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Report to the Colorado General Assembly

WATER LEGISLATION FOR 1971



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 156

November, 1970

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OF THE
COLORADO GENERAL ASSEMBLY

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* * * * *

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

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

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Report To The
Colorado General Assembly**

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

November 20, 1970

To Members of the Forty-eighth Colorado General Assembly:

Pursuant to provisions of House Joint Resolution No. 1034, 1969 Session, the Legislative Council submits the accompanying report concerning water legislation.

The Legislative Council Committee on Water submitted its report and recommendations to the Council at its meeting on November 20, 1970. The accompanying report was adopted by the Council at that meeting for transmission to the Governor and to the First Regular Session of the Forty-eighth General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/mp

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November 20, 1970

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

Dear Mr. Chairman:

Your Committee on Water submits the attached report and recommendations concerning water legislation. This year the Committee studied many issues involving state water policy and administration. As a result of its study, the Committee submits twelve bills concerning water for your consideration.

The bills generally cover three subjects. Bills A and B pertain to ground water law in Article 18 of Chapter 148 and are of principle concern to designated ground water basins.

The second group of bills (Bills C through J) concern water administration and would amend Senate Bill 81 -- the Water Right Determination and Administration Act of 1969. Possibly the most significant change recommended would be to make abandonment a separate action from the 1974 tabulation.

Other proposed changes include modifications in the judicial procedures for the adjudication of water rights; a delay in the deadline for revision and republication of the tabulation; removing the deadline for filing applications for plans for augmentation; clarifying the date of priority for a water right; clarification of the law concerning well permits; and delay of a deadline concerning showings of due diligence for conditional decrees awarded prior to the enactment of Senate Bill 81.

The third category of bills (Bills K and L) would provide additional state financial participation in water project construction (Bill L) and would establish a river management fund

for the state engineer (Bill K). These two bills would have a far-reaching impact on water development policy in Colorado. Since the Committee did not have sufficient time to thoroughly study these two bills, they are submitted for legislative consideration without specific recommendation from the Committee.

Respectfully submitted,

/s/ Senator Wayne Denny
Chairman
Committee on Water

WD/mp

FOREWORD

To carry out provisions of H.J.R. No. 1034, 1969 Session, the Legislative Council appointed a Water Committee comprised of the membership of the House Natural Resources Committee and the Senate Water Committee. The directive of the Committee was to conduct a further review of water laws to determine their sufficiency, need for modification, or need for further legislation to provide an effective system for administration, development, and control of water use in Colorado. Last year the Committee submitted a report Proposed Amendments To 1969 Water Legislation (Research Publication No. 147, December, 1969).

Since the total membership of the two legislative committees would be thirty-seven members, an executive committee of eleven members was established to coordinate the work of the full Committee. The Committee members are listed below with the Executive Committee members indicated by asterisks.

*Rep. Harold McCormick, Chairman for 1969	*Sen. Wayne Denny, Chairman for 1970
Rep. T. John Baer	*Sen. Fred Anderson
Rep. Forrest Burns	Sen. Hugh Chance
Rep. Charles DeMoulin	Sen. Fay DeBerard
*Rep. George Fentress	Sen. Clarence Decker
*Rep. Vincent Grace	Sen. Chester Enstrom
*Rep. Wad Hinman	Sen. Hugh Fowler
*Rep. Robert Jackson	Sen. William S. Garnsey, III
*Rep. Hiram McNeil	*Sen. Ted Gill
Rep. Ed Newman	Sen. Lloyd Hodges
Rep. Clarence Quinlan	Sen. George Jackson
Rep. Robert Schafer	Sen. Frank Kemp
Rep. Lowell Sonnenberg	Sen. Harry Locke
Rep. Ronald Strahle	Sen. Donald MacManus
*Rep. George Woodard	Sen. Vincent Massari
	*Sen. Dan Noble
	Sen. Norman Ohlson
	Sen. Allegra Saunders
	Sen. Joe Shoemaker
	Sen. Sam Taylor
	Sen. Kirk Wagner
	Sen. John Wogan

This year the Executive Committee held a series of five regional tours and meetings throughout the state in an effort to acquaint water users with the recent water legislation and to obtain the viewpoints of water users as well as to see first-hand the problems relating to water resource development and distribution. All members of the Committee were invited to attend the

meetings in their area. The Committee is pleased with the number of persons attending these meetings and discussing their ideas with the Committee. Also the Committee is appreciative of the excellent cooperation received from water judges in taking an active interest assisting with the meetings.

Other meetings of the Executive Committee were held in Denver and a meeting of the full Committee was held on November 12 and 13. At this meeting the twelve draft bills were reviewed and further amended by the full Committee.

Many persons were involved in the Committee's work this year and the excellent assistance of federal, state, and local officials, several private individuals, and representatives of private groups should be recognized. Mr. Tom Ten Eyck, Executive Director, Department of Natural Resources; Mr. Clarence Kuiper, State Engineer; Bill Mattern, Supervising Engineer; Don Hamburg, Water Resources Counsel; and Felix Sparks, Director of the Colorado Water Conservation Board, were in attendance at practically all of the regional meetings and participated actively in the discussions with water users. The Division of Game, Fish and Parks was also helpful on the western slope tour.

Mr. Ted Moulder and Dr. John Moore of the U.S. Geological Survey contributed to the meetings and arranged for other U.S.G.S. staff persons knowledgeable in particular water basins to make presentations of the geological conditions of each basin. Recognition should also be given to staff of the regional offices of the U.S. Bureau of Reclamation and the Federal Water Quality Administration for their contributions to the success of the field trips and water studies.

Stanley Elofson, Principal Analyst of the Legislative Council staff, had primary responsibility for coordinating the Committee work and was assisted by Robert Crites, Senior Research Assistant.

November, 1970

Lyle C. Kyle
Director

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COMMITTEE ON WATER REPORT AND RECOMMENDATIONS

As a continuation of the study of water laws conducted following the enactment of Senate Bill 81 in 1969, the Legislative Council Committee on Water again pursued the subject of further needs for water legislation.

As in 1969, the Legislative Council Committee on Water consisted of the entire membership of the House Committee on Natural Resources and the Senate Committee on Water. An executive committee of eleven members continued to function in 1970 as the primary study group. The executive committee was expanded by the addition of two Senators and two Representatives, bringing the executive committee to eleven members.

Executive Committee Studies

The executive committee made five field trips which covered most areas of the state. There were two purposes for these trips. The first was to gain first-hand knowledge of uses being made of water, methods of its use, and needs for further development of this resource. Secondly, the committee was able to meet with water users to obtain their thinking about legislation to alleviate the state's water problems. Special recognition should be given to legislators not on the executive committee who accompanied the committee on many of the trips and attended the meetings with water users.

As one of the field trips, the executive committee visited the Loveland area to inspect a rehabilitation project for an irrigation canal system. In Fort Collins, the committee visited the environmental resources center and the engineering research facilities at Colorado State University. In July, the executive committee visited the Steamboat Springs area to see water use for agriculture in the high mountain valleys and at the Hayden electric generating plant. A meeting was held in the San Luis Valley in August at which the committee viewed the closed basin area and a drainage project and held meetings in Monte Vista, Center, and La Jara.

Eastern Colorado was covered in August with a bus tour down the Arkansas Valley inspecting an irrigation canal works, John Martin Dam, the Great Plains Reservoir system, and a large irrigated farm in Lamar. From Lamar, the tour went through the Northern high plains area with its successfully developed designated ground water basin, and then up the South Platte Valley viewing various irrigation works and reservoir sites. Meetings with water users were held in Canon City, La Junta, Lamar, Burlington, Sterling, and Greeley.

The western slope was visited in September with a bus tour of water use areas and water development sites including the Grand Valley, Grand Mesa, Curecanti, Uncompahgre, San Miguel, Dolores, and Animas-La Plata projects. Meetings were held in Grand Junction, Delta, Norwood, Dove Creek, Cortez, Towaoc, Durango, and at the Marrow Point Dam.

On each tour water experts were invited from the State Engineer's Office, the Water Conservation Board, and the Division of Game, Fish and Parks, Colorado State University, the U.S. Geological Survey, the U.S. Bureau of Reclamation, the Federal Water Quality Administration, and representatives from the U.S. Congress. These specialists provided valuable information to the executive committee and to the water users present at the meetings and on the tours.

The executive committee met several times to consolidate its findings into bill form for consideration by the full water committee and by the Legislative Council. The bills, plus comments and the brief outline concerning the bills, are submitted for consideration in the 1971 General Assembly.

Generally, the bills may be considered as pertaining to three major areas of water law. Bills A and B concern the Colorado Ground Water Management Act. Bills C through J generally apply to the Water Right Determination and Administration Act of 1969 (Senate Bill 81); and Bills K and L would provide new legislation to assist the Water Conservation Board and the State Engineer's Office in the construction of projects for the conservation and management of water in Colorado. The latter two bills, however, are submitted for legislative consideration without specific recommendation of the Legislative Council Committee on Water.

Committee Findings and Recommendations

Ground Water. (Bills A and B) The Colorado Ground Water Management Act (Senate Bill 367, 1965 Session) has been in effect for five years and has provided a vehicle for the successful development of ground water in designated ground water basins. Development in these basins proceeds on the assumption that natural recharge of the aquifer in these basins is too slow to allow water use to be tied to replenishment. The policy established as a result of Senate Bill 367 is to permit a 40 percent depletion of the nontributary aquifers over a period of 25 years.

It was suggested that some changes need to be made in the Colorado Ground Water Management Act (Article 18 of Chapter 148, C.R.S. 1963, as amended). The State Engineer's Office suggested some administrative changes under the act; ground water users requested clarification of procedures concerning replacement wells;

and the point was made that the membership of the ground water commission does not provide adequate representation for residents of designated ground water basins. Bills A and B are addressed to these recommendations.

More specifically, it is recommended that six members of the ground water commission be appointed from designated ground water basins, with not more than two from any one basin. Also, the bill would provide that one member representing municipal or industrial uses shall be from west of the continental divide. (Bill A) The committee suggests that the term "resident agriculturalist", as used to provide rural representation, be defined to assure that the appointees will be farmers or ranchers. (See definition in Bill B)

Definitions of "alternate point of diversion wells" and "supplemental wells" are provided to differentiate these wells from replacement wells. A suggested change to section 148-18-10 would prohibit alternate point of diversion wells and supplemental wells in certain portions of designated ground water basins.

Another amendment would limit the exemption section in the ground water act (148-18-4) to designated ground water basins. A similar provision might be added to the Water Right Determination and Administration Act (Senate Bill 81). As it applies to ground water basins, the amendment would reduce the maximum capacity of wells exempted from 50 gallons per minute to 30 gallons per minute. A permit would be required for all wells.

A change in section 148-18-7 would require an appropriator to submit evidence of the capacity of his well in order to obtain his final well permit.

Several amendments address themselves to procedures for hearings, fees charged, and publication requirements for the Commission in hearing applications and objections.

