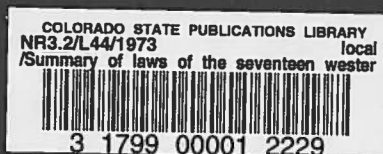


NR 3.2 / L44 / 1973

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Summary of Laws
OF THE
SEVENTEEN WESTERN RECLAMATION STATES
RELATING TO WATER RESOURCE PLANNING,
POLICY AND ADMINISTRATION

PREPARED FOR
THE INTERIM COMMITTEE ON WATER
49th GENERAL ASSEMBLY
OF THE
STATE OF COLORADO



Prepared by
The Colorado Water Conservation Board
Department of Natural Resources
State of Colorado

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SUMMARY OF LAWS
OF THE
SEVENTEEN WESTERN RECLAMATION STATES
RELATING TO WATER RESOURCE PLANNING,
POLICY AND ADMINISTRATION

I. Introduction

The United States Congress, through the Federal Reclamation Act of 1902, designated seventeen states lying generally in the western half of the United States as those states being entitled to participate in the reclamation program. The seventeen designated states are Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Although differing greatly in climate and geography, the common denominator for these designated states lies in the fact that all have an abundance of arable lands, but in many areas insufficient rainfall for most types of crops. Of the approximate total of 39,000,000 acres of irrigated lands in the United States, about 35,000,000 acres are in the reclamation states. The contribution of these lands to the national economy is tremendous.

In most of the western states, irrigation was the genesis of the enactment of laws relating to the acquisition of water rights. Colorado was the first state to fully adopt a system of water law awarding a vested priority based upon date of appropriation, commonly expressed as "first in time-first in right." All of the western states

now have either fully or partially adopted the doctrine of prior appropriation. However, almost all of the western states have rejected the cumbersome, lengthy and expensive judicial determination of water rights still in use in Colorado.

Immediately following World War II, an accelerated western migration began to take place in the United States. This growing population is beginning to severely tax the available water supplies of the western states. It is not surprising therefore that all of these states are now undertaking a critical review of the available water supplies in light of known and anticipated demands.

In their early history the western states were sparsely populated and their economy was based almost entirely upon mining and agriculture. At the inception of statehood, irrigation was already a flourishing practice in many of the western states. The need for state regulation of the available water supplies became obvious at an early date. Because of the then sparse populations, the need for governmental water resource planning and development was not so obvious. The result was that in almost every state in which irrigation was practiced to any appreciable extent there was the early establishment of a state administrative and regulatory agency, usually designated as the state engineer, the state water engineer or some similar title.

As time progressed and populations expanded, internal shortages of water and interstate conflicts made it clear that other factors

should be added to internal administration and regulation in order to both protect and develop the water resources of each state. Thus came about laws providing for the establishment of state agencies responsible for the development, conservation and protection of water resources.

The planning for the development, utilization, conservation and protection of each state's water resources, along with administration and regulation, will continue to be of critical importance as the result of ever-increasing demands upon the available water supplies. The legislatures of each of the seventeen western states face a common and growing problem in connection with both the utilization and regulation of their water resources. How one state is meeting its problems may or may not be applicable to the problems of another state. However, the laws and experiences of any state relating to a common problem constitute a valuable source of ideas and information. The Forty-Ninth General Assembly of the state of Colorado has authorized and established an interim legislative committee on water. This summary was prepared in order to provide that committee with a basis for comparing Colorado's laws and policies relating to water planning, development and administration with those of the other western states.

II. Summary

In 1973, the National Water Commission issued a report under the title "A Summary-Digest of State Water Laws." This reference was used as a starting point for this report. However, the information

contained in the publication was insufficient for the purposes of this report and was supplemented to a considerable extent by personal interviews with water officials of other states.

Because of the varying duties and responsibilities of water agencies among the various states, direct comparisons are difficult and in many cases misleading. For instance, in the field of administration, most of the other western states charge their administrative officials with the responsibility for adjudicating or awarding water rights, which is not the case in Colorado. On the other hand, Colorado has more irrigated land and thus more irrigation decrees which require administration than many of the other states. In the field of planning and development, the state of California has a huge state-financed construction program under way and thus a very large planning and construction staff on a scale not comparable to any of the other states. Therefore, no valid comparisons can be drawn from this report without taking into consideration the varying circumstances in the various states.

Although each of the western states has acted independently, there is a remarkable parallel in the evolution of the respective state laws relating to the heretofore two primary fields of water resources; that is, (1) planning and policy and (2) administration and regulation. To these two primary considerations a third element has now been added by all states; namely, water pollution control.

A continuing problem with all states has been in the division

of responsibility for the treatment of water resources, which now falls into three well-defined categories, i.e., planning and development, administration and regulation, and pollution control and abatement. A simplistic and tempting solution is the creation of a single agency responsible for all matters concerning water. In fact, this was the original approach adopted by all of the seventeen western states, but usually inadvertently because the problems of water shortages and pollution were not clearly perceived in the pioneer days.

