discharge, if a permit has not
7 been issued or denied within two hundred seventy days after
8 receipt by the division of the permit application, a temporary
9 permit shall be issued.

10 (II) In the case of each permit application, the deadlines
11 established pursuant to subparagraph (I) of this paragraph (a)
12 shall be extended by:

13 (A) The number of days which an applicant
14 takes to submit information requested by the division pursuant to
15 paragraph (c) of subsection (2) of this section plus the fifteen
16 days provided for the division to evaluate such additional
17 information; and

18 (B) Thirty days, if a public meeting is held pursuant to
19 subsection (3) of this section.

20 (b) All temporary permits shall contain such conditions as
21 are necessary to protect public health and shall not be less
22 restrictive than required by state and federal effluent
23 guidelines. A temporary permit shall be issued for a period not
24 to exceed two years and shall expire as provided in the issuance
25 or denial of the final permit. Issuance of a temporary permit
26 shall be final agency action for the purposes of section

1 24-4-106, C.R.S. 1973.

2 25-8-503. Permits - when required and when prohibited -
3 variances. (1) The division shall issue a permit in accordance
4 with regulations promulgated under this article when the division
5 has determined that federal requirements and the provisions of
6 this article have been met with respect to both the application
7 and proposed permit.

8 (2) No discharge shall be permitted which will violate any
9 regulatory aspect of an approved regional wastewater management
10 plan.

11 (3) No discharge shall be permitted which will violate a
12 control regulation unless the waste discharge permit contains
13 effluent limitations and a schedule of compliance specifying
14 treatment requirements as determined by the division. Such
15 requirements shall require the permittee, at a minimum, to meet
16 federal and state effluent limitations.

17 (4) No discharge shall be permitted that by itself or in
18 combination with other pollution will result in pollution of the
19 receiving waters in excess of the pollution permitted by an
20 applicable water quality standard unless the permit contains
21 effluent limitations and a schedule of compliance specifying
22 treatment requirements or the division has granted a variance
23 from the water quality standard. Variances from the water
24 quality standard may be granted if the division determines that
25 the benefits derived from meeting a standard do not bear a
26 reasonable relationship to the economic, environmental, and

1 energy impacts or other costs which are unique to the applicant
2 in meeting the water quality standard. Variances may be granted
3 for no longer than the duration of the permit.

4 (5) The acts of diverting, carrying, and exchanging water
5 from or into streams, lakes, reservoirs, or conveyance
6 structures, or storing water in or releasing water from lakes,
7 reservoirs, or conveyance structures, in the exercise of water
8 rights shall not be considered to be point sources of pollution
9 under this article. Water quality standards shall not apply to
10 such acts unless and until the commission has adopted appropriate
11 control regulations pursuant to section 25-8-205.

12 25-8-504. Nuclear, toxic, and radioactive wastes. (1) It
13 is unlawful for any person to discharge, deposit, generate, or
14 dispose of any radioactive, toxic, or other hazardous waste
15 underground in liquid, solid, or explosive form unless the
16 commission, upon application of the person desiring to undertake
17 such activity, and after investigation and hearing, has first
18 found beyond a reasonable doubt that there will be no pollution
19 resulting therefrom or that the pollution, if any, will be
20 limited to waters in a specified limited area from which there is
21 no risk of significant migration and that the proposed activity
22 is justified by public need.

23 (2) If the commission has made the findings specified in
24 subsection (1) of this section, the division may issue a permit
25 for the proposed activity, upon the payment of a fee of one
26 thousand dollars. The commission may require, in any permit

1 issued pursuant to this subsection (2), such reasonable terms and
2 conditions as it may from time to time require to implement this
3 section in a manner consistent with the purposes of this article.
4 The terms or conditions which may be imposed shall include,
5 without limitation, those with respect to duration of use or
6 operation; monitoring; reporting; volume of discharge or
7 disposal; treatment of wastes; and the deposit with the state
8 treasurer of a bond, with or without surety as the division may
9 in its discretion require, or other security, to assure that the
10 permitted activities will be conducted in compliance with the
11 terms and conditions of the permit, and that, upon abandonment,
12 cessation, or interruption of the permitted activities or
13 facilities, appropriate measures will be taken to protect the
14 waters of the state. Other than relief from provisions of this
15 article to the extent specified in this subsection (2), no permit
16 issued pursuant to this subsection (2) shall relieve any person
17 of any duty or liability to the state or to any other person
18 existing or arising under any statute or under common law.

19 25-8-505. Agricultural wastes. (1) Neither the commission
20 nor the division shall require any permit for any flow or return
21 flow of irrigation water into state waters except as may be
22 required by the federal act or regulations. The provisions of
23 any permit that are so required shall not be any more stringent
24 than, and shall not contain any condition for monitoring or
25 reporting in excess of, the minimum required by the federal act
26 or regulations.

1 (2) Neither the commission nor the division shall require
2 any permit for animal or agricultural waste on farms and ranches
3 except as may be required by the federal act or regulations. The
4 provisions of any permit that are so required shall not be any
5 more stringent than, and shall not contain any condition for
6 monitoring or reporting in excess of, the minimum required by the
7 federal act or regulations.

8 (3) No permit or fee shall ever be required pursuant to
9 this part 5 for the diversion of water from natural surface
10 streams.

11 25-8-506. Permit conditions concerning publicly owned
12 wastewater treatment works. The division is authorized to
13 impose, as conditions in permits for the discharge of pollutants
14 from publicly owned wastewater treatment works, appropriate
15 measures to establish and insure compliance by industrial users
16 with any system of user charges or industrial cost recovery.

17 PART 6

18 VIOLATIONS, REMEDIES, AND PENALTIES

19 25-8-601. Division to be notified of suspected violations
20 and accidental discharges - penalty. (1) Any person or any
21 agency of the state or federal government may apply to the
22 division to investigate and take action upon any suspected or
23 alleged violation of any provision of this article or of any
24 order, permit, or regulation issued or promulgated under
25 authority of this article.

26 (2) Any person engaged in any operation or activity which

1 results in a spill or discharge of oil or other substance which
2 may cause pollution of the waters of the state contrary to the
3 provisions of this article, as soon as he has knowledge thereof,
4 shall notify the division of such discharge. Any person who
5 fails to notify the division as soon as practicable is guilty of
6 a misdemeanor and, upon conviction thereof, shall be punished by
7 a fine of not more than ten thousand dollars, or by imprisonment
8 in the county jail for not more than one year, or by both such
9 fine and imprisonment. Notification received pursuant to this
10 subsection (2) or information obtained by the exploitation of
11 such notification shall not be used against any such person in a
12 criminal case except prosecution for perjury, for false swearing,
13 or for failure to comply with a clean-up order issued pursuant to
14 section 25-8-606.

15 25-8-602. Notice of alleged violations. (1) Whenever the
16 division has reason to believe that a violation of an order,
17 permit, or control regulation issued or promulgated under
18 authority of this article has occurred, the division shall cause
19 written notice to be served personally or by certified mail,
20 return receipt requested, upon the alleged violator or his agent
21 for service of process. The notice shall state the provision
22 alleged to be violated and the facts alleged to constitute a
23 violation, and it may include the nature of any corrective action
24 proposed to be required.

25 (2) Each cease and desist and clean-up order issued
26 pursuant to sections 25-8-605 and 25-8-606 shall be accompanied

1 by or have incorporated in it the notice provided for in
2 subsection (1) of this section unless such notice has been given
3 prior to issuance of such cease and desist or clean-up order.

4 25-8-603. Hearing procedures for alleged violations.

5 (1) In any notice given under section 25-8-602, the division
6 shall require the alleged violator to answer each alleged
7 violation and may require the alleged violator to appear before
8 it for a public hearing to provide such answer. Such hearing
9 shall be held no sooner than fifteen days after service of the
10 notice; except that the division may set an earlier date for
11 hearing if it is requested by the alleged violator.

12 (2) If the division does not require an alleged violator to
13 appear for a public hearing, the alleged violator may request the
14 division to conduct such a hearing. Such request shall be in
15 writing and shall be filed with the division no later than thirty
16 days after service of a notice under section 25-8-602. If such a
17 request is filed, a hearing shall be held within a reasonable
18 time.

19 (3) If a hearing is held pursuant to the provisions of this
20 section, it shall be public and, if the division deems it
21 practicable, shall be held in any county in which the violation
22 is alleged to have occurred. The division shall permit all
23 parties to respond to the notice served under section 25-8-602,
24 to present evidence and argument on all issues, and to conduct
25 cross-examination required for full disclosure of the facts.

26 (4) Hearings held pursuant to this section shall be

1 conducted in accordance with section 24-4-105, C.R.S. 1973.