Section 148-18-8 would be amended by the addition of language from section 148-21-35 (Senate Bill 81) concerning waste, futile call, and material injury.

Language concerning the expiration of well permits for wells outside designated ground water basins was added to section 148-18-36 to require holders of permits issued prior to April 21, 1967 to either construct a well or to relinquish the permit. The state engineer would be required to notify each person who might be affected.

A change in 148-18-10 would give the Ground Water Commission statutory guidelines in setting policy on depletion rates of the aquifer.

Augmentation. (Bill C) The committee found that water users are not filing applications for approval of plans for augmentation as was anticipated under section 148-21-23 of the 1969 water legislation (Senate Bill 81). In general, plans for augmentation concern programs to increase the supply of water.

Since plans are not being filed, the deadline for filing, July 1, 1971, and the subsequent delay in accepting further plans until July 1, 1973, will not serve the purpose originally intended. The purpose of this section, stated in 148-21-23 (1) of Senate Bill 81, is to gather as many applications as possible into one adjudication proceeding to prevent augmentation plans from injuring other water rights. Bill C would simply delete the two dates noted above which restrict applications for plans for augmentation.

Republication. (Bill D) Republication of a revised tabulation of water rights on October 20, 1970, did not take place (Section 148-21-27 (4)). The state engineer's office did not have sufficient funds to republish the tabulation in its entirety and not all of the revisions of the first tabulation had been completed by that date. Bill D would set the dates forward three years to October, 1973, for revision and republication of the tabulation.

Better understanding of the tabulation would be achieved through a new provision permitting the state engineer to prepare tabulations of water rights on individual rivers and tributaries within a water division as well as for the entire division. The portion of the tabulation covering a smaller area, rather than an entire division, would be easier for water users to understand. These partial tabulations would not be published but would be available through the office of the division engineer.

Decree Seniority. (Bill E) A suggested change in section 148-21-22 would provide that decrees issued by one term of court would be junior to decrees issued as a result of applications filed at a previous term of court. This change would prevent more complicated cases from losing seniority during the process of adjudication.

Judicial Changes. (Bill F) Some further possible changes have been mentioned by water judges concerning the adjudication procedures in sections 148-21-18 and 148-21-19. Publication of the resume of water right adjudication applications seems to be more extensive than is necessary, especially for applications for adjudication of wells. It was suggested that section 148-21-18 (3) (b) be changed to provide that the portion of the resume pertaining to wells be published only in the county in which the well is situated, except as the water judge may otherwise deem necessary.

The language in 148-21-18 (3) (c) concerning a quarterly mailing list would be clarified to specify that the \$12.00 annual fee can be prorated over a shorter period of time.

Section 148-21-19 (1) presents two problems. The first suggestion would eliminate the requirement that the referee keep separate records since he can use the records of the water clerk. Secondly, it was reported that the time limit of one month for the referee to make his ruling on applications is proving to be impossible to meet. Bill F would remove the duplication of records requirement and would extend by one month the deadline for the referee to make his ruling, with further extension permitted at the discretion of the water judge.

A change to this subsection, not recommended by the water judges, would require a written statement by the division engineer concerning possible injury, to accompany every ruling by the referee. Fears have been expressed that no state agency has responsibility of seeking to prevent applications for water rights from being accepted which will result in injury to vested rights. This problem might be alleviated by requiring that the referee include a written statement from the division engineer in his ruling. The statement of the division engineer would specify any anticipated injury to other vested water rights.

Section 148-21-20 (1) provides for two terms annually in the water court. It was suggested that a single term beginning earlier in the year would suffice and would mitigate a problem of seniority of water rights being established by term of court.

Copies of Applications and Statements of Opposition.

(Bill G) The committee recommends that the state engineer and the division engineer receive a copy of all applications and all statements of opposition.

Well Permits and Water Rights. (Bill H) A conflict in the law exists between section 148-21-21, which gives the water judge authority to decree water rights, and section 148-18-36 (3), which states that a permit from the state engineer is a prerequisite to construct a well. Bill H would require that a permit to construct a well accompany any application to the water court for a water right which would require drilling a well. Reasoning for this requirement is that the state engineer should be charged with developing ground water policy outside designated ground water areas. A decision not to grant a permit could be appealed in court.

Abandonment. (Bill I) Abandonment of water rights is of such importance that the process should involve more safeguards than merely omitting the water rights from the tabulation in 1974 (section 148-21-28 (1)). Abandonment procedures would be separated from the tabulation of water rights under section 148-21-28.

The provisions of a new section (148-21-24) would require that the division engineer first determine the water rights in his division which have been abandoned and to then consult with the owners of those rights before filing a petition in the water court for an abandonment decree.

Some criteria, providing guidelines for evidence of abandonment and for rebuttal of such evidence, are specified in the bill. The division engineer would file his first petition in October, 1972. Subsequent abandonment proceedings would take place every four years.

Due Diligence. (Bill J) The deadline of June 1, 1970, stipulated in section 148-21-44 (disposition of pending proceedings) caught some people unprepared in filing applications for biennial findings of reasonable diligence. This provision may have been unfair if it unnecessarily contradicted previous law. Section 148-10-8, repealed in 1969, provided for evidence of due diligence in developing a conditional decree. Bill J would extend the deadline of June 1, 1970 to June 1, 1972 by providing that 1972 be the first year in which evidence for biennial findings of reasonable diligence would be heard. (148-21-44)

River Management. (Bill K) It has been maintained that the most efficient use of water in Colorado would require organized management of the use of water within the priority system. One method to effectuate water management would be to provide that the state engineer buy and sell water using a self-sustaining fund in order to keep the call off the river.

The bill would provide for the establishment of a water management fund which would be under the state engineer's office. The fund could be used to purchase rights in existing or planned reservoirs or to construct wells at strategic locations to provide water for the senior decrees upon the purchase of such water by the junior decree holders. This bill is submitted to the General Assembly without recommendation.

State Financing Water Projects. (Bill L) The committee was often told that the state will soon need to increase its participation in the development of water resources. Under this bill, the Colorado Water Conservation Board would contract for construction of water projects. Such projects would first need the approval of the General Assembly and an annual report would be required for the General Assembly.

The projects contemplated would include "seed" monies to get needed projects started, and also funds to assist local governmental agencies in completing projects in which local resources have been exhausted. The fund could also be used to construct projects beneficial to the state water plan which is to be completed within a few years. This bill is submitted for consideration without recommendation of the committee.

BILL A
A BILL FOR AN ACT

1
2
3 CONCERNING THE MEMBERSHIP OF THE GROUND WATER COMMISSION.

4
5 SECTION 1. 148-18-3 (1), Colorado Revised Statutes 1963
6
7 (1965 Supp.), is amended to read:

8
9 148-18-3. Commission - organization - expenses. (1) There
10 is hereby created a ground water commission to consist of twelve
11 members, nine of whom shall be appointed by the governor, and
12 confirmed by the senate. ~~Appointments shall be two each from~~
13 ~~irrigation divisions one, two, and three, and one from either~~
14 ~~division four or seven, and one from either division five or six,~~
15 ~~and one at large. Of the two members appointed from divisions~~
16 ~~one and two, one member from each of such divisions shall be~~
17 ~~appointed representing the area east of the 104th meridian and one~~
18 ~~from the area west of the 104th meridian. Of the two members~~
19 ~~appointed from division three, one member shall be appointed~~
20 ~~representing the area north and east of the Rio Grande river and~~
21 ~~one representing the area south and west of the Rio Grande river.~~

22
23 SECTION 2. 148-18-3 (2) and (3), Colorado Revised Statutes,
24
25 1963 (1965 Supp.), are REPEALED AND REENACTED, WITH AMENDMENTS,
26
27 to read:
28
29
30
31
32
33
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Since the powers of the Ground Water Commission are expressed only with reference to designated ground water areas, it has been recommended that the membership of the Commission should be more representative of these areas. The amendment to Section 148-18-3 would provide that six of the nine appointed members shall be residents of a designated ground water basin. At the present time there are six designated ground water basins.

A

TEXT

1 148-18-3. Commission - organization - expenses. (2) The
2
3 appointed members of the commission holding office as of July 1,
4
5 1971 shall continue in office for the term of their appointment,
6
7 and until their successors are appointed.

8
9 (3) (a) All appointments to the commission shall be for
10
11 four year terms, except those made to fill vacancies, which shall
12
13 be for the remainder of the term vacated.

14
15 (b) Appointments made after July 1, 1971, as terms expire
16
17 or are vacated, shall be made so that the commission shall
18
19 include six members who are resident agriculturists of designated
20
21 ground water basins, with no more than two resident
22
23 agriculturists from the same ground water basin to be members of
24
25 the commission at the same time, and three residents of the state
26
27 representing municipal or industrial water users of the state,
28
29 one of whom shall be appointed from the area west of the
30
31 continental divide.

32
33 SECTION 3. 148-18-3 (4) , Colorado Revised Statutes 1963
34
35 (1969 Supp.), is amended to read:

36
37 148-18-3. Commission - organization - expenses. (4) IN
38
39 ADDITION TO THE APPOINTED MEMBERS, the natural--resources

EXPLANATION

(2) Present members will continue in office until the end of their terms.

(3) (a) Concerns length of terms.

(b) Six members of the commission must be from designated ground water basins. The remaining three members appointed by the Governor will be municipal or industrial representatives. One of the three municipal or industrial representatives will be from west of the continental divide.

The added language clarifies the composition of the ground water commission and reflects the change in title of the natural resources coordinator to the

TEXT

1 coordinator, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL
2
3 RESOURCES, the state engineer, and the director of the state
4
5 water conservation board shall be voting members of the
6
7 commission. Seven voting members shall constitute a quorum at
8
9 any regularly or specially called meeting of the commission, and
10
11 a majority vote of those present shall rule. The commission
12
13 shall establish and maintain a schedule of four general meetings
14
15 each year. The chairman, at his discretion, may call special
16
17 meetings of the commission to dispose of accumulated business.

18
19 SECTION 4. Safety clause. The general assembly hereby
20
21 finds, determines, and declares that this act is necessary for
22
23 the immediate preservation of the public peace, health, and
24
25 safety.

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EXPLANATION

executive director of the department of natural resources.

1
2 BILL B
3 A BILL FOR AN ACT

4 CONCERNING UNDERGROUND WATER.

5
6 Be it enacted by the General Assembly of the State of
7
8 Colorado:

9
10 SECTION 1. 148-18-2 (3) and (4), Colorado
11 Revised Statutes 1963 (1965 Supp.), are amended, and
12 section 148-18-2 is further amended BY THE ADDITION OF
13
14 NEW SUBSECTIONS to read:

15
16 148-18-2. Definitions. (3) The term
17
18 "designated ground water" is that ground water which
19
20 in its natural course would not be available to and
21
22 required for the fulfillment of decreed surface
23
24 rights, or ground water in areas not adjacent to a
25
26 continuously flowing natural stream wherein ground
27
28 water withdrawals have constituted the principal water
29
30 usage for at least fifteen years preceding ~~January 1,~~
31
32 ~~1965,~~ THE DATE OF THE FIRST HEARING ON THE PROPOSED
33
34 DESIGNATION OF THE BASIN; and which in both cases is
35
36 within the boundaries, either geographic or geologic,
37
38 of a designated ground water basin.
39

148-18-2 (3) and (4). Definitions would be clarified to more closely reflect actual geological conditions and scientific language. The term "designated ground water basin" requires updating to eliminate a specific date reference and to provide for a 15 year continuous use standard.