Independently, but almost universally, the western states starting in the 1930's began to draw a clear line of demarcation between responsibility for planning and responsibility for administration. New Mexico, Colorado and Utah were foremost in the creation of citizen planning boards staffed with full-time employees. Eleven of the seventeen western states now have separate divisions for water planning and for water administration. In some states however, as in Colorado, the water planning agency and the water administration agency, although separate, have been placed under overall supervision of a department of natural resources or similar agency. The most unique agency among the western states is in the state of Washington. In that state a department of ecology was created in 1970. This department has complete jurisdiction over all matters relating to land use planning, air quality control, water pollution control, water planning and water administration. This pattern is not likely to be followed by any of the other western states.

In thirteen of the western states, citizen boards are appointed by the governor to establish state water policy and planning. In a few cases, citizen boards are responsible also for administration. Only the less populous states do not utilize citizen boards; namely, Montana, Nevada, South Dakota and Wyoming.

The remainder of this summary will be devoted to the particular topics of water administration and regulation, policy and planning, and state loan and construction funds. Following this summary is Table A which sets forth the number of people employed by various water resource agencies in the seventeen western states, Table B which sets forth the population figures and irrigated acreages of these states, and Table C which contains a summary of the type of agency in each state responsible for water planning and administration, along with the number of employees for each agency. The main text contains a brief description of the water resource agencies of each of the states.

1. Water Administration and Regulation

An early concern of the western states was the establishment of a system of water rights. With the establishment of such rights, administration became necessary. In most cases, this led to the creation of an office known as the state engineer. A common pattern in the early days was for the courts to adjudicate water rights and for the state engineer to administer these decreed rights. However, the court adjudication system was quickly abandoned by most states as being

too cumbersome. As a result, adjudication and administrative authority were vested in the state engineer. Only in Colorado, Montana and Oregon do the courts still handle the initial applications for water rights, although in Oregon the state engineer acts as a referee for the courts.

In general, duties of the state engineers or counterpart officials in the various states are quite similar. All supervise the distribution of water in accordance with state law. Most of them also have dam safety responsibilities. The degree of supervision differs considerably, however. In most states local officials and agencies accomplish the actual distribution of water under the general supervision of the state engineer. The most exclusive control of water distribution by state engineers is maintained in the states of Colorado, New Mexico, Utah and Wyoming. In the latter three states the state engineer also has the additional responsibility for determining and awarding water rights and changes in water rights. In this respect, the state engineers in those three states act in a quasi-judicial capacity. Appeals from their decisions can be made to the state courts.

As the population pressures have increased, the need for state control over the development of water resources, in addition to administration, has become more and more apparent. State construction and loan programs are now fairly common. Almost universally the state engineers were eager to expand their responsibilities into these new fields, and almost universally they were rejected. The reason for this

rejection can be best summarized by quoting from a report on the reorganization of the Texas water structure which took place in 1965, as follows:

"The state's role in water development, exercised through the Board of Water Engineers, was almost totally passive prior to 1957. It was only after the actions and legislation of 1957 initiating a planning program and establishing the Water Development Board and Fund that the state became actively involved."

"A complete separation of planning from regulating came in 1965 when the legislature transferred the planning function from the Water Commission to the Water Development Board. The Texas Research League immediately prior to the separation found that the Commission was hampered in its duties by conflicting responsibilities for making plans and then ruling on objections to them. The view that unbiased proceedings could not be had under such circumstances was held by a number of leading lawyers, engineers, and water administrators in Texas."

The long protracted struggle in Texas to separate water planning from administration is reminiscent of the same struggle which took place in Colorado during the 1930's and in California during the 1950's. Prior to 1937, all matters in the state of Colorado pertaining

to water resources were under the jurisdiction of the state engineer. However, over the years a feeling developed among the people of this state that the duties of the state engineer were too encompassing to permit a proper emphasis on the development of water resources. As the result of this sentiment, the Colorado Water Conservation Board was created in 1937. A similar pattern was followed by California in 1956, and in more recent years, by the states of Arizona, Idaho and Nebraska. Of the seventeen western states, only Wyoming, the smallest in population, still retains the original state engineer concept adopted in 1890.

The creation of water planning and construction agencies in the various states has not diminished the importance of water administration and regulation. On the contrary, as water supplies become more critical the need for increased regulation will become more critical. Regardless of how state water resource agencies are restructured, the need for the regulation of the available water supplies by some means is a vital part of any state policy.

2. Water Policy, Planning and Construction

As previously indicated, thirteen of the seventeen western states, including the most populous states of California and Texas, have through legislative action created citizen water planning boards under various titles. The primary purpose of all of these boards is the same, although the scope of responsibilities varies considerably. The

general purpose of the various boards can be adequately described by quoting the Colorado statute creating the Colorado Water Conservation Board as follows: "It shall be the duty of the board to promote the conservation of the waters of the state of Colorado in order to secure the greatest utilization of such waters and the utmost prevention of floods . . ."