2 25-8-604. Suspension, modification, and revocation of
3 permit. Upon a finding and determination, after hearing, that a
4 violation of a permit provision has occurred, the division shall
5 suspend, modify, or revoke the pertinent permit or take such
6 other action with respect to the violation as may be authorized
7 pursuant to regulations promulgated by the commission.

8 25-8-605. Cease and desist orders. If the division
9 determines, with or without hearing, that a violation of any
10 provision of this article or of any order, permit, or control
11 regulation issued or promulgated under authority of this article
12 exists, the division may issue a cease and desist order. Such
13 order shall set forth the provision alleged to be violated, the
14 facts alleged to constitute the violation, and the time by which
15 the acts or practices complained of must be terminated.

16 25-8-606. Clean-up orders. The division may issue orders
17 to any person to clean up any material which he, his employee, or
18 his agent has accidentally or purposely dumped, spilled, or
19 otherwise deposited in or near state waters which may pollute
20 them. The division may also request the district attorney to
21 proceed and take appropriate action under section 16-13-305 and
22 sections 16-13-307 to 16-13-315, or section 18-4-511, C.R.S.
23 1973.

24 25-8-607. Restraining orders and injunctions. (1) If any
25 person fails to comply with a cease and desist order or clean-up
26 order that is not subject to a stay pending administrative or

1 judicial review, the division may request the district attorney
2 for the judicial district in which the alleged violation exists
3 or the attorney general to bring, and if so requested it shall be
4 the duty of such district attorney or the attorney general to
5 bring, a suit for a temporary restraining order, preliminary
6 injunction, or permanent injunction to prevent any further or
7 continued violation of such order. In any such suit the final
8 findings of the division, based upon evidence in the record,
9 shall be prima facie evidence of the facts found in such record.

10 (2) Suits under this section shall be brought in the
11 district or county court where the discharge occurs. Emergencies
12 shall be given precedence over all other matters pending in such
13 court. The institution of such injunction proceeding by the
14 division shall confer upon such court exclusive jurisdiction to
15 determine finally the subject matter of the proceeding; except
16 that the exclusive jurisdiction of the court shall apply only to
17 such injunctive proceeding and shall not preclude assessment of
18 civil penalties or any other enforcement action or sanction
19 authorized by this article.

20 25-8-608. Civil penalties. (1) Any person who violates any
21 provision of this article, or of any permit issued under this
22 article, or of any final cease and desist order or clean-up order
23 shall be subject to a civil penalty of not more than ten thousand
24 dollars per day for each day during which such violation occurs.

25 (2) Upon application of the division, penalties shall be
26 determined by the executive director or his designee and may be

1 collected by the division by action instituted in a court of
2 competent jurisdiction for collection of such penalty. The final
3 decision of the executive director or his designee may be
4 appealed to the commission. A stay of any order of the division
5 pending judicial review shall not relieve any person from any
6 liability under subsection (1) of this section, but the reason
7 for the request for judicial review shall be considered in the
8 determination of the amount of the penalty.

9 25-8-609. Criminal pollution of state waters - penalties.

10 (1) Any person who discharges any pollutant into any state
11 waters commits criminal pollution of state waters if such
12 discharge is made:

13 (a) In violation of any permit issued under this article;

14 or

15 (b) In violation of any cease and desist order or clean-up
16 order issued by the division which is final and not stayed by
17 court order; or

18 (c) Without a permit, if a permit is required by the
19 provisions of this article for such discharge, unless there is
20 then pending an application for such a permit; or

21 (d) In violation of any applicable control regulation,
22 unless a permit has been issued therefor or unless there is then
23 pending an application for such permit.

24 (2) Prosecution under paragraphs (a) and (d) of subsection
25 (1) of this section shall be commenced only upon complaint filed
26 by the division.

1 (3) Any person who commits criminal pollution of state
2 waters shall be fined, for each day the violation occurs, as
3 follows:

4 (a) If the violation is committed with criminal negligence
5 or recklessly, as defined in section 18-1-501, C.R.S. 1973, the
6 maximum fine shall be twelve thousand five hundred dollars.

7 (b) If the violation is committed knowingly or
8 intentionally, as defined in section 18-1-501, C.R.S. 1973, the
9 maximum fine shall be twenty-five thousand dollars.

10 (c) If two separate offenses under this article occur in
11 two separate occurrences during a period of two years, the
12 maximum fine for the second offense shall be double the amounts
13 specified in paragraph (a) or (b) of this subsection (3),
14 whichever is applicable.

15 25-8-610. Falsification and tampering. Any person who
16 knowingly makes any false statement, representation, or
17 certification in any application, record, report, plan, or other
18 document filed or required to be maintained under this article or
19 who falsifies, tampers with, or knowingly renders inaccurate any
20 monitoring device or method required to be maintained under this
21 article is guilty of a misdemeanor and, upon conviction thereof,
22 shall be punished by a fine of not more than ten thousand
23 dollars, or by imprisonment in the county jail for not more than
24 six months, or by both such fine and imprisonment.

25 25-8-611. Proceedings by other parties. (1) The factual or
26 legal basis for proceedings or other actions that result from a

1 violation of any control regulation inure solely to, and shall be
2 for the benefit of the people of, the state generally, and it is
3 not intended by this article, in any way, to create new private
4 rights or to enlarge existing private rights. A determination
5 that water pollution exists or that any standard has been
6 disregarded or violated, whether or not a proceeding or action
7 may be brought by the state, shall not create any presumption of
8 law or finding of fact which shall inure to or be for the benefit
9 of any person other than the state.

10 (2) A permit issued pursuant to this article may be
11 introduced in any court of law as evidence that the permittee's
12 activity is not a public or private nuisance. Introduction into
13 evidence of such permit and evidence of compliance with the
14 permit conditions shall constitute a prima facie case that the
15 activity to which the permit pertains is not a public or private
16 nuisance.

17 25-8-612. Remedies cumulative. (1) It is the purpose of
18 this article to provide additional and cumulative remedies to
19 prevent, control, and abate water pollution and protect water
20 quality.

21 (2) No action pursuant to section 25-8-609 shall bar
22 enforcement of any provision of this article or of any rule or
23 order issued pursuant to this article by any authorized means.

24 (3) Nothing in this article shall abridge or alter rights
25 of action or remedies existing on or after July 1, 1981, nor
26 shall any provision of this article or anything done by virtue of

1 this article be construed as estopping individuals, cities,
2 towns, counties, cities and counties, or duly constituted
3 political subdivisions of the state from the exercise of their
4 respective rights to suppress nuisances.

5 PART 7

6 DOMESTIC WASTEWATER TREATMENT WORKS

7 25-8-701. Definitions. As used in this part 7, unless the
8 context otherwise requires:

9 (1) "Construction" means entering into a contract for the
10 erection or physical placement of materials, equipment, piping,
11 earthwork, or buildings which are to be part of a domestic
12 wastewater treatment works.

13 (2) "Eligible project" means a project for the planning,
14 design, or construction of domestic wastewater treatment works or
15 of facilities for the discharge of wastewater or backwash water
16 from public water treatment plants which is, in the judgment of
17 the division, necessary for the accomplishment of the state water
18 quality control program, which conforms with applicable rules and
19 regulations of the commission, and which is eligible for federal
20 assistance under provisions of the federal act.

21 (3) "Federal assistance" means funds available to a
22 municipality, either directly or through allocation by the state,
23 from the federal government as grants for planning, design, or
24 construction of domestic wastewater treatment works, or funds
25 which are used for such planning, design, or construction, under
26 provisions of the federal act.

1 25-8-702. Approval for commencement of construction.

2 (1) No person shall commence the construction of any domestic
3 wastewater treatment works or the enlargement of the capacity of
4 an existing domestic wastewater treatment works, unless:

5 (a) The site location and the design for the construction
6 or expansion have been approved by the division;

7 (b) A permit for the discharge from such facility has been
8 issued pursuant to section 25-8-501 (5).

9 (2) In evaluating the suitability of a proposed site
10 location for a domestic wastewater treatment works, the division
11 shall consider the local long-range comprehensive planning for
12 the area as it affects water quality, any approved regional water
13 quality management plan for the area, and the need to consolidate
14 domestic wastewater treatment works to avoid proliferation of
15 small domestic wastewater treatment works.

16 (3) The decision of the division concerning approval of the
17 site location or design may be appealed to the commission. The
18 commission shall hold a hearing on the site location or design in
19 accordance with the provisions of section 24-4-105, C.R.S. 1973,
20 and the decision of the commission shall be final administrative
21 action for the purposes of section 24-4-106, C.R.S. 1973.