B

TEXT

EXPLANATION

1 (4) The term "aquifer" is a ~~member of a~~
2 ~~geological formation that contains or transmits ground~~
3 ~~water.~~ GEOLOGIC DEPOSIT OF WATER BEARING MATERIAL
4
5 YIELDING A SUFFICIENT QUANTITY OF WATER TO ALLOW
6
7 EXTRACTION FOR APPLICATION TO A BENEFICIAL USE.
8

9
10 (20) "Resident agriculturist" as used in this
11 article means a bona fide farmer or rancher residing
12 in the designated ground water basin whose major
13 source of income is derived from the production and
14 sale of agricultural products.
15
16
17
18

19
20 (21) "Supplemental well" as used in this article
21 means any well drilled and used, in addition to an
22 original well or other diversion for the purpose of
23 obtaining the quantity of the original appropriation
24 of the original well, which quantity can no longer be
25 obtained from the original well.
26
27
28

29 (22) "Alternate point of diversion well" as
30 used in this article means any well drilled and used,
31 in addition to an original well or other diversion,
32 for the purpose of obtaining the present appropriation
33
34
35
36
37
38
39

"Resident agriculturist" is defined to express the intent of the committee that six persons directly connected with agriculture and livestock shall be appointed to the commission. This term is also in present law, 148-18-3 (3) (1965 Supp.).

"Supplemental well" is defined to differentiate supplemental from replacement wells.

"Alternate point of diversion well" is defined to differentiate this type of well from replacement wells.

TEXT

EXPLANATION

1 of that original well, from more than one point of
2
3 diversion.
4

5 SECTION 2. 148-18-4, Colorado Revised Statutes
6
7 1963 (1967 Supp.), is REPEALED AND REENACTED, WITH
8
9 AMENDMENTS, to read:

10
11 148-18-4. Small capacity wells. (1) (a) The
12
13 state engineer shall have the authority to approve
14
15 permits for the following types of wells in designated
16
17 ground water basins without regard to any other
18
19 provisions of this article, upon satisfactory evidence
20
21 that the exercise of such permits would not interfere
22
23 with the exercise of prior vested water rights:

24
25 (b) Wells not exceeding thirty gallons per
26
27 minute and used for no more than three single-family
28
29 dwellings, including the normal operations associated
30
31 with such dwellings but not including the irrigation
32
33 of more than one acre of land;

34
35 (c) Wells not exceeding thirty gallons per
36
37 minute and used for watering of livestock on range and
38
39 pasture; or

"Small capacity wells" would require a permit to provide more information for the state engineer concerning small wells, which, in large number, could have a substantial impact on ground water levels. This provision would apply only to designated ground water basins.

(Note: Section 148-21-45. Exemptions refers to 148-18-4 which would be repealed and re-enacted by this amendment. Section 148-21-45 should be modified if wells located outside of designated ground water basins are to continue to be exempted from regulation.)

TEXT

EXPLANATION

1 (d) Wells not exceeding thirty gallons per
2
3 minute and used for drinking and sanitary facilities
4
5 in individual commercial businesses.

6
7 (2) A fee of five dollars shall accompany any
8
9 application for a well permit under this section.

10
11 SECTION 3. 148-18-5 (1) (a), (b), (c), (d), and
12
13 (h), Colorado Revised Statutes 1963 (1965 Supp.), are
14
15 amended to read:

16
17 148-18-5. Determination of designated ground
18
19 water basins. (1) (a) The commission shall, from time
20
21 to time as adequate factual data becomes available,
22
23 determine designated ground water basins and
24
25 subdivisions thereof by ~~both geologic and~~ geographic
26
27 description, and as future conditions require and
28
29 factual data justify, shall alter the boundaries or
30
31 description thereof. In making such a determination
32
33 the commission shall make the following findings:

34
35 (b) The name or names of the ~~water bearing~~
36
37 ~~geological member or members of a defined formation;~~
38
39 AQUIFER OR AQUIFERS WITHIN THE PROPOSED DESIGNATED

Changes in this section provide more accurate language. The new terms used are defined in section 1 of this bill.

TEXT

EXPLANATION

1 BASIN;
2
3 (c) The boundaries of each ~~formation~~ AQUIFER OF
4
5 ~~member~~ AQUIFERS being considered;
6
7 (d) The estimated quantity of water stored in
8
9 each ~~formation~~ AQUIFER or ~~member~~ AQUIFERS;
10
11 (h) If the source is an area of use exceeding
12
13 fifteen years as defined in section 148-18-2 (3), the
14
15 commission shall list those users who have been
16
17 withdrawing water ~~in excess of~~ DURING the fifteen-year
18
19 period, the use made of the water, the average annual
20
21 quantity of water withdrawn, and the year in which the
22
23 user began to withdraw water.
24
25 SECTION 4. 148-18-6 (1), (2), and (4), Colorado
26
27 Revised Statutes 1963 (1965 supp.), are amended to
28
29 read:
30
31 148-18-6. Application for use of ground water -
32
33 publication of notice - conditional permit - hearing
34
35 on objections. (1) Any person desiring to
36
37 appropriate ground water for a beneficial use in a
38
39 designated ground water basin shall make application

TEXT

1 to the commission in a form to be prescribed by the
2 commission. The applicant shall specify the
3 particular designated ground water basin or
4 subdivision thereof from which water is proposed to be
5 appropriated, the beneficial use to which it is
6 proposed to apply such water, the location of the
7 proposed well, the name of the owner of the land on
8 which such well will be located, the ESTIMATED average
9 annual amount of water applied for in acre-feet, the
10 proposed ESTIMATED maximum pumping rate in gallons per
11 minute, and if the proposed use is irrigation, the
12 description of the land to be irrigated and the name
13 of the owner thereof, together with such other
14 reasonable information as the commission may designate
15 on the form prescribed. THE AMOUNT OF WATER APPLIED
16 FOR SHALL ONLY BE UTILIZED ON THE LAND DESIGNATED ON
17 THE APPLICATION. THE PLACE OF USE SHALL NOT BE
18 CHANGED WITHOUT FIRST OBTAINING AUTHORIZATION FROM THE
19 GROUND WATER COMMISSION.

(2) Upon the filing of such application, the

EXPLANATION

An estimate would be a more realistic requirement than in present law for information with a well application.

Clarification is needed to provide control over the amount of water used.

TEXT

EXPLANATION

1 commission shall, within thirty days, cause notice of
2
3 the same to be published IN A NEWSPAPER OF GENERAL
4
5 CIRCULATION WITHIN THE COUNTY IN WHICH THE WELL IS
6
7 LOCATED AND IN ANY OTHER COUNTIES WHICH WOULD BE
8
9 AFFECTED.

Publication requirement.

Clarification is required to avoid duplication of hearings in connection with objections to well applications. Under the present statute, hearings are required if an objection is filed, even though the well application could not be granted because of over-appropriation in the area.

10
11 (4) If objections have been filed within the time
12
13 in said notice specified, the commission shall, ONLY
14
15 IN THE EVENT SAID APPLICATION COULD BE GRANTED
16
17 PURSUANT TO SUBSECTION (3) OF THIS SECTION, set a date
18
19 for a hearing on the application and the objections
20
21 thereto, and shall notify the applicants and the
22
23 objectors of the time and place. Such hearing shall
24
25 be held in the ~~county~~ DESIGNATED GROUND WATER BASIN in
26
27 which the proposed well will be located. If after
28
29 such hearing it shall appear that there are no
30
31 unappropriated waters in the designated source, or
32
33 that the proposed appropriation would unreasonably
34
35 impair existing water rights from such source, or
36
37 would create unreasonable waste, the application shall
38
39 be denied; otherwise it shall be granted in accordance

TEXT

EXPLANATION

1 with subsection (3) of this section. THE COMMISSION
2
3 SHALL CONSIDER ALL EVIDENCE PRESENTED AT THE HEARING
4
5 AND ALL OTHER MATTERS SET FORTH IN THIS SECTION IN
6
7 DETERMINING WHETHER THE APPLICATION SHOULD BE DENIED
8
9 OR GRANTED.

10
11 SECTION 5. 148-18-7 (1) and (2), Colorado
12
13 Revised Statutes 1963 (1965 Supp.), are amended to
14
15 read:

16
17 148-18-7. Final permit - evidence of beneficial
18
19 use - limitations. (1) After having received a
20
21 conditional permit to appropriate designated ground
22
23 water, the applicant shall proceed with due diligence
24
25 to construct the well or other works necessary to
26
27 apply the water to a beneficial use. THE APPLICANT
28
29 SHALL, UPON COMPLETION OF THE WELL, FURNISH THE
30
31 COMMISSION INFORMATION AS TO THE MAXIMUM PUMPING RATE
32
33 IN GALLONS PER MINUTE, MEASURED BY SUCH DEVICE AS IS
34
35 PRESCRIBED BY THE COMMISSION, SUCH RATE TO BE
36
37 CERTIFIED BY THE DRILLER, A TEST PUMPER, OR THREE
38
39 DISINTERESTED PERSONS. The applicant shall ALSO

This addition would require evidence of well capacity for the final permit.

TEXT

EXPLANATION

1 furnish the commission with such evidence in the form
2
3 prescribed by the commission as will demonstrate that
4
5 the water has been put to beneficial use.
6

7 (2) If after due investigation the commission
8
9 finds that the water has been put to beneficial use
10
11 and that the other terms of the conditional permit
12
13 have been complied with, the commission shall order
14
15 the state engineer to issue a final permit to use
16
17 designated ground water IN THE AMOUNT SHOWN BY THE

18 TESTING DEVICE CERTIFIED AS PRESCRIBED IN SUBSECTION
19
20 (1) OF THIS SECTION AND containing such limitations
21
22 and conditions as the commission shall deem necessary
23
24 to prevent waste and for the protection of other
25
26 appropriators.
27

28
29 SECTION 6. 148-18-8 (4), (a) Colorado Revised
30
31 Statutes 1963 (1965 Supp.), is amended, and said
32
33 subsection (4) is further amended BY THE ADDITION OF A
34
35 NEW PARAGRAPH to read:

36
37 148-18-8. Priority - discontinuance orders -
38
39 grounds. (4) (a) After having established tentative

TEXT

EXPLANATION

1 priorities, the commission shall publish the same.
2
3 ~~setting forth the following information:~~ SEPARATE
4
5 LISTS MAY BE PUBLISHED FOR SUBDIVISIONS OF A
6
7 DESIGNATED GROUND WATER BASIN WHEN IT IS SHOWN BY
8
9 HYDROLOGICAL OR GEOLOGICAL FACT THAT AN AREA OR
10
11 SUBDIVISION DOES NOT AFFECT THE SUPPLY OF WATER
12
13 AVAILABLE TO ANOTHER AREA OR SUBDIVISION. THE
14
15 PUBLICATION SHALL SET FORTH THE FOLLOWING INFORMATION:
16
17 (h) The number of acres to be irrigated.
18
19 Section 7. 148-18-8, Colorado Revised Statutes
20
21 1963 (1965 Supp.), is amended BY THE ADDITION OF A NEW
22
23 SUBSECTION to read:
24
25 148-18-8. Priority - discontinuance orders -
26
27 grounds. (7) (a) The ground water commission shall
28
29 order the total or partial discontinuance of any
30
31 diversion within a ground water basin to the extent
32
33 the water being diverted is not necessary for
34
35 application to a beneficial use; the commission shall
36
37 also order a total or partial discontinuance of any
38
39 diversion in a ground water basin to the extent the

Provision would be made for publication of separate priority lists for areas which are not hydrologically connected.