In every state, except in Wyoming, there is a board, commission or natural resources department which has the responsibility for state water planning and development. In eleven states the planning and administrative functions are completely separated. In the remaining six states these functions are integrated, although usually under separate divisions. The integrated divisions are for the most part in the smaller states such as Nevada, Wyoming and the Dakotas.

In general, the duties of the Colorado Water Conservation Board are more encompassing than those of similar agencies of other states. In particular, the responsibility for flood control and for stream classification for environmental purposes either does not exist in other states or has been delegated to some other agency. The administration of a state construction fund is common to several water planning agencies in other states, but not to all.

3. Loan and Construction Funds

Twelve of the seventeen western states have made state funds available for either state construction or state loans, or both, for

water resource projects. These funds vary in size from the almost two billion dollar construction fund of California down to a \$250,000 loan fund in the state of Nevada. The terms of repayment for either loan or construction funds are usually on a long-term basis, but in most cases, not exceeding forty years. Interest rates charged for the use of state funds vary considerably. For instance, in Utah no interest is charged. In New Mexico the interest rate is 2 1/2 percent, 4 percent in Wyoming, 5 percent in Washington and 6 percent in Texas.

NUMERICAL RANKING COMPARISON AMONG THE SEVENTEEN RECLAMATION STATES IN RELATION TO PERSONS EMPLOYED FOR (1) WATER PLANNING AND POLICY, AND (2) FOR WATER ADMINISTRATION AND REGULATION.

(1) <u>Water Planning and Policy</u>		(2) <u>Water Administration and Regulation</u>	
<u>State</u>	<u>Employees</u>	<u>State</u>	<u>Employees</u>
1. California	2,438	1. Colorado	205
2. Texas	310	2. Texas	100
3. Nebraska	47	3. California	97
4. Arizona	35	4. New Mexico	90
5. Utah	30	5. Oregon	70
6. Idaho	25	6. Wyoming	62
7. Kansas	23	7. Utah	54
8. North Dakota	23 (a)	8. Kansas	51
9. Montana	22	9. Idaho	43
10. Oregon	20	10. Nebraska	25
11. Washington	20	11. Washington	25
12. Colorado	17	12. Nevada	24
13. Nevada	13	13. North Dakota	23 (a)
14. Oklahoma	13	14. Oklahoma	16
15. Wyoming	10	15. South Dakota	7
16. New Mexico	9	16. Arizona	3
17. South Dakota	7	17. Montana	0 (b)

(a) No separate division for planning and administration.

(b) Administration under jurisdiction of state courts at the expense of water users.

Table A

POPULATION AND IRRIGATED ACREAGES OF THE SEVENTEEN WESTERN STATES BY
 NUMERICAL RANKING (1970 census-rounded to nearest thousand)

Population		Irrigated Acreages		
1.	California	19,953,000	1. California	7,240,000
2.	Texas	11,197,000	2. Texas	6,888,000
3.	Washington	3,409,000	3. Colorado	2,895,000
4.	Oklahoma	2,559,000	4. Nebraska	2,857,000
5.	Kansas	2,247,000	5. Idaho	2,761,000
6.	Colorado	2,207,000	6. Montana	1,842,000
7.	Oregon	2,091,000	7. Wyoming	1,524,000
8.	Arizona	1,771,000	8. Kansas	1,522,000
9.	Nebraska	1,483,000	9. Oregon	1,519,000
10.	Utah	1,059,000	10. Washington	1,224,000
11.	New Mexico	1,016,000	11. Arizona	1,178,000
12.	Idaho	713,000	12. Utah	1,025,000
13.	Montana	694,000	13. New Mexico	823,000
14.	South Dakota	666,000	14. Nevada	753,000
15.	North Dakota	618,000	15. Oklahoma	524,000
16.	Nevada	489,000	16. South Dakota	148,000
17.	Wyoming	332,000	17. North Dakota	63,000

Table B

S U M M A R Y T A B L E

STATE	WATER PLANNING AND POLICY AGENCY		ADMINISTRATIVE AND REGULATORY AGENCY		SEPARATE AGENCIES
	Title and Membership	Employees	Title and Membership	Employees	
Arizona	Ariz. Water Commission (1971) 7 citizen members 2 ex-officio members	35	State Land Commissioner	3	Yes
California	Calif. Water Commission (1956) 9 citizen members	2,438	Water Resources Control Board 5 members	97	Yes
Colorado	Colo. Water Cons. Board (1937) 9 citizen members 4 ex-officio members	17	Colorado State Engineer	205	Yes
Idaho	Idaho Water Resource Board (1965) 8 citizen members 1 ex-officio member	25	Dept. of Water Administration	43	Yes
Kansas	Kansas Water Resources Bd. (1955) 7 citizen members	23	Division of Water Resources	51	Yes
Montana	Division of Water Resources of the Dept. of Natural Res. and Cons. (1971)	22	State Courts upon petition by water users	0*	Yes
Nebraska	Nebr. Natural Res. Commission (1972) 14 citizen members	47	Department of Water Resources	25	Yes
Nevada	Dept. of Cons. and Natural Res. (1957) Water planning staff	13	Same Water administration staff	24	No
New Mexico	New Mexico Interstate Stream Commission (1935) 8 citizen members 1 ex-officio member	9	New Mexico State Engineer	90	Yes
North Dakota	North Dakota Water Conservation Commission (1955) 5 citizen members 2 ex-officio members	23**	Same. No separate administrative staff. Administration included in the total staff of 23.	**	No
Oklahoma	Oklahoma Water Resources Bd. (1957) 9 citizen members	13	Same	16	No
Oregon	Oregon Water Resources Board (1955) 7 citizen members	20	Oregon State Engineer	70	Yes
South Dakota	South Dakota Department of Natural Resource Development (1973)	7	Same	7	No
Texas	Texas Water Development Board (1957) 5 citizen members	310	Texas Water Rights Commission 3 members	100	Yes
Utah	Utah Water Resources Board (1947) 8 citizen members	30	Utah State Engineer	54	Yes
Washington	Washington Dept. of Ecology (1970) 7 citizen members Water Planning Division	20	Same Water Management Division	25	No
Wyoming	Wyoming State Engineer (1890) Planning Division	10	Same Administrative Division	62	No