22 25-8-703. State contracts for construction of domestic
23 wastewater treatment works. (1) To meet the responsibility of
24 the state with respect to the protection of public health and to
25 assist municipalities, the division, in the name of the state and
26 to the extent of state funds appropriated therefor, may enter

1 into contracts with municipalities with populations of not more
2 than five thousand persons concerning the planning, design, or
3 construction of domestic wastewater treatment works.

4 (2) The division shall be the state agency for the
5 administration of funds appropriated for such project grants and
6 shall contract for grant projects only to the extent state
7 general funds have been appropriated. The division may use not
8 more than five percent of the funds appropriated for such project
9 grants for the administration and management thereof.

10 (3) Domestic wastewater treatment grants for municipalities
11 with populations of not more than five thousand persons shall be
12 authorized based upon water quality needs and public health
13 related problems. The commission shall promulgate project
14 categorization system for use in determining the relative
15 priority of proposed domestic wastewater projects. The division
16 shall review applications for state funds and may approve only
17 those applications which are consistent with the project
18 categorization system.

19 (4) During the review process the division shall seek from
20 the division of local government in the department of local
21 affairs a fiscal analysis of the applying municipality to
22 determine financial need. Based upon its fiscal analysis, the
23 division of local government shall issue or deny a certificate of
24 financial need. If a certificate of financial need is issued,
25 the division may authorize a state grant percentage contribution
26 to the project in accordance with the recommendation of the

1 division of local government and with the project categorization
2 adopted by the commission.

3 (5) Any contract entered into pursuant to this section
4 shall include an estimate of the reasonable lost of the project
5 as determined by the division and shall also include, but not be
6 limited to, provisions which set forth that the municipality
7 shall:

8 (a) Proceed expeditiously and complete the project in
9 accordance with design documents reviewed by the division;

10 (b) Provide a plan of operation to the division for
11 approval and shall commence operation of the domestic wastewater
12 treatment works on completion of the project;

13 (c) Not discontinue operation of the domestic wastewater
14 treatment works without prior approval of the division;

15 (d) Operate and maintain the domestic wastewater treatment
16 works in accordance with the plan of operation;

17 (e) Provide for the payment of its share of the project.

18 (6) In connection with each contract concerning an eligible
19 project, the division shall keep accurate records on the project,
20 including, but not limited to, records of the amount of payment
21 by the state and the amount of federal assistance received by the
22 municipality. Such records may establish the basis for
23 application for federal reimbursement of such payments made by
24 the state, and the division is authorized to make such
25 application in appropriate cases.

26 SECTION 2. 13-6-104, Colorado Revised Statutes 1973, as

1 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:
2 13-6-104. Original civil jurisdiction. (7) The county
3 court shall have concurrent original jurisdiction with the
4 district court to hear actions brought pursuant to section
5 25-8-607, C.R.S. 1973.

6 SECTION 3. 24-1-135, Colorado Revised Statutes 1973, as
7 amended, is amended to read:

8 24-1-135. Effect of congressional redistricting. Effective
9 January 1, 1973, the terms of office of persons appointed
10 pursuant to sections 11-2-102, 12-22-103, 12-35-104, 12-54-104,
11 23-60-104, 24-32-308, 24-32-706, 24-65-103, 25-1-103, ~~25-8-201~~;
12 26-10-101, 33-42-105, 34-60-104, and 35-65-105, C.R.S. 1973,
13 shall terminate. Prior thereto, the appointing authority
14 designated by law shall appoint members to such boards,
15 commissions, and committees for terms to commence on January 1,
16 1973, and to expire on the date the terms of the predecessors in
17 office of such members would have expired, and any person whose
18 term of office is terminated by this section may be reappointed
19 effective January 1, 1973, and, for the purposes of such
20 reappointment, shall not be deemed to succeed himself.
21 Appointments thereafter shall be made as prescribed by law.

22 SECTION 4. 39-1-102 (12.1) (a) (II), Colorado Revised
23 Statutes 1973, as amended, is amended to read:

24 39-1-102. Definitions. (12.1) (a) (II) For the primary
25 purpose of eliminating, reducing, or preventing the release of
26 pollutants, as defined in section ~~25-8-103-(11)~~ 25-8-103 (15),

1 C.R.S. 1973, into state waters to the extent that such property
2 is certified as pollution control property in accordance with the
3 provisions of section 39-4-110 or 39-5-131. The term includes any
4 treatment works, control devices, disposal systems, machinery,
5 equipment, buildings, structures, land, or other real or personal
6 property, or any parts or accessories thereof, installed,
7 constructed, or used for the primary purpose of reducing,
8 controlling, or disposing of pollutants which if released into
9 state waters could cause water pollution. It does not include any
10 residential sewage disposal system or domestic sewer lines.

11 SECTION 5. Effective date. This act shall take effect July
12 1, 1981.

13 SECTION 6. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary for
15 the immediate preservation of the public peace, health, and
16 safety.

BILL 6

A BILL FOR AN ACT

1 CONCERNING PERMITS FOR DISCHARGE OF DREDGED OR FILL MATERIAL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides statutory authority for the state engineer and the division of water resources of the department of natural resources to assume control of the permit program required by section 404 of the federal "Clean Water Act".

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. Article 8 of title 25, Colorado Revised Statutes
4 1973, as amended, is amended BY THE ADDITION OF A NEW PART to
5 read:

6 PART 8

7 DREDGE AND FILL PERMIT SYSTEM

8 25-8-801. Definitions. As used in this part 8, unless the
9 context otherwise requires:

10 (1) "Division" means the division of water resources of the
11 department of natural resources.

12 (2) "Dredged material" means material that is excavated or

1 dredged from state surface waters or wetlands.

2 (3) "Federal act" means the "Federal Water Pollution
3 Control Act", commonly referred to as the "Clean Water Act".

4 (4) "Fill material" means any material used for the primary
5 purpose of replacing an aquatic area with dry land or of changing
6 the bottom elevation of a waterway.

7 25-8-802. Permits required for discharge of dredged
8 material or fill material - administration. (1) No person shall
9 discharge any dredged material or fill material into any state
10 surface waters without first having obtained a permit from the
11 state engineer for such discharge. The purpose for requiring
12 permits for dredge and fill activities is for the protection and
13 maintenance of water quality standards and the minimizing of
14 adverse effects on the aquatic environment. Each application for
15 a permit duly filed under the federal act shall be deemed to be a
16 permit application filed under this part 8, and each permit
17 issued pursuant to the federal act shall be deemed to be a permit
18 issued under this part 8.

19 (2) The state engineer shall examine applications for and
20 may issue, suspend, revoke, modify, deny, or otherwise administer
21 permits for the discharge of dredged material or fill material
22 into state surface waters. Such administration shall be in
23 accordance with the provisions of this article and regulations
24 promulgated by the state engineer.

25 (3) The state engineer shall promulgate such regulations as
26 may be necessary and proper for the orderly and effective

1 administration of permits for the discharge of dredged material
2 or fill material. Such regulations shall be consistent with the
3 provisions of this article and with federal requirements and
4 shall be in furtherance of the policy contained in section
5 25-8-102 and may pertain to and implement, among other matters,
6 permit and permit application contents, procedures, requirements,
7 and restrictions with respect to the following:

8 (a) Identification and address of the owner and operator of
9 the activity which is to be permitted;

10 (b) Location, quantity, and quality characteristics of the
11 permitted discharge;

12 (c) Equipment and procedures required for mandatory
13 monitoring as well as record-keeping and reporting requirements;

14 (d) Schedules of compliance;

15 (e) Procedures to be followed by division personnel for
16 entering and inspecting premises;

17 (f) Submission of pertinent plans and specifications for
18 the activity which is to be permitted;

19 (g) Restrictions on transfers of the permit;

20 (h) Procedures to be followed in the event of the expansion
21 or modification of the activity to be permitted;

22 (i) Duration of the permit, not to exceed five years, and
23 renewal procedures;

24 (j) Authority of the state engineer to require changes in
25 plans and specifications for the activity which is to be
26 permitted as a condition for the issuance of a permit;

1 (k) Authority of the state engineer to evaluate
2 economically and technically feasible alterations to the proposed
3 activity which are also less environmentally damaging to the
4 aquatic environment;

5 (l) Notice requirements of any intent to take an action
6 that is likely to result in a new or altered discharge;

7 (m) Applicable standards and requirements which assure
8 compliance with sections 307, 403, and 404(b)(1) of the federal
9 act;

10 (n) Procedures for issuing appropriate notice of pending
11 permit applications;

12 (o) Procedures for notifying and consulting with another
13 state whose waters may be affected by the issuance of a permit;

14 (p) Procedures to coordinate with federal and federal-state
15 water-related planning and review processes.