The addition of the new paragraph (h) is intended to establish uniformity. It will also aid in the administration of priorities.

This language is taken from 148-21-35 (S.B. 81) which relates to surface water.

TEXT

EXPLANATION

1 water being diverted is required by persons entitled
2
3 to use the water under appropriations having senior
4
5 priorities. No such discontinuance shall be ordered
6
7 unless the diversion is causing or will cause material
8
9 injury to such appropriators having senior priorities.
10
11 In making its decision as to the discontinuance of a
12
13 diversion to satisfy senior priorities the ground
14
15 water commission shall be governed by the following:
16
17 (b) Materiality of injury depends on all factors
18
19 which will determine in each case the amount of water
20
21 such discontinuance will make available to such senior
22
23 priorities at the time and place of their need. Each
24
25 diversion shall be evaluated and administered upon the
26
27 basis of the individual circumstances relating to it
28
29 and in accordance with the provisions of this article.
30
31 In the event that discontinuance is ordered pursuant
32
33 to the foregoing, and such does not cause water to
34
35 become available to said senior priority at the time
36
37 and place of their need, then said discontinuance
38
39 order shall be rescinded.

TEXT

EXPLANATION

1 SECTION 8. 148-18-10 (1) Colorado Revised
2
3 Statutes 1963, as amended, is amended BY THE ADDITION
4
5 OF A NEW PARAGRAPH, and said 148-18-10 is further
6
7 amended BY THE ADDITION OF A NEW SUBSECTION to read:

8
9 148-18-10. Powers of the ground water commission
10
11 -- limitations. (1) (f) In establishing reasonable
12
13 ground water pumping levels the commission shall not
14
15 approve new ground water withdrawals which would
16
17 result in more than forty percent depletion of the
18
19 aquifer over a twenty-five year period.

20
21 (2) No supplemental wells or alternate point of
22
23 diversion wells shall be allowed in any area of any
24
25 designated ground water basin in which the proposed
26
27 well or wells combined would affect, within the
28
29 economic life of the aquifer, any area of the aquifer
30
31 in which the water table was declining or had declined
32
33 in the past.

34 SECTION 9. 148-18-11 (1) and (2), Colorado
35
36 Revised Statutes 1963 (1965 Supp.), are REPEALED AND
37
38 REENACTED, WITH AMENDMENTS, to read:

(1) (f) Statutory guidelines would be given to the Commission to establish policy on depletion of the aquifer.

(2) This added section would prohibit supplemental or alternate point of diversion wells in most areas of designated ground water basins.

TEXT

EXPLANATION

1 148-18-11. Notice - publication. (1) When any
2
3 notice is required to be published under any section
4
5 of this article, including notice of elections, except
6
7 for the notice required in 148-18-6 (2) of this
8
9 article, it shall be deemed to mean a publication in a
10
11 newspaper of general circulation in each of the
12
13 counties concerned. Publication of all notices shall
14
15 be once each week for two successive weeks. The
16
17 notice shall state the hour and date of the
18
19 commencement of hearings on the subject matter of the
20
21 notice; the place at which the hearings will be held,
22
23 which shall be a place within the boundaries of the
24
25 ground water basin; the place where written objections
26
27 may be filed; and the final date by which written
28
29 objections will be received; or if for an election,
30
31 the date, hours, and polling places.

32
33 (2) All objections, either to the published
34
35 notice or any matter contained therein, shall be in
36
37 writing and shall briefly state the nature of the
38
39 objection and shall be filed within the time and at

Provision would be made for publication where the influence of a well would affect appropriations in other counties. The change would also conform to other recommended purification requirements. (Also see 148-18-6 (2) amended by section 4 of this bill - page 17.)

TEXT

1 the place designated in the notice.

2
3 SECTION 10. 148-18-12 (1), Colorado Revised
4 Statutes 1963 (1965 Supp.), is amended to read:

5
6
7 Hearings. (1) Hearings on all
8 matters to be heard by the commission shall be held in
9 ~~one of the counties~~ WITHIN THE BOUNDARIES OF THE
10 GROUND WATER BASIN AND WITHIN THE DISTRICT, IF ONE
11 EXISTS, in which the water rights directly involved
12 are situated. The hearings shall be conducted before
13 the commission under reasonable rules and regulations
14 of procedure prescribed by it. All parties to the
15 hearing, including the commission, shall have the
16 right to subpoena witnesses, who shall be sworn by the
17 chairman or acting chairman of the commission to
18 testify under oath at the hearing. All parties to the
19 hearing shall be entitled to be heard either in person
20 or by attorney.

21 SECTION 11. 148-18-13, Colorado Revised Statutes
22 1963 (1965 Supp.), is amended to read:

23 148-18-13. Other administrative hearings. Any

EXPLANATION

148-18-12 Hearings. The proposed changes would allow use of central trade area location for hearings rather than county by county hearings. It would particularly facilitate and reduce the costs involved in the hearings.

The proposed changes would also aid in distinguishing the type of hearings considered by sections 148-18-12 and 148-18-13 and would eliminate duplication of hearings.

TEXT

1 person claiming to be injured by any act of the state
2
3 engineer or commission under the provisions of this
4
5 article, or the failure of the state engineer or
6
7 commission to take any action under the provisions of
8
9 this article, OTHER THAN THE DENIAL OF A WELL
10
11 APPLICATION OR DENIAL OF AN OBJECTION, may file a
12
13 written statement with the commission stating the
14
15 basis of the alleged injury. Thereafter, upon thirty
16
17 days' written notice to any adverse party, the
18
19 commission shall conduct a hearing upon the petition
20
21 in the manner provided in section 148-18-12.

22
23 SECTION 12. 148-18-15 (1) (b), Colorado Revised
24
25 Statutes 1963 (1965 Supp.), is amended, and said
26
27 subsection (1) is further amended BY THE ADDITION OF A
28
29 NEW PARAGRAPH to read:

30
31 148-18-15. Fees. (1) (b) With an application
32
33 for the use of ground water, ~~\$25.00~~ \$30.00, WHICH SUM
34
35 SHALL NOT BE REFUNDED.

36
37 (h) With an objection to an application for the
38
39 use of ground water, \$10.00, which sum shall not be

EXPLANATION

Hearings concerning a denial of a well application are provided elsewhere in the act.

Experience indicates that the present fee schedule is not adequate to offset the costs incurred. Also the requirement of a fee for the filing of an objection (h) will aid in controlling the number of objections filed which are without merit.

TEXT

EXPLANATION

1 refunded.

2
3 SECTION 13. 148-18-30, Colorado Revised Statutes
4
5 1963 (1965 Supp.), is amended to read:

6
7 148-18-30. Management district - board of
8
9 directors - control measures - hearing - notice -
10
11 publication - order. Whenever the board of directors
12
13 shall determine that control measures are necessary in
14
15 order to ensure the proper conservation of ground
16
17 water within the district, it shall confer with the
18
19 ground water commission and ground water users within
20
21 the district. No control measures shall be instituted
22
23 until after a public hearing. Notice of such hearing
24
25 shall be published. Such notice shall state the time
26
27 and place of the hearing and in general terms the
28
29 corrective measure or measures proposed. Within
30
31 thirty days after such hearing, the board shall
32
33 announce the measure or measures ordered to be taken
34
35 and shall cause notice thereof to be published;
36
37 provided, that the ground water commission may review
38
39 any measure or measures ordered by the board when an

TEXT

EXPLANATION

1 objection thereto is made to said commission by an
2
3 affected party or parties within thirty days after
4
5 publication of the corrective measures. Notice of
6
7 such measure or measures shall also be sent to all
8
9 known ground water users throughout such district by
10
11 either certified or registered mail. The board shall
12
13 have authority to compel compliance with such measure
14
15 or measures by an action brought in the district court
16
17 of the county in which any failure to comply is found
18
19 to exist. ANY PERSON AGGRIEVED BY AN ACT OF THE
20
21 DISTRICT BOARD SHALL HAVE THE RIGHT TO BE HEARD BY THE
22
23 BOARD. IF SAID PERSON IS DISSATISFIED WITH THE
24
25 DECISION OF THE BOARD, HE MAY APPEAL THE SAME TO A
26
27 COURT OF COMPETENT JURISDICTION WITHIN THIRTY DAYS OF
28
29 SAID DECISION.

30 SECTION 14. 148-18-31, Colorado Revised Statutes
31
32 1963 (1967 Supp.), is amended to read:

33 148-18-31. Management district - board of
34
35 directors - taxes - levy - limitation. The board of
36
37 directors may levy and collect annually taxes
38
39

This amendment is proposed to provide for conformity with administrative procedures and also to provide for clarification of a time period within which appeals can be made.

TEXT

EXPLANATION

1 necessary to finance the activities of such district
2
3 to the amount of not more than one-half mill on the
4
5 dollar of the assessed value of all taxable property
6
7 within such district. It shall, on or before the
8
9 fifteenth day of October of each year, certify its
10
11 mill levy to the board of county commissioners of the
12
13 counties wholly or partially within the district, who
14
15 shall extend the same on the county tax list, and the
16
17 same shall be collected by the county treasurer in the
18
19 same manner as state and county taxes. In addition,
20
21 annually the board of directors of the district may
22
23 assess and certify a special assessment on all water
24
25 wells, except those wells described in section
26
27 143-18-4, in the district not to exceed five cents per
28
29 gallon PER MINUTE of the ~~rated~~ REGISTERED pump
30
31 capacity of each such well. Said assessment shall be
32
33 collected by the county treasurer in the same manner
34
35 as other special assessments. It shall be the duty of
36
37 the board to apply for and to receive from the county
38
39 treasurers all money to the credit of the district.

The suggested amendment would place the tax on the registered capacity of the pump to more accurately reflect the amount of water actually used than is the case at present.