*Administrative officials appointed by state courts at expense of water users.
**The same staff performs both planning and administrative functions.

Table C

STATE OF ARIZONA

Policy

The Arizona state legislature in 1971 created the Arizona Water Commission. It was a successor to the Arizona Interstate Stream Commission which had only limited jurisdiction over water matters. Prior to that time, there was great dissatisfaction in the state of Arizona concerning the lack of a coordinated state water policy. The Arizona Water Commission was therefore established with duties and responsibilities comparable to that of the Colorado Water Conservation Board. The commission has nine members, seven of whom are appointed by the Governor. The other two members are the state land commissioner and the chairman of the Arizona Power Authority. The commission, in addition to establishing state water policy, also has the responsibility for the safety of dams.

The commission employs thirty-five people. It also has statutory authority to employ independent counsel and at the present time has three attorneys under contract. The state has no loan or construction program.

Administration

Water rights administration in Arizona is under the jurisdiction of the state land commissioner. For the purposes of water rights administration, the commissioner employs three persons. Virtually all water rights administration in Arizona is carried out by water associations and districts at no expense to the state government. Water adjudications as such are the responsibility of the state land commission through a permit system.

STATE OF CALIFORNIA

A large-scale reorganization of California water agencies occurred in 1956, when the legislature created the Department of Water Resources and the State Water Rights Board. The California Water Commission was created concurrent with the establishment of the Department of Water Resources. In 1967 the State Water Rights Board was merged with the State Water Quality Control Board to become the State Water Resources Control Board.

Policy

The Department of Water Resources has the primary responsibility for the development and utilization of the water resources of California. It was assigned the authority and jurisdiction for the planning and construction of water development projects, including the State Water Project, which entails expenditures in excess of two billion dollars. In addition, it has major responsibilities in administering state and federal grant programs and projects, for the safety of dams, and as representative of the state in any commission created to form compacts to control use of interstate waters. The Department is also charged with planning and developing water-related recreational resources.

A \$1,750,000,000 bond issue for construction of the State Water Project was approved by the voters in 1960. Of the authorized bond funds, \$130,000,000 was allocated for state loans and grants to local public agencies to help finance water development projects which are in conformance with the California Water Plan. The Department of Water Resources has jurisdiction over these funds.

During the height of construction of the State Water Project, the Department employed about three thousand five hundred people. At the present time it has a staff of two thousand four hundred thirty-eight, including a legal section. It has authority to employ outside counsel on a consulting basis.

The California Water Commission is composed of nine citizen members appointed by the Governor. They represent designated geographical areas covering the entire state. The commission acts as an advisory body to the director of the Department of Water Resources and conducts public hearings throughout the state in order to provide an effective avenue for public participation in policy formulation. It also has approval authority on all rules and regulations of the

Department, except those which are purely internal.

Administration

The State Water Resources Control Board consists of five members appointed by the Governor. The legislative mandate of the board is to "exercise the adjudicatory and regulatory functions of the state in the field of water resources." The board is authorized to hold such hearings and conduct such investigations as it deems necessary to carry out the powers vested in it. All hearings are required to be open to the public. Major responsibilities include administration of water rights and maintenance of water rights records. The actual physical regulation of the water in accordance with vested water rights is done by twenty water masters appointed by the director of the Department of Water Resources.

The State Water Resources Control Board has broad responsibilities in water quality planning and administration. It has a staff of four hundred twenty-seven people, in addition to the twenty water masters. Of the total staff, about three hundred fifty employees are involved in the water quality program and about ninety-seven employees are engaged in the field of water administration.

STATE OF COLORADO

Policy

In 1937 the Colorado General Assembly created the Colorado Water Conservation Board to act as the policy and planning agency for the state. Prior to that time, all matters pertaining to water resources were under the implied jurisdiction of the Colorado state engineer. Colorado was one of the first states to separate planning and policy from water rights administration. This evolutionary pattern has been followed by almost all of the seventeen reclamation states, particularly in recent years.