16 (4) Nothing in any permit shall ever be construed to
17 prevent or limit the application of any emergency power of the
18 state engineer.

19 (5) The state engineer may authorize general permits to be
20 issued which authorize certain dredge or fill activities on a
21 state or regional basis for certain clearly described categories
22 of activities which will cause minimal adverse environmental
23 effects on water quality and which are in furtherance of the
24 policy contained in section 25-8-102.

25 (6) The state engineer is authorized to develop best
26 management practices for the construction and maintenance of farm

1 roads, forest roads, or temporary roads for moving mining
2 equipment.

3 (7) This part 8 shall not be administered so as to
4 supersede or abrogate in any way the provisions of articles 80 to
5 93 of title 37, C.R.S. 1973.

6 25-8-803. Activities exempted. (1) A dredge and fill
7 permit for the discharge of dredged material or fill material
8 shall not be required for any activities exempted under the
9 federal act.

10 (2) The provisions of any dredge and fill permit which is
11 required shall not be any more stringent than, and shall not
12 contain any condition for monitoring or reporting in excess of,
13 those required by the federal act or regulations.

14 25-8-804. Application - fee - public participation.

15 (1) The permits shall run from the dates of issuance, and the
16 annual fees shall be paid to the state engineer. The state
17 engineer shall establish a fee schedule designed to defray the
18 cost of administering the dredge and fill permit program.

19 (2) Upon receipt of an application, the state engineer
20 shall prepare a tentative determination to issue or deny the
21 permit and, if it is to be issued, its tentative determination as
22 to the terms and conditions of such permit.

23 (3) Public notice of every complete application for a
24 dredge and fill permit shall be circulated in a manner designed
25 to inform interested and potentially interested persons of the
26 proposed discharge and of the proposed determination to issue or

1 deny a permit. Procedures for the circulation of public notice
2 shall be established by the state engineer and shall include at
3 least the following:

4 (a) Notice shall be circulated within the geographical
5 areas of the proposed discharge.

6 (b) Notice shall be mailed to any person or group upon
7 request.

8 (c) Upon request, the state engineer shall add the name of
9 any person or group to a mailing list of persons or groups
10 receiving copies of notices for all permit applications within
11 this state or within a certain geographical area.

12 (4) The state engineer shall promulgate such regulations as
13 are necessary and appropriate to provide an opportunity for a
14 public hearing, when appropriate, prior to the granting or denial
15 of a dredge and fill permit by him.

16 25-8-805. Permits - when required and when prohibited.

17 (1) The state engineer shall issue a dredge and fill permit in
18 accordance with regulations promulgated under this part 8 when he
19 has determined that federal requirements and the provisions of
20 this part 8 have been met with respect to both the application
21 and the proposed permit.

22 (2) No discharge shall be permitted that by itself or in
23 combination with other pollution will result in the pollution of
24 receiving waters in excess of the pollution permitted by an
25 applicable water quality standard unless the permit is
26 conditioned to prevent such a violation.

1 (3) Applicants for permits shall be advised within twenty
2 days after receipt of any application, or supplement thereto, if
3 and in what respect the application or supplement is incomplete.
4 Upon failure of the state engineer to notify the applicant as
5 provided in this subsection (3), the application shall be deemed
6 complete. Within thirty days after receipt of a complete permit
7 application or, if public comment or hearing is required, within
8 thirty days after the comment period or hearing, the state
9 engineer shall grant the permit application if he finds that the
10 proposed source or activity will meet the requirements of
11 applicable provisions of state law and the regulations of the
12 state engineer and will not cause a violation of water quality
13 standards.

14 (4) In any case in which a permit for a discharge has been
15 applied for but final administrative disposition of such complete
16 application, as provided in subsection (3) of this section, has
17 not been made within thirty days, such discharge shall not be a
18 violation of any of the provisions of this article or the
19 regulations promulgated under this article unless the state
20 engineer proves that absence of final administrative disposition
21 of such application has resulted from the failure of the
22 applicant to furnish information reasonably required or requested
23 in order to process an application.

24 25-8-806. Delegation of administrative duties. The state
25 engineer is authorized to delegate administrative duties required
26 by this part 8 to the department of health.

1 SECTION 2. Effective date. This act shall take effect July
2 1, 1981.

3 SECTION 3. Safety clause. The general assembly hereby
4 finds, determines, and declares that this act is necessary for
5 the immediate preservation of the public peace, health, and
6 safety.

BILL 7

A BILL FOR AN ACT

1 CONCERNING INITIAL DETERMINATIONS WITH RESPECT TO APPLICATIONS
2 REGARDING WATER RIGHTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides that the division engineer shall make the initial determinations with respect to applications regarding water rights. Provides that the state engineer shall review such determinations.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 37-92-204(2), Colorado Revised Statutes 1973, is
5 amended to read:

6 37-92-204. Water clerks - duties. (2) The water clerk
7 shall maintain the records of all proceedings related to
8 appropriations, determinations of water rights and conditional
9 water rights and the amount and priority thereof, changes of
10 water rights, plans for augmentation, abandonment of water rights
11 and conditional water rights, and the records of all proceedings
12 of the water judge and of all rulings and actions of the referee

1 STATE ENGINEER OR DIVISION ENGINEER required by this article to
2 be filed with the water clerk. The clerks of the various
3 district courts in each division, if requested by the water clerk
4 of that division, shall transfer to the water clerk duplicate
5 copies of any of the files, or parts thereof, of cases relating
6 to water rights. The water clerk shall perform such other duties
7 as may be prescribed by the water judge or the supreme court.

8 SECTION 2. 37-92-301 (2), (4), and (5), Colorado Revised
9 Statutes 1973, as amended, are amended to read:

10 37-92-301. Administration and distribution of waters.

11 (2) In accordance with procedures specified in this article, the
12 ~~referee-in~~ DIVISION ENGINEER OF each division , WITH THE APPROVAL
13 OF THE STATE ENGINEER, shall in the first instance have the
14 authority and duty to rule upon determinations of water rights
15 and conditional water rights and the amount and priority thereof,
16 including a determination that a conditional water right has
17 become a water right by reason of completion of the
18 appropriation, determinations with respect to changes of water
19 rights, plans for augmentation, approvals of reasonable diligence
20 in the development of appropriations under conditional water
21 rights, and determinations of abandonment of water rights or
22 conditional water rights; and he may include in any ruling for a
23 determination of water right or conditional water right any use
24 or combination of uses, any diversion or combination of points or
25 methods of diversion, and any place or alternate places of
26 storage and may approve any change of water right as defined in

1 this article.

2 (4) In every fourth calendar year after the calendar year
3 in which a determination is made with respect to a conditional
4 water right, the owner or user thereof, if he desires to maintain
5 the same, shall obtain a finding by the referee DIVISION ENGINEER
6 of reasonable diligence in the development of the proposed
7 appropriation, or said conditional water right shall be
8 considered abandoned. The ruling of the referee DIVISION
9 ENGINEER and the judgment and decree of the court determining a
10 conditional water right shall specify the month in such calendar
11 year in which application for a quadrennial finding of reasonable
12 diligence shall be filed with the water clerk pursuant to section
13 37-92-302 (1).

14 (5) In all proceedings for a change of water right and for
15 approval of reasonable diligence with respect to a conditional
16 water right, it is appropriate for the referee DIVISION ENGINEER
17 and the courts to consider abandonment of all or any part of such
18 water right or conditional water right.

19 SECTION 3. 37-92-302 (3)(c), Colorado Revised Statutes
20 1973, is amended to read:

21 37-92-302. Applications for water rights or changes of such
22 rights - plans for augmentation. (3)(c) Not later than the end
23 of such month, a copy of such resume shall be mailed to each
24 person who the referee DIVISION ENGINEER has reason to believe
25 would be affected or who has requested the same by submitting his
26 name and address to the water clerk. The water clerk shall

1 maintain a mailing list of such names and addresses so submitted,
2 and persons desiring to have their names and addresses retained
3 on such list must resubmit the same by January 31. Persons who
4 have not so resubmitted their names and addresses shall not be
5 retained on such list, but they may submit their names and
6 addresses at any time thereafter for inclusion on the list
7 subject to the foregoing. In order to obtain a copy of a resume
8 for a particular month, a person's name and address must be
9 received not later than the fifth day of the month of publication
10 of the resume. A fee of twelve dollars shall be payable for
11 inclusion on the mailing list for a calendar year prorated at one
12 dollar per month for a lesser period. A copy of the resume shall
13 be furnished without charge to the state engineer.~~and--the~~
14 ~~appropriate-division-engineer:~~

15 SECTION 4. 37-92-302 (4), Colorado Revised Statutes 1973,
16 is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17 37-92-302. Applications for water rights or changes of such
18 rights - plans for augmentation. (4) The division engineer shall
19 make such investigation as is necessary to determine whether or
20 not the statements in the applications and statements of
21 opposition are true. He shall make such other investigation as
22 may be necessary in his opinion so that he will be fully advised
23 with respect to the subject matter of the application and the
24 statements of opposition. The state engineer and the division
25 engineers may consult with the Colorado water conservation board
26 and such other state agencies as may be appropriate.