TEXT

EXPLANATION

1 SECTION 15. 148-18-36 (4), Colorado Revised
2
3 Statutes 1963 (1967 Supp.), is amended to read:
4

5 148-18-36. Permits to construct wells outside
6
7 designated areas - fees - permit not ground water
8
9 right - evidence - time limit. (4) (a) Any permit to
10
11 construct a well, issued on or after the effective
12
13 date of this subsection, shall expire one year after
14
15 the issuance thereof, unless the applicant to whom
16
17 such permit was issued shall furnish to the state
18
19 engineer, prior to such expiration, evidence that the
20
21 water from such well has been put to beneficial use,
22
23 or unless prior to such expiration the state engineer
24
25 , upon good cause shown, shall have extended such
26
27 permit for an additional period certain, not to exceed
28
29 one year.

30
31 (b) ANY PERMIT TO CONSTRUCT A WELL ISSUED PRIOR
32
33 TO APRIL 21, 1967 SHALL EXPIRE ON JANUARY 1, 1972,
34
35 UNLESS THE APPLICANT SHALL FURNISH TO THE STATE
36
37 ENGINEER, PRIOR TO JULY 1, 1972, EVIDENCE THAT THE
38
39 WATER FROM SUCH WELL HAS BEEN PUT TO BENEFICIAL USE.

Permits issued for wells outside designated ground water areas before April 21, 1967 have no expiration date. This change would require holders of such permits to either drill a well for that permit or lose the permit. The state engineer would be required to notify affected permit holders of the new expiration date.

TEXT

1 THE STATE ENGINEER SHALL GIVE NOTICE BY CERTIFIED OR
2 REGISTERED MAIL TO ALL PERSONS TO WHOM SUCH PERMITS
3 WERE ISSUED AT THE ADDRESS SHOWN ON THE STATE
4 ENGINEER'S RECORDS, SETTING FORTH THE PROVISIONS OF
5 THIS SUBSECTION. SUCH NOTICES SHALL BE MAILED NO
6 LATER THAN DECEMBER 31, 1971.

7 SECTION 16. Repeal. 148-18-5 (1) (g), Colorado
8 Revised Statutes 1963 (1965 Supp.), is repealed.

9 SECTION 17. Safety clause. The general assembly
10 hereby finds, determines, and declares that this act
11 is necessary for the immediate preservation of the
12 public peace, health, and safety.

EXPLANATION

148-18-5 (1) (g). The repeal of this section is recommended to obtain conformity between the law and Commission policy concerning projected use of ground water.

1 BILL C
2 A BILL FOR AN ACT

3 REMOVING TIME LIMITATIONS ON PLANS FOR AUGMENTATION RELATING TO
4
5 WATER.

6
7 Be it enacted by the General Assembly of the State of Colorado:

8
9 SECTION 1. 148-21-23 (2), Colorado Revised Statutes 1963
10 (1969 Supp.), is amended to read:

11
12 148-21-23. Special procedures with respect to plans for
13 augmentation. (2) Applications for approval of plans for
14
15 augmentation which are filed prior to ~~July 1, 1971~~; shall be
16
17 handled in the manner specified in this article except as
18
19 follows: ~~All~~ NO such applications ~~and all~~ OR statements of
20
21 opposition with respect thereto shall ~~not~~ be referred by the
22
23 water judge to the referee as specified in section 148-21-10.
24
25 ~~Commencing in September or October of 1971, as the case may be;~~
26
27 The water judge of each division shall undertake hearings with
28
29 respect to all such applications filed in that division. Upon
30
31 the conclusion of such hearings the water judge shall make his
32
33 decision on all such plans for augmentation, treating each one
34
35 individually but considering each one in its relationship, if
36
37 any, to others.
38
39

It is reported that water users are not filing plans for augmentation. If these plans are not filed, the deadlines set in subsections (2) and (3) will not have the intended effect of gathering a large number of plans for augmentation into one adjudication proceeding. The amendments to this section would provide for adjudication of plans for augmentation, as such plans are filed

Other changes are to improve the sentence structure



TEXT

1 SECTION 2. Repeal. 148-21-23 (3), Colorado Revised
2 Statutes 1963 (1969 Supp.), is repealed.
3
4

5 SECTION 3. Safety clause. The general assembly hereby
6 finds, determines, and declares that this act is necessary for
7 the immediate preservation of the public peace, health, and
8 safety.
9
10
11
12
13
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15
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35
36
37
38
39

EXPLANATION

148-21-23 (3) pertains only to the deadlines removed by this bill.

1 BILL D
2 A BILL FOR AN ACT

3
4 AMENDING SECTION 148-21-27 (4), COLORADO REVISED STATUTES 1963,
5
6 CONCERNING REVISION OF TABULATIONS UNDER "THE WATER RIGHT
7
8 DETERMINATION ACT OF 1969".
9

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

11 SECTION 1. 148-21-27 (4), Colorado Revised Statutes 1963
12
13 (1969 Supp.), is amended to read:

14
15 148-21-27. Lists of priorities. (4) ~~On or before~~ NOT
16
17 LATER THAN October 10, 1970; 1973, the division engineer shall
18
19 make such revisions, if any, as he deems proper in such.
20
21 tabulation. In considering the matters raised by statements of
22
23 objection, the division engineer may consult with any interested
24
25 persons. The division engineer shall consult with the state
26
27 engineer and shall make any revisions in the tabulation
28
29 determined by the state engineer to be necessary or advisable.
30

31 (b) (i) SUCH REVISION MAY CONSIST OF ONE OR MORE SYSTEMS OF
32
33 NUMBERING TO BE USED TO INDICATE:

34
35 (ii) THE RELATIVE PRIORITY OF SUCH RIGHT IN THE ENTIRE
36
37 DIVISION;
38
39

The state engineer was unable to republish the tabulation on October 20, 1970 because of insufficient funds to pay for the republication and because of lack of time to correct and revise the initial tabulation as required by this section. For these reasons, the dates for republication of this tabulation would be extended three years in this amendment.

This change would allow a more flexible alternative as to the type of tabulation which could be used for the revised tabulation. Tabulations could be provided for individual rivers and tributaries as well as for the entire water division.



TEXT

EXPLANATION

1 (iii) THE RELATIVE PRIORITIES OF SUCH RIGHTS ON ANY ONE
2
3 RIVER OR TRIBUTARY WITHIN A DIVISION;

4
5 (iv) THE RELATIVE PRIORITY OF SUCH RIGHTS UNDER ORDINARY OR
6
7 NORMAL RIVER FLOWS AS DISTINGUISHED FROM EXTREME DRAUGHT
8
9 CONDITIONS; OR

10
11 (v) SUCH OTHER SYSTEM OF NUMBERING AS THE STATE ENGINEER
12
13 MAY DETERMINE TO BE APPROPRIATE.

14
15 (c) ONE OR MORE OF THE NUMBERING SYSTEMS SET FORTH IN
16
17 PARAGRAPH (b) OF THIS SUBSECTION (4) MAY BE USED ON ANY
18
19 TABULATION.

20
21 (d) The tabulation, together with any revisions, signed by
22
23 the division engineer and the state engineer or his duly
24
25 authorized deputy, shall be filed ~~en-er--before~~ AS PROMPTLY AS
26
27 POSSIBLE, BUT NOT LATER THAN October 10, 1970; 1973, with the
28
29 water clerk. Copies of such tabulation shall be available in the
30
31 office of the division engineer, and a copy shall be mailed by
32
33 him to any person requesting same upon payment of a fee of two
34
35 dollars.

36
37 (e) If the tabulation is revised, the division engineer, ~~en~~
38
39 ~~er-before~~ NOT LATER THAN October 20, 1970; 1973, shall cause such

TEXT

1 publication of the-revised--tabulation SUCH REVISIONS, OR THE
2
3 ENTIRE REVISED TABULATION AS THE STATE ENGINEER MAY DETERMINE, to
4
5 be made as is necessary to obtain general circulation once in
6
7 each county or portion thereof in the division by means of one or
8
9 more newspapers, which, if feasible, are published in the
10
11 division.

12
13 SECTION 2. Safety clause. The general assembly hereby
14
15 finds, determines, and declares that this act is necessary for
16
17 the immediate preservation of the public peace, health, and
18
19 safety.
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EXPLANATION

Publication would probably be less expensive--
if the state engineer had the option of pub-
lishing either the revised tabulation or
only a list of revisions as the situation
seemed appropriate.

1 BILL E
2 A BILL FOR AN ACT

3
4 CONCERNING SENIORITY OF WATER RIGHT PRIORITIES.

5
6 Be it enacted by the General Assembly of the State of
7
8 Colorado:

9
10 SECTION 1. 148-21-22, Colorado Revised Statutes
11
12 1963 (1969 Supp.), is amended to read:

13
14 148-21-22. Priorities junior to prior awards -
15
16 when. With respect to the divisions described in
17
18 section 148-21-8, priorities awarded in any year DECREE
19
20 UNDER THIS ARTICLE for water rights or conditional
21
22 water rights shall be junior to all priorities
23
24 ~~awarded-in-previous-years~~ WHICH ARE AWARDED AS A
25
26 RESULT OF FILINGS MADE DURING PREVIOUS TERMS OF
27
28 COURT and junior to all priorities awarded in decrees
29
30 entered prior to June 7, 1969, or in decrees entered
31
32 in proceedings which are pending on such date; ex-
33
34 cept that with respect to water rights which are di-
35
36 verted by means of wells, the priorities for which have
37
38 not been established or sought in any such decree or
39

It was suggested that the date of filing an application for a water right be the priority date of the water right. Otherwise, if the case had to be heard over a long period of time, the applicant might lose his priority even though a delay in the adjudication was not the fault of the applicant.

TEXT

EXPLANATION

1 proceeding, if the person claiming such a water right
2
3 files an application for determination of water right
4
5 and priority not later than July 1, ~~1971~~, 1972 ~~except in~~
6
7 ~~water-division-3, where such application must be filed~~
8
9 ~~not later than July 1, 1972~~, and such application is ap-
10
11 proved and confirmed, such water right, subject to the
12
13 provisions of section 148-21-21 (1), shall be given a
14
15 priority date as of the date of actual appropriation and
16
17 shall not be junior to other priorities by reason of the
18
19 foregoing provision.

Separate date for water division 3 is struck in order to provide uniformity among the water divisions and to avoid possible constitutional problems of two different dates for filing applications. The deadline for filing applications was set back one year to assure that water users in all divisions have the same amount of time for adjudication of wells.