The board has the responsibility for policy and planning on both an interstate and intrastate basis. The board also has the responsibility for flood control, flood plain designation, stream classification for environmental protection and small project construction. The board has limited responsibilities in the fields of soil conservation and water quality control. For small project construction the board administers a \$10,000,000 revolving fund. The board furnishes a member and technical assistance to the Colorado Ground Water Commission and to the Colorado Water Quality Control Commission.

The board consists of thirteen members, nine of whom are appointed by the Governor from specified geographical areas. The remaining four members are ex-officio; to wit, the Attorney General, the Natural Resources Director, the State Engineer and the Water Conservation Director. The board employs a full-time staff of 17 people. The board has the authority to retain independent counsel with the approval of the Attorney General.

Administration

The responsibility for water rights administration is vested in the Colorado state engineer. The office of the state engineer records all water rights decreed by the courts and administers those water rights on a daily basis in accordance with court decrees. The state engineer also furnishes a professional staff for the Colorado Ground Water Commission. Dam safety is also a responsibility of the state engineer.

In general, the office of the state engineer functions in about the same manner as counterparts in other western states, except

that in Colorado the state engineer has no responsibility for the establishment of water rights. Colorado is one of the few states among the seventeen reclamation states which vests water rights determinations exclusively in the courts. However, the state engineer's office does record and issue permits for the drilling of wells, a practice common to most other states.

The office of the Colorado state engineer employs 205 persons on a full-time equivalent basis.

STATE OF IDAHO

Policy

In 1965 the Idaho state legislature created the Idaho Water Resource Board with the objective of achieving a coordinated, integrated, multiple-use water resource policy within the state. The board has eight regular members appointed by the Governor and one ex-officio member who is the director of the Department of Water Administration. The broad powers delegated to the board by the legislature include the authority to conduct studies and investigations directed toward the formulation and implementation of a statewide water plan. The board has authority to issue revenue bonds and to construct and operate water conservation and development projects, as well as projects to generate power, and to sell water and power. It may appropriate water, protect Idaho's water from diversion outside the state, and may institute judicial proceedings for the adjudication of water rights by court decree. For all projects involving the impoundment of more than 10,000 acre-feet of water, the proposal must be submitted to the board for its approval or disapproval. A permit is also required from the Department of Water Administration.

There is also a revolving development fund of \$500,000 from which the board may loan money for the development of water projects, including the rehabilitation or improvement of existing systems or facilities. Title to all projects constructed from this revolving fund must be conveyed to the board to secure repayment of the loan.

The board employs 25 people. It has no authority to participate in flood plain designation activities. It has authority to employ independent legal counsel.

Administration

The general administrative supervision of the waters of the state is vested in the director of the Department of Water Administration. All statutory appropriations of water must be initiated by filing an application with the director and securing his approval. The director has the responsibility for reviewing the proof of appropriation after the water has been put to beneficial use, and if this has been properly accomplished, to issue a license confirming such use.

In addition, as head of the Department of Water Administration, the director is charged with the responsibility of distributing water in accordance with the priority of rights. In recent years this authority has been extended to include the administration of ground water.

The director, upon his own initiative or upon petition of the water users, is authorized to petition the district court for the adjudication of the water rights of any water system. Once such an action is commenced, he conducts an examination of the water system and uses. He examines the claims filed by the water users and prepares a report in the nature of a proposed finding of water rights, which is submitted to the court and the water users.

Other duties of the director include the licensing of well drillers and adopting standards for well construction, approving plans and specifications for the construction, enlargement or alteration of dams, and inspecting them during construction.

The Department of Water Administration employs approximately 43 people. It has authority to employ independent legal counsel, although normally such counsel is obtained from the attorney general's office.

STATE OF KANSAS

Policy

Recognizing the importance of water to the overall economy of the state and the need for planning the policies and coordinating the activities in the field of flood control and in the conservation and development of the state's water resources, the 1955 Kansas legislature created the Kansas Water Resources Board. With the creation of the board, the state immediately took steps toward comprehensive planning and coordination.

The board consists of seven members appointed by the Governor with the advice and consent of the Senate. One member represents each congressional district, three members are appointed at large, one of whom must be a practicing attorney.

The board's directions are implemented by a staff of 23 people, headed by an executive director who is appointed by the board. The board has authority to contract with independent counsel to accomplish any purpose that the board is required, or authorized, to accomplish under the statutory provisions. Provision is also made in the enabling act for state financial assistance through a water development fund administered by the board.

Administration

The general administrative control of Kansas water resources is vested in the Division of Water Resources, a division of the State Board of Agriculture. The division is administered by the chief engineer and a staff of 51 employees.

STATE OF MONTANA

Policy

Montana has changed its organizational structure at the state level several times in recent years. The Executive Reorganization Act of 1971 abolished the Montana Water Resources Board (successor to Montana Water Conservation Board) and its units and transferred its functions to the Division of Water Resources in the newly created Department of Natural Resources and Conservation.