1 SECTION 5. 37-92-303, Colorado Revised Statutes 1973, is
2 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

3 37-92-303. Rulings by the division engineer. Within sixty
4 days from the last day on which statements of opposition may be
5 filed with respect to a particular application, unless such time
6 is extended by the division engineer for good cause shown, the
7 division engineer shall make his ruling on the application. The
8 ruling may disapprove the application in whole or in part in the
9 discretion of the division engineer even though no statements of
10 opposition have been filed. Before the ruling of the division
11 engineer is entered, it shall be submitted to the state engineer,
12 who may specify changes to be made therein or approve the ruling
13 as submitted. The ruling of the division engineer shall give the
14 names of the applicants with respect to each water right or
15 conditional water right involved, the location of the point of
16 diversion or place of storage, the means of diversion, the type
17 of use, the amount and priority, and other pertinent information.
18 In the case of a plan for augmentation, the ruling shall include
19 a complete statement of such plan as approved or disapproved.
20 The ruling shall be filed with the water clerk promptly after it
21 is entered and shall become effective upon such filing, subject
22 to judicial review pursuant to section 37-92-304. A copy of such
23 ruling shall be mailed by the water clerk by certified or
24 registered mail to the applicant and to each person who has filed
25 a statement of opposition.

26 SECTION 6. 37-92-304 (1), (2), (3), (5), and (11), Colorado

1 Revised Statutes 1973, are amended to read:

2 37-92-304. Proceedings by the water judge. (1) On the
3 first Tuesday of March and September in division 1, the second
4 Tuesday of March and September in division 2, the third Tuesday
5 of March and September in division 3, the fourth Tuesday of March
6 and September in division 4, the first Tuesday of April and
7 October in division 5, the second Tuesday of April and October in
8 division 6, and the third Tuesday of April and October in
9 division 7, the water judge for the particular division shall set
10 for hearing matters in which protests have been filed or orders
11 of rereferral entered by the referee during the preceding six
12 calendar months. Such matters shall generally be considered by
13 the water judge in chronological order; however, the dates and
14 times of hearings shall be adjusted by the water judge at his
15 discretion for the convenience of persons involved or for other
16 reasonable cause.

17 (2) Within twenty days after the date of mailing thereof,
18 any person who wishes to protest a ruling of the referee DIVISION
19 ENGINEER shall file a written protest with the water clerk and a
20 copy thereof with the referee DIVISION ENGINEER. Such protest
21 shall clearly identify the ruling being contested and shall state
22 the factual and legal grounds for the protest. Promptly after
23 the same is filed, a copy of such protest shall be sent by the
24 water clerk by certified or registered mail to the applicant and
25 to persons who have filed statements of opposition; except that
26 no copy need be sent to the protestant. Upon filing of such a

1 protest, the protestant shall pay a filing fee of twenty dollars
2 plus an additional amount which is sufficient to cover the costs
3 of mailing the copies thereof as required in this subsection (2);
4 except that no person who has already entered an appearance,
5 either as an applicant or as an objector, in the matter in which
6 the protest is made shall be charged the twenty-dollar filing
7 fee.

8 (3) As to the rulings with respect to which a protest has
9 been filed, ~~and-as-to-matters-which-have-been-rereferred-to-the~~
10 ~~water-judge-by-the-referee~~; there shall be hearings conducted in
11 accordance with the Colorado rules of civil procedure; except
12 that no pleadings shall be required. The court shall not be
13 bound by findings of the referee DIVISION ENGINEER. The division
14 engineer shall appear to furnish pertinent information and may be
15 examined by any party, and ~~if-requested-by-the-division-engineer;~~
16 ~~the--attorney--general--shall--represent--the--division--engineer~~ THE
17 DIVISION ENGINEER OR THE STATE ENGINEER MAY APPEAR FOR THE
18 PURPOSE OF PARTICIPATING IN THE HEARING IN SUPPORT OF THE RULING
19 OF THE DIVISION ENGINEER. THE ATTORNEY GENERAL SHALL, IF SO
20 REQUESTED, REPRESENT THE DIVISION ENGINEER OR THE STATE ENGINEER.

21 The applicant shall appear either in person or by counsel and
22 shall have the burden of sustaining the application, whether it
23 has been granted or denied by the ruling ~~or-been-rereferred-by~~
24 ~~the-referee~~ and in the case of a change of water right the burden
25 of showing absence of any injurious effect alleged in the protest
26 or a statement of opposition. All persons interested shall be

1 permitted to participate in the hearing either in person or by
2 counsel if they enter their appearance in writing prior to the
3 date on which hearings are to commence as specified in subsection
4 (1) of this section. Each interested person, if such person has
5 not already appeared in the matter in which the hearing is to be
6 held and paid an appropriate filing or docket fee, shall pay a
7 docket fee of twenty dollars upon filing the entry of appearance
8 under this subsection (3). Such entry of appearance shall
9 identify the matter with respect to which the appearance is being
10 made. Service of copies of applications, statements of
11 opposition, protests, or any other documents is not necessary for
12 jurisdictional purposes, but the water judge may order service of
13 copies of any documents on any persons and in any manner which he
14 deems appropriate.

15 (5) A decision of the water judge with respect to a
16 protested ruling of the referee DIVISION ENGINEER shall either
17 confirm, modify, reverse, or reverse and remand such ruling, and
18 in the case of the modification of a ruling the decision may
19 grant a different priority than that granted by the referee
20 DIVISION ENGINEER and may specify its own terms and conditions
21 with respect to a change of water right or plan for augmentation.
22 ~~A--decision--of--the--water--judge--in--regard--to--a--matter--which--has~~
23 ~~been--referred--by--the--referee--shall--dispose--fully--of--such--matter~~
24 ~~and--may--contain--such--provisions--as--the--water--judge--deems~~
25 appropriate. The water judge shall confirm and approve by
26 judgment and decree a ruling of the referee DIVISION ENGINEER

1 with respect to which no protest was filed, but the water judge
2 may reverse, or reverse and remand, any such ruling which he
3 deems to be contrary to law.

4 (11) If any application is granted in whole or in part by
5 the referee DIVISION ENGINEER pursuant to this article, any
6 person who asserts that he will be damaged by any acts authorized
7 by such ruling may, upon payment of a filing fee of twenty
8 dollars plus an additional amount which is sufficient to cover
9 the costs of service of such notice of the proceedings, by
10 personal service or otherwise, as the court may direct, within
11 thirty days after the issuance thereof apply ex parte to the
12 water judge of such division for an order directed to the
13 applicant to show cause why the operation of such ruling should
14 not be stayed until judicial review thereof under the provisions
15 of this section. Such application shall be verified, shall have
16 attached to it a copy of the ruling of the referee DIVISION
17 ENGINEER, and shall allege facts upon the basis of which it is
18 claimed that damages are likely to result from the acts
19 authorized thereby. If the application for an order to show
20 cause is found to be in proper form, the court shall issue its
21 order to show cause and set the same down for hearing. At the
22 hearing on the order to show cause, the party to whom such order
23 is directed shall have the burden of proving that no material
24 damage is likely to result from the operations authorized by the
25 ruling of the referee DIVISION ENGINEER. The court shall
26 thereupon make its findings, and, if it finds that material

1 damage is likely to result to the party at whose instance the
2 show cause order was issued prior to the time that judicial
3 review of the ruling of the referee DIVISION ENGINEER can be had
4 pursuant to the provisions of this section, he shall stay the
5 effectiveness of said ruling pending such judicial review.

6 SECTION 7. 37-92-305 (3), (6), and (8), Colorado Revised
7 Statutes 1973, as amended, are amended to read:

8 37-92-305. Standards with respect to rulings of the
9 division engineer and decisions of the water judge. (3) A
10 change of water right or plan for augmentation, including water
11 exchange project, shall be approved if such change or plan will
12 not injuriously affect the owner of or persons entitled to use
13 water under a vested water right or a decreed conditional water
14 right. If it is determined that the proposed change or plan as
15 presented in the application would cause such injurious effect,
16 the referee DIVISION ENGINEER or the water judge, as the case may
17 be, shall afford the applicant or any person opposed to the
18 application an opportunity to propose terms or conditions which
19 would prevent such injurious effect.