-38-

20 SECTION 2. Safety clause. The general assembly
21
22 hereby finds, determines, and declares that this act
23
24 is necessary for the immediate preservation of the
25
26 public peace, health, and safety.
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1 BILL F
2 A BILL FOR AN ACT
3

4 CONCERNING COURT PROCEDURES WITH RESPECT TO APPLICATIONS FOR
5
6 WATER RIGHTS.
7

8 Be it enacted by the General Assembly of the State of Colorado:
9

10 SECTION 1. 148-21-18 (3) (b) and (c), Colorado Revised
11
12 Statutes 1963, as amended by section 3 of chapter 103, Session
13
14 Laws of Colorado 1970, are amended to read:
15

16 148-21-18. Applications for water rights or changes of such
17
18 rights - plans for augmentation. (3) (b) No later than the end
19
20 of such month, the water clerk shall cause such publication to be
21
22 made of each resume or portion thereof in a newspaper or
23
24 newspapers as is necessary to obtain general circulation once in
25
26 every county affected as determined by the water judge. IN THE
27
28 CASE OF AN APPLICATION FOR A WATER RIGHT DETERMINATION WITH
29
30 RESPECT TO A WELL, PUBLICATION NEED BE MADE ONLY AS NECESSARY TO
31
32 OBTAIN GENERAL CIRCULATION IN THE COUNTY IN WHICH THE WELL IS
33
34 LOCATED EXCEPT AS OTHERWISE DETERMINED BY THE WATER JUDGE.

35 (c) Not later than the end of such month, a copy of such
36
37 resume shall be mailed to each person whom the referee has reason
38
39

This bill contains the suggestions received from the Judicial Department, except as otherwise noted, which would improve the judicial procedures under S.B. 81.

This amendment would clarify the water judge's option with respect to publication of the portion of the resume concerning adjudication of wells and may reduce publication expenses.



TEXT

EXPLANATION

1 to believe would be affected or who has requested the same by
2
3 submitting his name and address to the water clerk. The water
4
5 clerk shall maintain a quarterly mailing list of such names and
6
7 addresses so submitted, and persons desiring to have their names
8
9 and addresses retained on such list must resubmit the same by
10
11 January 31. Persons who have not so resubmitted their names and
12
13 addresses shall not be retained on such list, but they may submit
14
15 their names and addresses at any time thereafter for inclusion on
16
17 the list subject to the foregoing. In order to obtain a copy of
18
19 a resume for a particular month, a person's name and address must
20
21 be received not later than the fifth day of the month of
22
23 publication of the resume. A fee of twelve dollars shall be
24
25 payable each-time-a-person's-name-is-submitted-for--inclusion--in
26
27 said--mailing--list: FOR INCLUSION ON THE MAILING LIST FOR A
28
29 CALENDAR YEAR PRORATED AT ONE DOLLAR PER MONTH FOR A LESSER
30
31 PERIOD.

32
33 SECTION 2. 148-21-19. (1), Colorado Revised Statutes 1963
34
35 (1969 Supp.), is amended to read:

36
37 148-21-19. Rulings by the referee. (1) Within the--month
38
39

This amendment would authorize the water clerk to prorate the cost of the annual mailing list at a cost of one dollar per month.

This amendment would extend the time for the referee to make his ruling. In addition, the water judge could further extend the deadline if necessary.

TEXT

EXPLANATION

1 following--the--last--month SIXTY DAYS FROM THE LAST DAY ON which
2
3 statements of opposition may be filed with respect to a
4
5 particular application, UNLESS SUCH TIME IS EXTENDED BY THE WATER
6
7 JUDGE FOR GOOD CAUSE SHOWN, the referee shall make his ruling on
8
9 such application unless he determines to rerefer the matter to
10
11 the water judge as specified in subsection (2) of this section.
12
13 The ruling may disapprove the application in whole or in part in
14
15 the discretion of the referee even though no statements of
16
17 opposition have been filed. The ruling of the referee shall give
18
19 the name or names of the applicants with respect to each water
20
21 right or conditional water right involved, the location of the
22
23 point or points of diversion or place or places of storage, the
24
25 means of diversion, the type or types of use, the amount and
26
27 priority, and other pertinent information AND INCLUDING A WRITTEN
28
29 STATEMENT OF PARTICULARS BY THE DIVISION ENGINEER AS TO WHETHER,
30
31 IN HIS OPINION, THE APPLICATION, IF GRANTED, WOULD UNLAWFULLY
32
33 IMPAIR THE SUPPLY OF WATER AVAILABLE TO ANY OTHER WATER RIGHT IN
34
35 THE DIVISION. In the case of a plan for augmentation, such
36
37 ruling shall include a complete statement of such plan as
38
39 approved or disapproved. The ruling shall be entered-by-the

This change would provide that the referee must include in his report to the water judge a statement by the division engineer as to whether the application or applications would unlawfully impair another water right. This amendment would inform the water judge of any change in the water situation which the division engineer would anticipate. (Not among Judicial Department suggestions.)

TEXT

EXPLANATION

1 referee-in-his-records FILED WITH THE WATER CLERK and shall
2
3 become effective upon such entry FILING, subject to judicial
4
5 review pursuant to section 148-21-20. A-copy-of-the-ruling-shall
6
7 be-filed-with-the-division-engineer-and-the-water--clerk--of--the
8
9 division. A copy of the ruling shall be mailed by the water
10
11 clerk by CERTIFIED OR registered mail to the applicant or
12
13 applicants, and to each person who has filed a statement of
14
15 opposition, TO THE STATE ENGINEER AND TO THE DIVISION ENGINEER.

16 SECTION 3. 148-20-20 (1) and (2), Colorado Revised
17
18 Statutes, 1963 (1969 Supp.), are amended to read:

19
20 148-21-20. Proceedings by the water judge. (1) On the
21
22 first Tuesday of March-and-September FEBRUARY in division 1, the
23
24 second Tuesday of March-and-September FEBRUARY in division 2, the
25
26 third Tuesday of March-and-September FEBRUARY in division 3, the
27
28 fourth Tuesday of March-and-September FEBRUARY in division 4, the
29
30 first Tuesday of April-and-October MARCH in division 5, the
31
32 second Tuesday of April-and-October MARCH in division 6 and the
33
34 third Tuesday of April-and-October MARCH in division 7, the water
35
36 judge for the particular division shall commence hearings OR
37
38
39

The referee would not be required to keep separate records but would use the records of the water clerk.

Certified mail was suggested as a cheaper, but satisfactory alternative, to registered mail.

The state engineer and the division engineer would receive copies of the ruling by mail. (Not among Judicial Department suggestions.)

This amendment would change the term of the water court from twice a year in spring and fall to once a year in either February or March. The water judges thought that one term a year would be sufficient.

As an alternative, one month, rather than one week intervals could be used to separate the opening of court in the various divisions. The months of February, March, April, May, June, October and November could be used.

TEXT

1 SHALL SET FOR HEARING ~~with-respect-to-the-subject-matter-of~~ CASES
2
3 IN WHICH protests WERE filed and orders of rereferral entered by
4 the referee ~~during-the-proceeding-six-calendar-months~~ SUBSEQUENT
5
6 TO THE PREVIOUS TERM OF COURT. Such matters shall generally be
7
8 considered by the water judge in chronological order, however,
9
10 the dates and times of hearings shall be adjusted by the water
11
12 judge at his discretion for the convenience of persons involved
13
14 or for other reasonable cause.

15
16 (2) Within twenty days after the entry MAILING thereof any
17
18 person who wishes to protest a ruling of the referee shall file a
19
20 written protest with the water clerk and a copy thereof with the
21
22 referee. Such protest shall clearly identify the ruling being
23
24 contested and shall state the factual and legal grounds for the
25
26 protest. Promptly after the same is filed, a copy of such
27
28 protest shall be sent by the water clerk by CERTIFIED OR
29
30 registered mail to the applicant or applicants and to persons who
31
32 have filed statements of opposition, except that no copy need be
33
34 sent to the protestant. Upon filing of such a protest, the
35
36 protestant shall pay a filing fee of twenty dollars plus an
37
38 additional amount which is sufficient to cover the costs of
39

EXPLANATION

This amendment would allow the water judge to use the first day of court to set the dates for subsequent hearings. The water judge may also commence hearings on this day.

This amendment would set the deadline for filing protests to the referee's ruling at 20 days after the ruling is mailed. A problem has been reported that mailing of the ruling had not occurred soon enough after entry to permit protests to be filed.
(Not among Judicial Department suggestions.)

TEXT

EXPLANATION

1 mailing the copies thereof as required in this subsection.
2
3 SECTION 4. Safety clause. The general assembly hereby
4
5 finds, determines, and declares that this act is necessary for
6
7 the immediate preservation of the public peace, health, and
8
9 safety.

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BILL G
A BILL FOR AN ACT

1
2
3 CONCERNING DUTIES OF THE WATER CLERK, WITH RESPECT TO
4
5 APPLICATIONS AND STATEMENTS OF OPPOSITION CONCERNING WATER
6
7 RIGHTS.
8

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

10 SECTION 1. 148-21-18 (1), Colorado Revised Statutes 1963,
11
12 as amended by section 3 of chapter 103, Session Laws of Colorado
13
14 1970, is amended to read:
15

16 148-21-18. Applications for water rights or changes of such
17
18 rights - plans for augmentation. (1) (a) Any person who desires
19
20 a determination of a water right or a conditional water right and
21
22 the amount and priority thereof, including a determination that a
23
24 conditional water right has become a water right by reason of the
25
26 completion of the appropriation, a determination with respect to
27
28 a change of a water right, approval of a plan for augmentation or
29
30 biennial finding of reasonable diligence, shall file with the
31
32 water clerk in duplicate QUADRUPLICATE a verified application
33
34 setting forth facts supporting the ruling sought, A COPY OF WHICH
35
36 SHALL BE SENT BY THE WATER CLERK TO THE STATE ENGINEER AND THE
37
38 DIVISION ENGINEER.
39

Subsection (1) was broken into paragraphs
(a), (b), (c), and (d) for ease of understanding.

The third and fourth copies of the application
and any statements of opposition will be sent to
the state engineer and the division engineer.



TEXT

EXPLANATION

1 (b) Any person who wishes to oppose the application may
2
3 file with the water clerk in duplicate QUADRUPLICATE a verified
4
5 statement of opposition setting forth facts as to why the
6
7 application should not be granted or why it should be granted
8
9 only in part or on certain conditions. THE WATER CLERK SHALL MAIL
10
11 A COPY OF SUCH STATEMENT OF OPPOSITION TO THE STATE ENGINEER AND
12
13 THE DIVISION ENGINEER.

14
15 (c) Such statement of opposition must be filed by the last
16
17 day of the second month following the month in which the
18
19 application is filed.

20
21 (d) The fee for filing an application shall be twenty-five
22
23 dollars; and for filing a statement of opposition, the fee shall
24
25 be fifteen dollars. If more than one water right is requested in
26
27 any application, a fee of five dollars for each additional right
28
29 shall be assessed.

30
31 SECTION 2. Safety clause. The general assembly hereby
32
33 finds, determines, and declares that this act is necessary for
34
35 the immediate preservation of the public peace, health, and
36
37 safety.
38
39

1 BILL H
2 A BILL FOR AN ACT

3
4 CONCERNING WATER, AND RELATING TO WATER RIGHTS.