The Division of Water Resources has a number of important and varied functions. It is responsible for coordinating all water programs and activities in the state. It is a planning agency responsible for the preparation of a continuing comprehensive inventory of water resources and of formulating a multiple-purpose state water plan, including an inventory of ground water resources. It is authorized to undertake a program of public works, including the construction of reservoirs, irrigation and drainage systems, and flood control projects and works. In addition, the division administers the Weather Modification and Control Act and has jurisdiction over the safety of dams and reservoirs having a capacity of 100 acre-feet or more. It administers the ground water regulation laws and the Floodway Management and Regulation Act. Legal counsel assigned to the Department of Natural Resources and Conservation handles the division's legal work. The Division of Water Resources employs 22 people.

Administration

The Division of Water Resources in Montana does not administer and control the use of private rights in the manner and to the extent such administration and control are performed by state engineers and similar administrative agencies in other appropriation doctrine states. The state's adjudicated waters - streams or portions of streams in which rights of use have been determined by court decree - are administered by the district court having jurisdiction. The law provides that on the application of the owners of 15 percent of the water rights affected by a decree the court must appoint one or more water commissioners to measure and distribute to the parties bound by the decree the waters to which they are entitled. Water commissioners are authorized to distribute water, keep records of distributions made, and make periodic reports to the court. Fees and expenses of the commissioners are charged to water users affected by the decrees thus administered.

STATE OF NEBRASKA

Policy

The Nebraska legislature in 1972 created the Nebraska Natural Resources Commission. It was a successor to the Nebraska Soil and Water Conservation Commission created in 1943, which since 1967 had been engaged in the preparation of a comprehensive water and related land resources plan for the state. The Natural Resources Commission consists of fourteen members, six being elected by the Nebraska Association of Soil and Water Conservation Districts, one by the Nebraska Irrigation and Reclamation Association, and seven appointed by the Governor to represent various state interests.

The Natural Resources Commission consists of three divisions; namely, the Planning Division, the Operations Division and the Legal Division. Within the divisions are sections responsible for comprehensive planning, water quality planning, data bank, watershed planning, flood plain management and district operations. The commission's directives are carried out by a staff of 47 employees headed by an executive secretary appointed by the commission. The commission has its own legal staff. Nebraska has no loan program at present.

Administration

In 1943 the Nebraska legislature updated previous water right legislation which, among other provisions, established the Department of Water Resources as successor to the earlier Board of Irrigation. This legislation conferred upon the Department of Water Resources administrative powers over all waters of the state, including action upon all applications to appropriate or store water. The Department of Water Resources is under the direction of the state engineer and has a full-time staff of 25 people. Five to ten additional water commissioners are employed during the irrigation season.

Water Quality

In 1971, Nebraska adopted a comprehensive Environmental Protection Act which established the Environmental Council as the organization primarily responsible for the control of air, water and land pollution. The Department of Environmental Control was established as the agency to administer the Act. The Department is given authority to adopt water quality standards for all waters in the state. A permit system for discharging waters is authorized and polluters were given a reasonable time within which to comply with water quality standards.

STATE OF NEVADA

Policy

The Department of Conservation and Natural Resources was created in Nevada in 1957 and has general administrative supervision over all the natural resource agencies, including the Division of Water Resources, which is administered by the state engineer. The Director of the Department formulates state policy in the natural resources area and coordinates all studies concerning the supply, development, use and conservation of water.

The Division of Water Resources is authorized to conduct necessary studies and inventories for the development of a comprehensive water resource plan for Nevada. The state engineer as administrator for the division may enter into agreements with agencies of the United States for studies and investigations relating to the development and use of water resources.

The division also administers a \$250,000 revolving fund for flood control loans. Loans from this fund may be made for a maximum of five years with no interest. It is also responsible for the safety of dams.

The Division of Water Resources has authority to employ independent counsel, and it frequently does so. It employs 37 people, of which about one-third are involved in planning and policy matters and two-thirds in water administration.

Administration

The present Nevada statutes delegate the general administrative supervision of the waters of the state to the state engineer. To facilitate the water right administration, he may divide the state into water districts for administrative supervision. Water commissioners are appointed by the state engineer, and they are subject to this supervision.

When an order of determination is filed in court in a special statutory proceeding, the distribution of water by the state engineer and water commissioners is under the supervision of the court.

STATE OF NEW MEXICO

Policy

The New Mexico Interstate Stream Commission was created by an act of the New Mexico legislature in 1935 to act as the water policy and planning agency for the state of New Mexico. Prior to that time, these functions were vested in the state engineer. The responsibilities and functions of the commission are almost identical with those of the Colorado Water Conservation Board. The commission has nine members. Eight of these members are appointed by the Governor from specified geographical areas of the state. The remaining member is the New Mexico state engineer.

The commission employs a staff of nine persons. It has independent statutory authority to employ legal counsel and currently has two attorneys under contract.