20 (6) In the case of an application for determination of a
21 water right or a conditional water right, a determination with
22 respect to a change of a water right or approval of a plan for
23 augmentation, which requires construction of a well, the-referee
24 or the water judge;-as--the--case--may--be; shall consider the
25 findings of the state engineer, made pursuant to section
26 37-90-137, which granted or denied the well permit, and may grant

1 a conditional decree unless a denial of such permit was justified
2 under said section, and in case a final decree or conditional
3 decree is granted by the court, the state engineer shall issue
4 said permit.

5 (8) In reviewing a proposed plan for augmentation and in
6 considering terms and conditions which may be necessary to avoid
7 injury, the referee DIVISION ENGINEER or the water judge shall
8 consider the depletions from an applicant's use or proposed use
9 of water, in quantity and in time, the amount and timing of
10 augmentation water which would be provided by the applicant, and
11 the existence, if any, of injury to any owner of or persons
12 entitled to use water under a vested water right or a decreed
13 conditional water right. A plan for augmentation shall be
14 sufficient to permit the continuation of diversions when
15 curtailment would otherwise be required to meet a valid senior
16 call for water, to the extent that the applicant shall provide
17 replacement water necessary to meet the lawful requirements of a
18 senior diverter at the time and location and to the extent the
19 senior would be deprived of his lawful entitlement by the
20 applicant's diversion. Decrees approving plans for augmentation
21 shall require that the state engineer curtail all
22 out-of-priority diversions, the depletions from which are not so
23 replaced as to prevent injury to vested water rights.

24 SECTION 8. 37-92-501 (2)(h)(I), Colorado Revised Statutes
25 1973, is amended to read:

26 37-92-501. Jurisdiction over water - rules and regulations.

1 (2) (h) (I) Any person desiring to protest a proposed rule and
2 regulation may do so in the same manner as provided in section
3 37-92-304 for the protest of a ruling of a referee DIVISION
4 ENGINEER, and the water judge shall hear and dispose of the same
5 as promptly as possible.

6 SECTION 9. Repeal. 37-92-203 (4), (5), (6), and (7),
7 Colorado Revised Statutes 1973, are repealed.

8 SECTION 10. Effective date. This act shall take effect
9 July 1, 1981.

10 SECTION 11. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary for
12 the immediate preservation of the public peace, health, and
13 safety.

BILL 8

A BILL FOR AN ACT

1 CONCERNING APPROVAL OF AN EXCHANGE OF WATER.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for applications for approval of a proposed or existing exchange of water.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 37-92-302 (1) (a), Colorado Revised Statutes
4 1973, is amended to read:

5 37-92-302. Applications for water rights or changes of such
6 rights - plans for augmentation. (1) (a) Any person who desires
7 a determination of a water right or a conditional water right and
8 the amount and priority thereof, including a determination that a
9 conditional water right has become a water right by reason of the
10 completion of the appropriation, a determination with respect to
11 a change of a water right, approval of a plan for augmentation,
12 or quadrennial finding of reasonable diligence, OR APPROVAL OF A
13 PROPOSED OR EXISTING EXCHANGE OF WATER UNDER SECTION 37-80-120 OR

1 37-83-104, shall file with the water clerk in quadruplicate a
2 verified application setting forth facts supporting the ruling
3 sought, a copy of which shall be sent by the water clerk to the
4 state engineer and the division engineer.

5 SECTION 2. 37-92-305, Colorado Revised Statutes 1973, as
6 amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

7 37-92-305. Standards with respect to rulings of the referee
8 and decisions of the water judge. (10) If an application filed
9 under section 37-92-302 for approval of an existing exchange of
10 water is approved, the original priority date or priority dates
11 of the exchange shall be recognized and preserved unless such
12 recognition or preservation would be contrary to the manner in
13 which such exchange has been administered.

14 SECTION 3. Safety clause. The general assembly hereby
15 finds, determines, and declares that this act is necessary for
16 the immediate preservation of the public peace, health, and
17 safety.

BILL 9

A BILL FOR AN ACT

1 CONCERNING APPLICATIONS FOR WATER RIGHTS WHICH WILL REQUIRE
2 CONSTRUCTION OF A WELL.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires an applicant for a water right which will require construction of a well to obtain a permit for construction of the well from the state engineer before the water right application is submitted.

3 Be it enacted by the General Assembly of the State of Colorado:

4
5 SECTION 1. 37-92-302 (2), Colorado Revised Statutes 1973,
6 is amended to read:

7 37-92-302. Applications for water rights or changes of such
8 rights - plans for augmentation. (2) The water judges of the
9 various divisions shall jointly prepare and supply to the water
10 clerks standard forms which shall be used for such applications
11 and statements of opposition. These forms shall designate the
12 information to be supplied and may be modified from time to time.

1 Supplemental material may be submitted with any form. In the
2 case of applications for a determination of a water right or a
3 conditional water right, the forms shall require, among other
4 things, a legal description of the diversion or proposed
5 diversion, a description of the source of the water, the date of
6 the initiation of the appropriation or proposed appropriation,
7 the amount of water claimed, and the use or proposed use of the
8 water. In the case of applications for a change of water right,
9 the forms shall require, among other things, a description of the
10 water right or conditional water right for which the change is
11 sought, the amount and priority of the water right or conditional
12 water right, and a description of the proposed change of water
13 right. In the case of applications for approval of a plan for
14 augmentation, the forms shall require a complete statement of
15 such plan. In the case of applications which will require
16 construction of a well, ~~no decision; ruling; or order granting a~~
17 ~~water right shall be entered until~~ the application shall be
18 supplemented by a permit to construct a well ~~or evidence of its~~
19 ~~denial~~ ISSUED by the state engineer pursuant to section
20 37-90-137. ~~or evidence of the state engineer's failure to grant~~
21 ~~or deny such a permit within six months after application to the~~
22 ~~state engineer therefor.~~

23 SECTION 2. 37-92-305 (6), Colorado Revised Statutes 1973,
24 is amended to read:

25 37-92-305. Standards with respect to rulings of the referee
26 and decisions of the water judge. (6) In the case of an

1 application for determination of a water right or a conditional
2 water right OR a determination with respect to a change of a
3 water right or approval of a plan for augmentation which requires
4 construction of a well, the referee or the water judge, as the
5 case may be, shall consider the findings of the state engineer
6 made--pursuant--to--section--37-90-137; which granted or-denied the
7 well permit. and-may-grant-a-conditional-decree-unless-a--denial
8 of--such--permit--was-justified-under-said-section;-and-in-case-a
9 final-decree-or-conditional-decree-is-granted-by-the--court;--the
10 state--engineer-shall-issue-said-permit SUCH AN APPLICATION SHALL
11 BE FILED WHILE SUCH WELL PERMIT IS IN EFFECT, AND, IF SO FILED,
12 THE DATE FOR EXPIRATION OF THE WELL PERMIT SHALL BE EXTENDED ONE
13 YEAR FROM THE DATE OF THE JUDGMENT AND DECREE ENTERED ON SUCH
14 APPLICATION, IF SUCH EXTENSION IS NECESSARY TO PREVENT EARLIER
15 EXPIRATION.

16 SECTION 3. Effective date - applicability. This act shall
17 take effect July 1, 1981, and shall apply to applications filed
18 on and after said date.

19 SECTION 4. Safety clause. The general assembly hereby
20 finds, determines, and declares that this act is necessary for
21 the immediate preservation of the public peace, health, and
22 safety.

BILL 10

A BILL FOR AN ACT

1 AMENDING 37-92-602 (1) (b), COLORADO REVISED STATUTES 1973,
2 LIMITING THE EXEMPTION OF DOMESTIC WELLS FROM WATER RIGHT
3 AND DETERMINATION STATUTES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Limits the exemption of domestic wells from water right determination and administration statutes.

4 Be it enacted by the General Assembly of the State of Colorado:

5 SECTION 1. 37-92-602 (1) (b), Colorado Revised Statutes
6 1973, is amended to read;

7 37-92-602. Exemptions - presumptions. (1) (b) Wells not
8 exceeding fifteen gallons per minute of production and used ONLY
9 ON WORKING FARMS AND RANCHES for ordinary household purposes,
10 fire protection, the watering of poultry, domestic animals, and
11 livestock, ~~on-farms-and-ranches~~; and the irrigation of not over
12 one acre of home gardens and lawns; ~~but-not-used-for-more-than~~

1 three-single-family-dwellings;

2 SECTION 2. Applicability. This act shall apply to the
3 granting of permits on or after the effective date of this act.