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

7
8 SECTION 1. 148-21-18 (2), Colorado Revised Statutes 1963
9 (1969 Supp.), is amended to read:

10 148-21-18. Application for water rights or changes of such
11 rights - plans for augmentation. (2) The water judges of the
12 various divisions shall jointly prepare and supply to the water
13 clerks standard forms which shall be used for such applications
14 and statements of opposition. These forms shall designate the
15 information to be supplied and may be modified from time to time.
16 Supplemental material may be submitted with any form. In the
17 case of applications for a determination of a water right or a
18 conditional water right, the forms shall require, among other
19 things, a legal description of the diversion or proposed
20 diversion, a description of the source of the water, the date of
21 the initiation of the appropriation or proposed appropriation,
22 the amount of water claimed, and the use or proposed use of the
23 water. In the case of applications for a change of water right,
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39



TEXT

1 the forms shall require, among other things, a description of the
2 water right or conditional water right for which the change is
3 sought, the amount and priority of the water right or conditional
4 water right, and a description of the proposed change of water
5 right. In the case of applications for approval of a plan for
6 augmentation, the forms shall require a complete statement of
7 such plan. IN THE CASE OF APPLICATIONS WHICH WILL REQUIRE
8 CONSTRUCTION OF A WELL, THE APPLICATION SHALL BE ACCOMPANIED BY A
9 PERMIT TO CONSTRUCT A WELL PURSUANT TO SECTION 148-18-36 (3).

10 SECTION 2. 148-21-21, Colorado Revised Statutes 1963 (1969
11 Supp.), is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12 148-21-21. Standards with respect to rulings of the referee
13 and decisions of the water judge. (6) No application for any
14 water right, change in point of diversion, or plan for
15 augmentation, which requires construction of a well, shall be
16 approved unless accompanied by proof of issuance of a permit to
17 construct a well pursuant to 148-18-36 for such well.

18 SECTION 3. Safety clause. The general assembly hereby
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EXPLANATION

The amendment would reconcile this section with section 148-18-36 (3) which states that a permit to construct a well is a prerequisite to drilling a well. The intention of this change is to insure that the state engineer can prevent drilling of wells. However, this amendment would not prevent a water user from appealing a decision of the state engineer not to issue a permit to construct a well.

This change is for the same purpose as the change in section 148-21-18 above.

TEXT

EXPLANATION

1 finds, determines, and declares that this act is necessary for
2
3 the immediate preservation of the public peace, health, and
4
5 safety.
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1 BILL I
2 A BILL FOR AN ACT

3
4 CONCERNING WATER, AND PROVIDING FOR ABANDONMENT PROCEEDINGS

5
6 PRIOR TO PUBLICATION OF THE 1974 TABULATION.

7
8 Be it enacted by the General Assembly of the State of Colorado:

9
10 SECTION 1. Article 21 of Chapter 148, Colorado Revised
11 Statutes 1963 (1969 Supp.), is amended BY THE ADDITION OF A NEW

12
13 SECTION to read:

14
15 148-21-24. Abandonment - proceedings. (1) (a) Not later
16
17 than March 1, 1972, and every four years thereafter, the divi-
18
19 sion engineer shall prepare a list of all decreed water rights
20
21 within his division, which he determines to have been abandoned
22
23 in whole or in part under the provisions of this section. In
24
25 making such determination, the division engineer shall investi-
26
27 gate the circumstances relating to each water right which he
28
29 reasonably believes may be subject to this procedure of aban-
30
31 donment, and shall consult with each known owner of such right
32
33 before making his determination. If after such investigation,
34
35 he determines any such right to be abandoned in whole or in
36
37 part, he shall include it in the list, and shall cause such
38
39

This bill sets forth abandonment procedures to be followed by the state engineer's office and water courts.

Abandonment would be separated from tabulation (a) to allow the state engineer to eliminate old, unused decrees before preparing the tabulation; (b) to assure careful attention to abandonment; and (c) to allow the state engineer to proceed immediately with abandonment instead of waiting until December, 1974. This change should mitigate speculation in water rights.

Subsection (1) provides for a listing by the division engineer of all water rights determined to have been abandoned.

This subsection would require that the division engineer consult with all known owners of water rights before making a determination that a water right has been abandoned in whole or in part.

TEXT

EXPLANATION

1 publication of the list to be made in such newspapers as may
2
3 be designated by the water judge, as is necessary to obtain
4
5 general circulation once in each county or portion thereof in
6
7 the division.
8

9 (b) Such list shall specify those water rights which
10
11 the division engineer determines to have been abandoned and
12
13 shall include the name or names of the owner or owners there-
14
15 of or the name or names of last known owner or claimant
16
17 thereof as the same are known to the division engineer.
18

19 (2) Not later than October 31 of the year in which the
20
21 abandonment list is prepared, the division engineer shall
22
23 file a petition with the water clerk of the division setting
24
25 forth the list and requesting that the court enter a decree
26
27 declaring the abandonment of the decrees or parts thereof as
28
29 set forth in the petition.
30

31 (3) After the filing of the list and petition with the
32
33 water clerk the matter, including process, time, and answer,
34
35 shall proceed before the water judge under the Colorado rules
36
37 of civil procedure, as any other civil case, except that pub-
38
39 lication of process, if any, shall be made in the county in
which the water right is diverted.

Subsection (2) requires that the division engineer file a petition with the water court.

This subsection provides rights to the owner of the water right under Colorado rules of civil procedure.

TEXT

EXPLANATION

1 (4) Copies of the abandonment petition filed by the di-
2
3 vision engineer and the final decree of the court on such
4
5 petition shall be furnished to any person by the division en-
6
7 gineer or the water clerk upon payment of a fee of one dollar
8
9 per page, but not to exceed ten dollars.

(4) -- Copies of the petition and decree are to be made available to any person.

10
11 (5) In action on abandonment the burden of proof to show
12
13 intent to abandon shall be on the state engineer.

Burden of proof is on the State Engineer.

14
15 (6) (a) Intent to abandon may be shown by evidence of
16
17 acts, statements made, and omissions to act including, but
18
19 not limited to, any of the following:

Subsection (6) sets forth the criteria for showing intent to abandon a water right.

20
21 (b) (i) Proof of non-use of such water right in whole or
22
23 in part for a continuous period of at least ten years up to the
24
25 date of institution of the action including, but not limited to,
26
27 any of the following circumstances shall establish a presump-
28
29 tion of abandonment, and shall be prima facie evidence there-
30
31 of:

32
33 (ii) The fact that water was available for the use of
34
35 said right or part thereof without any request for or diver-
36
37 sion during such period;

TEXT

EXPLANATION

1 (iii) The fact that water has not been available to
2 such water right or part thereof at any time within such per-
3 iod and that a request for diversion to such right would have
4 been futile.
5
6

7
8
9 (iv) The fact that the water user has never constructed
10 sufficient facilities or has not used sufficient facilities
11 in such period to divert his decreed amount of water.
12

13
14 (7) (a) A presumption of abandonment may be rebutted by
15 evidence including, but not limited to, any of the following:
16

17
18 (b) That use of such water right or part thereof has
19 been made during such period by other means of diversion than
20 the method originally used, although such original method of
21 diversion may have been abandoned;
22

23
24 (c) That sufficient water has not been available during
25 such period to enable the right or part thereof to be exer-
26 cised by reason of the intervening acts of others, but that
27 such right or part thereof would have been used had water
28 been available;
29

30
31 (d) That circumstances beyond the control of the owner.
32 of the right prevented any use of such right or part thereof
33 during such period;
34
35
36
37
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39

This subsection lists some of the evidence that may be used to rebut evidence of abandonment.

TEXT

EXPLANATION

1 (e) That the right is decreed to or owned by a municipi-
2 pal or industrial user which does not require cultivation of
3 land for beneficial use and that such user or owner has pro-
4 jected need for said water and intends to build sufficient
5 facilities.
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9

10 (8) A copy of such judgment and decree as is issued
11 pursuant to provisions of this section shall be filed with
12 the state engineer and the division engineer and shall be
13 provided by the water clerk to any other person requesting
14 same upon payment of a fee of one dollar per page with a
15 maximum of ten dollars. Promptly after receiving a judgment
16 and decree the division engineer and the state engineer shall
17 enter in their records the determinations therein made as to
18 priority, location, and use of the water rights and condi-
19 tional water rights and shall regulate the distribution of
20 water accordingly.
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32 SECTION 2. 148-21-28 (1), Colorado Revised Statutes
33 1963 (1969 Supp.), is amended to read:
34 148-21-28. Tabulations. (1) No later
35 than July 1, 1974, and July 1 of each even-numbered year
36
37
38
39

This paragraph is necessary to correspond with (6) (b), immediately above. Municipal and industrial users often purchase water for future growth and their rights should not be considered abandoned if not used within ten years.

Self-explanatory.

Necessary changes to correspond with new Section 148-21-24, above.

TEXT

EXPLANATION

1 thereafter the division engineer with the approval of
2 the state engineer shall prepare a new tabulation of
3 all water rights and conditional water rights in his
4 division. The 1974 tabulation shall reflect any changes
5 in the 1970 tabulation which the division engineer
6 and the state engineer determine to be advisable based
7 on the principles set forth in section 148-21-27 to
8 reflect correctly the priority of water rights, and
9 the 1974 tabulation and succeeding tabulations shall
10 include the priorities awarded subsequent to those
11 listed in the preceding tabulation, shall incorporate
12 any changes from conditional water right to water right,
13 shall modify any water rights or conditional water
14 rights which the ~~division-engineer-determines~~ WATER
15 JUDGE HAS DECREED to have been abandoned in part, and
16 shall omit any water rights or conditional water rights
17 which the ~~division-engineer-determines~~ WATER JUDGE HAS
18 DECREED have been totally abandoned. Except as speci-
19 fied in the preceding sentence, each tabulation pur-
20 suant to this section shall make no changes in the

Removes references to division engineer with respect to determination of abandonment in this section.

TEXT

EXPLANATION

1 listings in previous tabulations except changes to cor-
2 rect clerical errors and changes ordered by the water
3 judge pursuant to subsection (2) (i) of this section,
4 and any such changes, modifications, or omissions
5 shall be especially noted by some appropriate means.
6
7
8

9
10
11 ~~In-making-his-determination-with-respect-to-abandonment,~~
12 ~~the-division-engineer-shall-investigate-the-circum-~~
13 ~~stances-relating-to-each-water-right,-the-water-avail-~~
14 ~~able-under-which-has-not-been-fully-applied-to-a-bene-~~
15 ~~ficial-use.~~ In making such tabulation the division en-
16 gineer may use such system or systems of numbering
17 and listing water rights and conditional water rights
18 in order of seniority as is suited to the administra-
19 tive needs of the particular division or portion there-
20 of. He shall have separate priority lists as necessary
21 so that only those water rights and conditional water
22 rights which take or will take water from the same
23 source and are in a position to affect one another
24 will be on the same priority list.
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TEXT

EXPLANATION

1 SECTION 3. 148-21-28 (2) (k), Colorado Revised
2 Statutes 1963 (1969 Supp.), is repealed.
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This paragraph is substantially included in new section 148-21-24 (6) (b) (i), above.