The commission has jurisdiction over a revolving loan fund which is financed through annual royalties on the sale and lease of state lands. At the present time, the income to this fund from that source is approximately \$450,000 per year. Loans can be made only for the construction, improvement or rehabilitation of irrigation projects leading to greater conservation or better utilization of irrigation water. The loans are made for a maximum period of twenty years at an interest rate of 2 1/2 percent.

Administration

New Mexico employs a state engineer who has the administrative responsibility for the distribution of water. The duties of the New Mexico state engineer are virtually identical with those of the Colorado state engineer, with one important exception. The New Mexico state engineer's office functions in a quasi-judicial capacity in awarding decrees and permits for the use of water. The office employs about 90 people.

STATE OF NORTH DAKOTA

Policy

In 1955 the North Dakota legislature passed legislation clarifying previous water right statutes and establishing the North Dakota Water Conservation Commission. The commission is composed of five members at large appointed by the Governor. The Governor is chairman of the commission and the chief engineer of the commission serves as an ex-officio member.

The powers and duties of the commission are set forth in the North Dakota Century Code as follows: The commission shall have full and complete power, authority and general jurisdiction to investigate, plan, regulate, undertake, construct, establish, maintain, control, operate and supervise works, dams, and projects, public and private, which in its judgment may be necessary or advisable to conserve, develop and control the waters of the state. Under this authority the commission establishes state water policy and as noted below, also has responsibilities with respect to appropriation and administration of water.

The commission is authorized to finance the construction, establishment, operation and maintenance of water resource projects, including measures to regulate flood flow. It is responsible for cooperation and coordination of all matters involving intrastate, interstate and international waters. The division employs 23 people, including one attorney.

Administration

In North Dakota, the administration of water rights is under the control of the Water Conservation Commission. There is no separate division for water administration and regulation.

Water Quality

The North Dakota Water Pollution Control Board was created in 1967. The board consists of ten members representing various state departments and private interest groups. The board has the power and duty to develop a comprehensive program for the prevention, control and abatement of new or existing pollution; to accept and administer federal loans and grants; to approve plans and specifications for construction or extension of disposal systems and to acquire proper operation and maintenance of systems following construction.

STATE OF OKLAHOMA

In Oklahoma, authority for water policy, water administration and water quality is vested in the Oklahoma Water Resources Board. The board consists of nine members appointed by the Governor. The board employs a full-time staff of 50 people. The Oklahoma state legislature is presently considering creation of a new state agency to separate the responsibilities of water policy from those of water administration, but this move is encountering some opposition from the present board.

Policy

Comprehensive state water planning is relatively new in Oklahoma. In 1965, the water resources board added a planning division to its staff. This division consists of 13 full-time employees.

Oklahoma does not have a construction or loan program. However, it does have a water conservation storage fund. This fund is administered by the board and is used to purchase unobligated water from federal water projects. This water may then be resold to future users.

Administration

The Water Resources Board has created separate surface water and ground water divisions to assist with its water administration duties. These duties include both water distribution and issuance of permits for all water uses. The combined staff of these two divisions is 16 people.

STATE OF OREGON

Policy

In 1955 the Oregon legislature created the Oregon Water Resources Board to act as a policy and planning agency for the state. Prior to that time, the Oregon state engineer, because of the lack of a definitive state policy, represented the state in policy and planning matters on a limited scale. The board consists of seven members appointed by the Governor. The duties and responsibilities of the board are almost identical to those vested in the Colorado Water Conservation Board, except that the Oregon board has no flood control responsibilities. However by recent legislation, the Oregon board was directed to delineate flood hazard areas. An additional responsibility of the Oregon board is to make an allocation of the unappropriated waters of the state. The full-time staff employed by the board fluctuates depending upon the work load, and has varied from about a minimum of 20 to a maximum of 40 people. The state has no loan or construction fund.

Administration

The responsibility for water rights administration is vested in the Oregon state engineer. His duties are similar to those of the Colorado state engineer, except that in Oregon the state engineer has the responsibility for determining water rights and priorities. However in this capacity, the Oregon state engineer is in fact a referee for the state courts. He submits his findings and recommendations to the courts for final adjudication. The office employs about 70 people.

STATE OF SOUTH DAKOTA

Policy

Executive Order Number 73-1 (Executive Reorganization of 1973) established the South Dakota Department of Natural Resource Development as successor to the South Dakota Water Resources Commission. Coordination of water and related land planning is accomplished by divisions for surveys, weather modification, planning and development consisting of seven people, and a division of water rights regulation consisting of an additional seven people. Planning, funding and construction of water resource projects are reviewed and recommended for construction by a State Water Projects Formulation and Finance Committee consisting of department heads of Natural Resource Development, Environmental Protection, Game, Fish and Parks and Executive Management (Governor's Office). Legal services for the department, including adjudications, are handled by the state attorney general's staff.

Administration

As indicated above, acquisition and administration of water rights are a function of the Water Rights Division, a division within the Department of Natural Resource Development, which consists of seven employees.