4 SECTION 3. Safety clause. The general assembly hereby
5 finds, determines, and declares that this act is necessary for
6 the immediate preservation of the public peace, health, and
7 safety.

BILL 11

A BILL FOR AN ACT

1 CONCERNING THE DIVISION OF MINES, AND MAKING AN APPROPRIATION FOR
2 THE USE THEREOF.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Exempts large coal and mineral mines which are inspected by the federal government from state inspection. Continues state inspection of small mineral mines. Exempts sand and gravel operations and earthen dams from state inspection.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 34-22-101, Colorado Revised Statutes 1973, as
5 amended, is amended to read:

6 34-22-101. Mines examined - report. It is the duty of the
7 ~~assistant-director-for-coal-mining~~ CHIEF COAL MINE INSPECTOR or
8 his district inspector of coal mines to enter into and examine
9 thoroughly each and every coal mine in the state at least four
10 times annually, and as often as to him seems necessary or
11 expedient, to see that the provisions of articles 20 to 30 of
12 this title are observed and strictly carried out and to examine

1 the surface areas adjacent to, or used in conjunction with, any
2 underground coal mining operation, and which areas are disturbed
3 or affected on or after July 1, 1969, and the methods of
4 stabilization, if necessary and practical, employed in or on such
5 areas to prevent landslides, floods, or erosion; EXCEPT THAT THE
6 CHIEF COAL MINE INSPECTOR OR HIS DISTRICT INSPECTOR OF COAL MINES
7 SHALL NOT EXAMINE PURSUANT TO THIS SECTION THE OPERATION OF A
8 COAL MINE IN WHICH AN AVERAGE OF MORE THAN ONE HUNDRED FULL-TIME
9 PRODUCTION EMPLOYEES WERE EMPLOYED DURING THE PRECEDING CALENDAR
10 YEAR. Said ~~assistant--director~~ CHIEF COAL MINE INSPECTOR or
11 district inspectors, or both, may enter, inspect, and examine any
12 coal mine WHICH IS SUBJECT TO EXAMINATION PURSUANT TO THIS
13 SECTION, and the works and machinery belonging thereto, at all
14 times, by night or by day, and the owner and the employees may
15 each designate a man who shall accompany the inspector during the
16 state inspection of the mine. After each inspection the
17 inspector shall make a report of the condition of the mine, one
18 copy of which shall be placed on file in the office of the
19 ~~assistant-director-for-coal-mining~~ CHIEF COAL MINE INSPECTOR and
20 three copies of which shall be placed in the hands of the owner;
21 all of such copies shall show the important recommendations, and
22 one of them shall be posted by the owner in a conspicuous place
23 under glass cover outside the mine office where it can be read
24 and where it shall remain until the next state inspection report
25 is issued. Within thirty days after receiving the inspector's
26 report wherein any important recommendations are made, the owner

1 shall send a report to the ~~assistant-director-for-coal-mining~~
2 CHIEF COAL MINE INSPECTOR stating what steps have been taken to
3 comply with such recommendations. THE REVISOR OF STATUTES IS
4 AUTHORIZED TO MAKE SUCH CHANGES IN OTHER PROVISIONS OF THE
5 STATUTES AS MAY BE NECESSARY TO CONFORM SUCH PROVISIONS TO THE
6 CHANGE OF NAME OF THE ASSISTANT DIRECTOR FOR COAL MINES TO THE
7 CHIEF COAL MINE INSPECTOR.

8 SECTION 2. 34-22-102, Colorado Revised Statutes 1973, is
9 amended to read:

10 34-22-102. Dangerous conditions - close mines - review.

11 When any owner so operates a coal mine WHICH IS SUBJECT TO
12 EXAMINATION PURSUANT TO SECTION 34-22-101, or any part thereof,
13 that, through the violations of any of the provisions of articles
14 20 to 30 of this title, in the opinion of the district inspector
15 in whose district the mine is situated, there is imminent danger
16 to the lives, health, or safety of the miners or employees, such
17 district inspector shall at once notify the person in charge of
18 said mine in which the dangerous condition exists to immediately
19 remove it, and in case of his refusal or failure to comply with
20 the inspector's instructions without delay, the district
21 inspector shall order the mine or such dangerous portions thereof
22 cleared of all persons other than those he deems actually
23 necessary and competent to remove or care for the dangerous
24 conditions. On closing any mine or dangerous part of a mine
25 under this section, the district inspector shall at once notify
26 the chief inspector by telephone or telegraph, and on receipt of

1 such notification, the chief inspector may sustain or reverse the
2 closure action and, if he deems it necessary, order the district
3 inspector to place a competent person at the mine, who shall
4 remain there until the dangerous condition is removed, and the
5 person so placed shall have power to prevent anyone from entering
6 the mine or such dangerous portion of a mine other than those
7 allowed by the district inspector. The expense of such competent
8 person shall be paid by the owner. However, the owner shall
9 always have the privilege to apply to the district court for an
10 injunction to enjoin the chief COAL MINE inspector of-coal-mines
11 from continuing to prevent the operation of the mine.

12 SECTION 3. 34-22-103, Colorado Revised Statutes 1973, as
13 amended, is amended to read:

14 34-22-103. Inadequate stabilization - enforcement. When
15 the ~~assistant-director-for-coal-mining~~ CHIEF COAL MINE INSPECTOR
16 or a district inspector finds that the surface area disturbed or
17 affected on or after July 1, 1969, by any underground coal mining
18 operations WHICH ARE EXAMINED PURSUANT TO SECTION 34-22-101 is
19 not being properly stabilized to prevent landslides, floods, or
20 erosion by such measures which are necessary and practical for
21 such stabilization, said ~~assistant--director~~ CHIEF COAL MINE
22 INSPECTOR or district inspector shall give notice in writing
23 thereof to the operator or person in charge of such operations,
24 setting forth in such notice the particulars in which he
25 considers the stabilization conditions or practices to be
26 deficient or defective, and he shall order the same to be

1 remedied without delay, allowing such time for the completion
2 thereof as in his judgment appears necessary. In case the
3 operator or person in charge, after written notice being duly
4 given, does not comply with or disregards any lawful order of the
5 said assistant-director CHIEF COAL MINE INSPECTOR or district
6 inspector made pursuant to this section, any court of competent
7 jurisdiction may, on application by the commissioner of mines, by
8 civil action in the name of the people of the state of Colorado,
9 enjoin or restrain the operator or person in charge from
10 continuing operations until he has complied with said order.
11 Such remedy shall be cumulative and shall not affect any other
12 proceedings against such operator or person in charge authorized
13 by law for the matters complained of in such action.

14 SECTION 4. 34-22-104, Colorado Revised Statutes 1973, as
15 amended, is amended to read:

16 34-22-104. Agreements. The commissioner of mines has the
17 power to enter into an agreement with any operator or person in
18 charge of any underground coal mine in--this--state WHICH IS
19 SUBJECT TO EXAMINATION PURSUANT TO SECTION 34-22-101, which
20 AGREEMENT shall set forth the stabilization work which is
21 required with respect to such operation to prevent landslides,
22 floods, or erosion.

23 SECTION 5. 34-29-135 (1) (d), Colorado Revised Statutes
24 1973, is amended to read:

25 34-29-135. State and federal coordination. (1) (d) Reports
26 and inspections. The chief COAL MINE inspector of-coal-mines

1 shall, to the extent that cooperation is obtainable, agree with
2 the United States bureau--of--mines MINE SAFETY AND HEALTH
3 ADMINISTRATION on the form and content of records, reports, and
4 information required to be submitted by mine owners and
5 operators, and, where agreement is reached, the same record shall
6 be deemed to comply with this article, and duplicate copies of
7 documents required to be filed may be submitted to the chief COAL
8 MINE inspector of--coal--mines and the United States bureau-of
9 mines MINE SAFETY AND HEALTH ADMINISTRATION. The chief COAL MINE
10 inspector of-coal-mines shall, to the extent that cooperation is
11 obtainable, arrange for exchange of inspection reports and
12 accident reports with the United States bureau--of--mines MINE
13 SAFETY AND HEALTH ADMINISTRATION. Where the chief COAL MINE
14 inspector of--coal--mines determines that any mine is being
15 adequately inspected by federal inspectors and reports of such
16 inspections are submitted to him, he may SHALL accept such
17 reports in lieu of state inspection thereof.

18 SECTION 6. 34-40-105, Colorado Revised Statutes 1973, as
19 amended is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

20 34-40-105. Duties of inspectors - inspections. (1) Except
21 as provided in subsection (2) of this section, it is the duty of
22 the inspectors to examine all mines; to examine the manner and
23 methods of working and timbering and the system of signals used
24 in the mines and the efficiency of the same; to examine, under
25 cooperative agreement with the director of the division of labor
26 and other appropriate state agencies, construction work on dams,

1 federal and state highways, public and quasi-public excavations,
2 and all excavations where rock drills and explosives are used; to
3 examine the condition of all buildings, machinery, and other
4 mechanical equipment used in and around said mine, all the open
5 workings and exits in each mine and how the same are ventilated,
6 the sanitary conditions in and around said mine, and how and
7 where all explosives and inflammable oils and supplies are
8 stored; and to make a report to the commissioner of the result of
9 the examination of each mine immediately after the inspection.
10 Such examinations shall be made without previous notice to the
11 owner of the mine to be examined.

12 (2) The inspectors shall not examine:

13 (a) Mines in which an average of more than one hundred
14 full-time employees were employed during the preceding calendar
15 year;

16 (b) Sand and gravel pit excavations and plants;

17 (c) Earthen dams.

18 SECTION 7. 34-40-113 (1), Colorado Revised Statutes 1973,
19 as amended, is amended to read:

20 34-40-113. Notice of defects - penalty. (1) The
21 commissioner, inspector, and authorized representative shall
22 exercise sound discretion in the enforcement of this article and
23 shall be authorized to inspect all mines at any time. The
24 inspectors or authorized representatives shall make regular
25 periodic inspections of all mines, EXCEPT MINES IN WHICH AN
26 AVERAGE OF MORE THAN ONE HUNDRED FULL-TIME EMPLOYEES WERE

1 EMPLOYED DURING THE PRECEDING CALENDAR YEAR OR SAND AND GRAVEL
2 PIT EXCAVATIONS AND PLANTS, and shall make their reports in such
3 form as prescribed by this article and by instructions from the
4 commissioner. If such inspections reveal any dangerous,
5 defective, or unhealthy condition which, in the opinion of the
6 inspector or authorized representative, threatens or tends to
7 threaten the bodily injury or health impairment of any person,
8 the commissioner, inspector, or authorized representative who
9 made such inspection shall give notice in writing thereof to the
10 mine owner, setting forth such dangerous, defective, or unhealthy
11 condition, and he shall order the same to be remedied without
12 delay, allowing such time for the completion thereof as in his
13 judgment appears necessary.

14 SECTION 8. 34-40-120 (1), (2), and (4)(b), Colorado Revised
15 Statutes 1973, are amended to read:

16 34-40-120. Inspection fees. (1) For the purpose of paying
17 a portion of the expenses of the bureau of mines in making
18 inspections as provided in this article, each employer operating
19 a mine, mill, or other activity which is inspected by said bureau
20 subject to the provisions of section 34-40-105 (1) shall, except
21 as provided in subsection (4) of this section, pay an annual
22 inspection fee in an amount determined by the average number of
23 full-time production employees engaged in the inspected operation
24 while operating during the preceding calendar year in accordance
25 with the following schedule:

Number of employees		Annual inspection fee
More than	But not more than	
0	10	\$ 15.00 per employee
10	20	\$ 150.00, plus \$12.50 per employee in excess of 10
20	50	\$ 275.00, plus \$10.00 per employee in excess of 20
50	100	\$ 575.00, plus \$9.00 per employee in excess of 50
100	200	\$1,025.00 plus \$8.00 per-employee-in excess-of-100
200	300	\$1,825.00, plus \$7.00 per-employee-in excess-of-200
300	500	\$2,525.00 plus \$6.00 per-employee-in excess-of-300
500	750	\$3,725.00, plus \$5.00 per-employee-in excess-of-500
750	1,000	\$4,975.00, plus \$4.00 per-employee-in

1 excess-of-750
2 1,000 \$5,975.00; plus \$3.00
3 per-employee-in
4 excess-of-1,000

5 (2) An employer concurrently engaged in operations at more
6 than one location shall pay a separate inspection fee for each
7 location according to the number of full-time production
8 employees at each location; however, in the case of operations,
9 such as oil or gas drilling rigs portable-sand-and-gravel-plants;
10 or construction crews, which may be moved frequently, one
11 inspection fee shall be paid for each drilling rig plant; or
12 crew. and--a-temporary-gravel-pit-operated-in-conjunction-with-a
13 construction-project-shall-be-included-with-said--project: Said
14 fee shall be paid by the principal employer of the employees upon
15 which the fee is determined, whether he is a contractor, A
16 lessee, or the owner of the property upon which such operation is
17 conducted; but subcontractors and their full-time production
18 employees may be included in determining a single fee for an
19 operation.

20 (4)(b) The annual inspection fee for-any--sand--and--gravel
21 excavation--pit--or-plant;--or for construction work on any dam or
22 on any federal or state highway shall be fifty percent of the fee
23 provided for such operation in subsection (1) of this section.

24 SECTION 9. Appropriation. In addition to any other
25 appropriation, there is hereby appropriated, out of any moneys in
26 the state treasury not otherwise appropriated, to the department

1 of natural resources for allocation to the division of mines, for
2 the fiscal year beginning July 1, 1981, the sum of _____
3 dollars (\$), or so much thereof as may be necessary, for
4 the implementation of this act.

5 SECTION 10. Repeal. 34-40-100.3 (9), 34-40-103 (3) (b),
6 34-40-110 (4), 34-40-112 (2), 34-40-113 (5), 34-40-114 (2),
7 34-40-115 (2), 34-40-116 (2), 34-40-117 (2), 34-40-118 (3),
8 34-40-120 (3) (b) and (4) (a) (II), 34-40-122 (6), 34-40-123 (2),
9 34-47-103 (3), 34-47-104 (5), 34-47-109 (2), 34-47-110 (4),
10 34-47-116 (2), 34-47-123 (2), 34-47-125 (2) (b), 34-47-127 (3),
11 34-47-128 (3), and 34-47-129 (2), Colorado Revised Statutes 1973,
12 as amended, are repealed.

13 SECTION 11. Effective date. This act shall take effect
14 June 30, 1981.

15 SECTION 12. Safety clause. The general assembly hereby
16 finds, determines, and declares that this act is necessary for
17 the immediate preservation of the public peace, health, and
18 safety.

BILL 12

HOUSE JOINT RESOLUTION NO.

1 WHEREAS, The sheep and cattle industries are a valuable
2 source of food and fiber for the American public and are also an
3 important source of income that is vital to the economy of many
4 western states, including Colorado; and

5 WHEREAS, Predation by coyotes has reached alarming
6 proportions, with disastrous losses having already forced many
7 sheepmen out of business; and

8 WHEREAS, Such predation is now threatening the entire sheep
9 industry and having deleterious effects on the game and wildlife
10 in the western states; and

11 WHEREAS, An Executive Order of the President of the United
12 States dated February 8, 1972, as amended by Executive Orders
13 11870 in 1975 and 11915 in 1976, prohibiting the routine use of
14 poisons to kill predators on public land, when combined with the
15 halting of interstate shipments of chemical products registered
16 for predator control by the United States Environmental
17 Protection Agency, has deprived livestock producers of their most
18 effective, economical and highly selective means of predator
19 control; and

20 WHEREAS, No fully documented evidence has been submitted to
21 indicate that use of chemical toxicants reduces coyote
22 populations to the point of making them an endangered species in
23 any area or that the proper and careful use of the chemical
24 toxicant 1080 and coyote getters poses an environmental threat
25 through the secondary killing of other species and, to the
26 contrary, said toxicant and devices are highly specific for
27 canines; and

28 WHEREAS, Research is being carried out to find alternative
29 methods for predator control, but present alternatives are not
30 effective and there is no indication that new alternatives which
31 are equally effective will be developed by such research; and

32 WHEREAS, Uncontrolled predation is an intolerable problem

1 for the sheep and cattle industries and for wildlife; now,
2 therefore,

3 Be It Resolved by the House of Representatives of the
4 Fifty-third General Assembly of the State of Colorado, the Senate
5 concurring herein:

6 That we, the members of this General Assembly, do hereby
7 request the President of the United States to relax the
8 prohibition on the use of certain canine-specific toxicants to be
9 used in a closely supervised predator control program in areas of
10 urgent need, including both publicly and privately owned land,
11 for a five-year period, or until such time as effective
12 alternative predator control is developed.

13 Be It Further Resolved, That copies of this Resolution be
14 transmitted to the President of the United States, the
15 Administrator of the United States Environmental Protection
16 Agency, and to each member of Congress from the State of
17 Colorado.