Water Quality

The Executive Reorganization of 1973 established a Department of Environmental Protection. This department includes two divisions; namely, the Division of Water and Air Quality and the Division of Land Management and Solid Wastes. The former division is concerned with water pollution and has supervisory and enforcement powers in this field.

STATE OF TEXAS

Policy

Originally, the responsibilities for water policy and water administration in Texas were vested in one agency. In 1957 the Texas legislature separated the functions with the creation of the Texas Water Development Board. The Water Development Board has duties and responsibilities, including flood control and flood plain zoning activities, that almost exactly parallel those of the Colorado Water Conservation Board. The board consists of five members appointed by the Governor. The board employs a staff of 310 people. Although the staff includes a full-time legal section, the board has authority to retain independent counsel.

The long protracted struggle in Texas to separate water planning from administration is reminiscent of the same struggle which took place in Colorado during the 1930's. The following is quoted from a report on the Texas reorganization:

"The state's role in water development, exercised through the Board of Water Engineers, was almost totally passive prior to 1957. It was only after the actions and legislation of 1957 initiating a planning program and establishing the Water Development Board and Fund that the state became actively involved."

"A complete separation of planning from regulating came in 1965 when the legislature transferred the planning function from the Water Commission to the Water Development Board. The Texas Research League immediately prior to the separation found that the Commission was hampered in its duties by conflicting responsibilities for making plans and then ruling on objections to them. The view that unbiased proceedings could not be had under such circumstances was held by a number of leading lawyers, engineers and water administrators in Texas."

The Water Development Board administers construction and loan programs. To date, the construction program has not been utilized, but the loan program for small water projects has been very popular. Loans are made for periods up to 50 years with an interest rate of 6 percent.

Administration

Water administration in Texas is handled by the Texas Water Rights Commission. The three members of the commission are appointed by the Governor. Its duties and responsibilities are similar to those of the Colorado state engineer, and include water distribution, issuance of permits to water users, and a dam inspection program. The commission employs a staff of about 100 people.

STATE OF UTAH

Policy

In 1947 the Utah legislature created the Utah Water Resources Board. The board consists of eight members appointed by the Governor. Prior to that time, the responsibility for planning and policy had been vested in the state engineer. The board generally has the same responsibilities as those of the Colorado Water Conservation Board, except that the Utah board has no responsibility for flood control or stream classification for environmental protection. The board employs 30 persons.

The Utah board administers a construction program which is currently funded at \$10,000,000. There is no statutory limitation on the amount of funding which can be made available. The construction costs are repayable by the water users, but no interest is charged. There is no statutory limit on the time for repayment, but the longest period of repayment authorized by the board to date is thirty-eight years.

Administration

Utah employs a state engineer who has administrative responsibility for the distribution of water, as is the case in Colorado. However the Utah state engineer, as in Wyoming and New Mexico, has the additional responsibility for adjudicating water rights. The Utah state engineer's office employs 54 people.

STATE OF WASHINGTON

In 1970, the Washington legislature created the Washington Department of Ecology, which was given the responsibility for land use planning, air quality control, water pollution control, water planning and water administration. An Ecology Commission was created to consist of seven members appointed by the Governor. In the field of water resources, three principal divisions were created as follows:

Policy

A division of water planning was created with responsibilities relating to overall state policy, planning and water allocations. Its functions are similar to the Colorado Water Conservation Board, although in general considerably more limited. The planning division employs approximately 20 people.

Administration

A division of water management was created which functions in the field of water administration and the granting of water rights through a permit system. This division operates in about the same manner as the Colorado state engineer, except that it has the responsibility for the granting of water rights. Various field personnel act in about the same capacity as our division engineers. The water management division employs approximately 25 people.

Water Quality

The largest division is the division of water quality. This division employs about 75 people. Since Washington has a large lumbering and pulp industry, the matter of water pollution control poses a formidable problem in that state. The aluminum processing industry is also a major one in the state and adds to the water pollution problems.

The Ecology Commission administers a \$10,000,000 revolving loan fund to assist with small water projects. The interest rate charged for these loans is variable. In the past, these loans have been made primarily for irrigation assistance.

STATE OF WYOMING

In Wyoming the responsibility for water planning, administration and adjudications is vested in the office of the state engineer. As in New Mexico and Utah, a major function of the state engineer's office is to adjudicate water rights through an administrative system. The office of the state engineer employs 72 persons, ten of whom are in the planning division.

Wyoming has two loan programs to assist in the water resource development. One of these programs consists of a \$1,000,000 revolving fund which is administered by the Economic Planning and Development Board. This board consists of nine members appointed by the Governor. Loans are repayable with interest at the rate of 4 percent. There is no statutory time limit on the repayment of loans, but generally are for relatively short periods of time, in most cases not exceeding fifteen years.

A larger and more comprehensive loan fund is administered by the Farm Loan Board, which consists of specified elected state officers, including the Governor. There is no statutory limit as to the size of this fund, but it is currently funded at \$10,000,000. Loans from this fund are repayable at an interest rate of 4 percent. There is no statutory limit on the time for repayment and loans have been made for a period of up to forty years.