1 BILL J
2
3 A BILL FOR AN ACT
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6
7 EXTENDING THE TIME FOR APPLICATIONS FOR BIENNIAL FINDINGS OF
8
9 REASONABLE DILIGENCE FOR CONDITIONAL WATER RIGHT DECREES.
10

11
12
13 Be it enacted by the General Assembly of the State of Colorado:
14

15 SECTION 1. 148-21-44, Colorado Revised Statutes 1963, as
16
17 amended by section 5 of chapter 103, Session Laws of Colorado
18
19 1970, is amended to read:

20 148-21-44. Disposition of pending proceedings - showings of
21
22 due diligence. (1) All proceedings pending on June 7, 1969, for
23
24 the adjudication of water rights, for a change of water rights,
25
26 or for the disposition of other matters which are of the type to
27
28 be handled by proceedings provided for in this article shall be
29
30 concluded by July 1, 1972, in accordance with the provisions of
31
32 the statute under which they were instituted and priorities and
33
34 changes of water rights which are determined in such pending
35
36 proceedings shall be integrated by the various division engineers
37
38 in their current records and shall be included in tabulations
39



TEXT

EXPLANATION

1 prepared by the division engineers pursuant to the provisions of
2 this article. Any such proceedings which are not concluded by
3 July 1, 1972, shall be heard from that time on to completion by
4 the water judge for the division in which the proceedings are
5 pending, under procedures provided for in this article, except
6 that the chief justice of the supreme court may provide that a
7 judge, other than the water judge, shall complete proceedings in
8 specific cases. Persons who have filed statements of claim in
9 such pending proceedings may withdraw therefrom at any time and
10 file applications or otherwise proceed in accordance with this
11 article.

12
13 (2) Showings of reasonable DUE diligence under existing
14 conditional decrees or conditional decrees entered in such
15 pending proceedings shall be made in accordance with the
16 provisions of this article in the year 1970 1972 and every
17 even-numbered year thereafter. Applications for biennial
18 findings of reasonable DUE diligence shall be filed with the
19 water clerk pursuant to section 148-21-18 (1) not later than June
20 1 of each such years. When and if a conditional water right
21 awarded in any such conditional decree becomes a water right

The change in this section would permit holders of conditional decrees to make applications for biennial findings of reasonable diligence until June 1, 1972. The purpose of this change is to prevent unnecessary hardships on holders of conditional decrees who might have misunderstood changes made by S.B. 81. Section 148-10-8, C.R.S. 1963 (1965 Supp.), which was repealed in 1969, permitted such filings throughout 1970. Others may have been confused by district court instructions in a previous adjudication hearing to file such applications after June 1, 1970.

TEXT

EXPLANATION

1 pursuant to the procedures in this article, the priority awarded
2
3 such water right shall be the same as if the proceedings in which
4
5 the conditional decree was entered had remained open until the
6
7 final determination with respect to such water right.

8
9 SECTION 2. Safety clause. The general assembly hereby
10
11 finds, determines, and declares that this act is necessary for
12
13 the immediate preservation of the public peace, health, and
14
15 safety.

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BILL K
A BILL FOR AN ACT

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2
3 CONCERNING WATER, AND PROVIDING FOR MANAGEMENT THEREOF
4 AND FOR A MANAGEMENT FUND AND DELAYING CERTAIN
5 DATES WITH RESPECT TO ADJUDICATION OF WELLS.

6 Be it enacted by the General Assembly of the State of
7 Colorado:

8 SECTION 1. Article 11 of Chapter 148, Colorado
9 Revised Statutes 1963, as amended, is amended BY THE
10 ADDITION OF THE FOLLOWING NEW SECTIONS, to read:

11 148-11-26. Authority to manage water supplies -
12 state engineer. (1) (a) The state engineer shall

13 have authority to purchase water for the purpose of
14 managing and conserving the waters of the state to the
15 maximum benefit of the people of the state of Colorado:

16 (b) To be sold to water users for water exchange
17 agreements.

18 (c) To be sold to water users for water augmenta-
19 tion needs.

20 (2) The state engineer may purchase water to be
21 stored and sold for future use under such contracts and
22 agreements as are, in his opinion, of benefit to the
23 people of the state using funds as authorized by sec-
24 tion 148-11-27.

25 (3) All moneys received as a result of water sold
26 under authority of this section shall be deposited in
27 the water management fund.

28 (4) Moneys in the water management fund may be
29 spent for such projects as the state engineer may deem
30 to be in the interest of the people of the state except
31 that such projects shall be approved under provisions
32 of Article 1 of Chapter 149.

33 148-11-27. Water management fund. (1) There is
34 created a fund to be known as the state engineer's wa-
35 ter management fund, which shall consist of all moneys
36 which may be appropriated thereto by the general assem-
37 bly or which may be otherwise made available to it by
38 the general assembly and such moneys as may become a
39 part thereof as a result of water sold pursuant to the

(This bill is submitted by the water com-
mittee without recommendation.)

The purpose of this bill is to allow the
state engineer to manage the distribution
of water in such a way as to prevent
wells, which are junior to other water
rights, from being called out by senior
surface rights. The only way for wells
to work in the priority system, according
to the state engineer, is to keep the call
off the river.

If the state engineer could sell water to
juniors for use by seniors, he might be
able to keep the call off the river.

The fund should be self supporting after
the initial out-lay. If the management
fund makes a profit, it would return
to the general fund all moneys in excess
of \$3,000,000.

TEXT

EXPLANATION

1 terms of section 148-11-26 and contracts and agreements
2 made thereunder.

3 (2) Moneys in the state engineer's water manage-
4 ment fund shall be spent for purposes set forth in sec-
5 tion 148-11-26 and for such purposes as are incidental
6 to the duties of the state engineer, except that any
7 balance in excess of three million (\$3,000,000) dollars
8 as of January 1 of each year shall revert to the general
9 fund.

10 SECTION 2. 148-21-22 Colorado Revised Statutes
11 1963, (1969 Supp.) is amended to read:

12 148-21-22. Priorities junior to prior awards -

13 when. With respect to the divisions described in sec-
14 tion 148-21-8, priorities awarded in any year for water
15 rights or conditional water rights shall be junior to
16 all priorities awarded in previous years and junior to
17 all priorities awarded in decrees entered prior to the
18 effective date of this article or in decrees entered in
19 proceedings which are pending on such date; except that
20 with respect to water rights which are diverted by means
21 of wells (the priorities for which have not been estab-
22 lished or sought in any such decree or proceeding), if
23 the person claiming such a water right files an applica-
24 tion for determination of water right and priority not
25 later than July 1, ~~1971~~ 1975, except in water division
26 3, where such application must be filed not later than
27 July 1, ~~1972~~ 1976, and such application is approved and
28 confirmed, such water right, subject to the provisions
29 of section 148-21-21 (1), shall be given a priority date
30 as of the date of actual appropriation and shall not be
31 junior to other priorities by reason of the foregoing
32 provision.

33 SECTION 3. Safety clause. The general assembly
34 hereby finds, determines, and declares that this act is
35 necessary for the immediate preservation of the public
36 peace, health, and safety.

If the state is committed to the manage-
ment concept, wells could be adjudicated
at a more leisurely pace. Wells might be
used in augmentation projects, exchange
agreements, and as alternate points of
diversion. They could be adjudicated as
water users see the need for it. If well
diversions were administered as if they
had no priority date, their owners would
probably soon see the need for adjudicat-
ing their wells.

(Note: This section would be in conflict
with amendments proposed in Bill E.)

BILL L
A BILL FOR AN ACT

1
2
3 CONCERNING WATER, AND PROVIDING FOR A WATER PROJECTS
4 CONSTRUCTION FUND.

5 SECTION 1. 149-1-11, Colorado Revised Statutes
6 1963, as amended, is amended BY THE ADDITION OF THE
7 FOLLOWING NEW SUBSECTIONS, to read:

8 149-1-11. Duties of the board. (13) To enter
9 into contracts as hereinafter provided for the con-
10 struction of conservation projects which as authorized
11 by the general assembly under procedures set forth in
12 section 149-1-24 will conserve and utilize for the
13 best advantage of the people of this state the water
14 and power resources of the state, including projects
15 beyond the boundaries of the state of Colorado located
16 on interstate waters when the benefit of such project
17 accrues to the citizens of the state of Colorado, upon
18 application under such rules and regulations as the
19 board shall establish.

20 (14) To file applications in the name of the de-
21 partment of natural resources for the appropriation of
22 water.

23 (15) To take all action necessary to acquire or
24 perfect water rights for projects sponsored by the
25 board.

26 (16) To sell or otherwise dispose of property
27 owned by the board, in the name of the state of Colo-
28 rado, as a result of expenditures from the water con-
29 servation board construction fund in such manner as to
30 be most advantageous to the state. Proceeds from such
31 sale or disposal shall accrue to the water conserva-
32 tion board construction fund and shall not revert to
33 the general fund except that any balance in such con-
34 struction fund in excess of ten (10) million dollars
35 at the close of any fiscal year shall revert to the
36 general fund of the state.

37 SECTION 2. Article 1 of Chapter 149, Colorado Re-
38 vised Statutes 1963, as amended, is amended BY THE ADDI-
39 TION OF THE FOLLOWING NEW SECTIONS, to read:

(This bill is submitted by the water com-
mittee without recommendation.)

This authorizes the Colorado Water Con-
servation Board to contract for construc-
tion of water projects. Such projects
must be approved by the general assembly.

This paragraph would permit contracts
with local groups to the effect that the
board would sell its interest in such
projects to local groups.



TEXT

EXPLANATION

1 149-1-19. Making water available to citizens of
2 the state - assessment of charges against water users
3 - Colorado water conservation board construction fund.
4 The Colorado water conservation board may make avail-
5 able for the use of the citizens of the state of Colo-
6 rado or to any agency or agencies of the state which
7 are, in its opinion, best able to utilize the same, any
8 or all water and power conserved by any of the projects
9 to which the state may have ownership or control and
10 may enter into contracts for the use of said water and
11 power with any agency or agencies of the state, indi-
12 viduals or with organizations composed of citizens of
13 the state of Colorado. The board may charge such per-
14 son or agency or organization using such water and power
15 such charges as, in the opinion of the board, are nec-
16 essary and reasonable for the maintenance of the pro-
17 ject and return to the state such portions of the ac-
18 tual costs of the project and over such term of years
19 as is agreed upon by contract. Any amount collected
20 as charges over and above the amount necessary to main-
21 tain any particular project and repay the cost of such
22 project shall become part of the Colorado water con-
23 servation board construction fund.

24 149-1-20. Control of projects - contractual pow-
25 ers of board. The state of Colorado shall have the
26 ownership and control of such portions of said projects
27 as will assure repayment of funds made available by
28 section 149-1-19. The board is empowered to enter in-
29 to contracts which are, in its opinion, necessary for
30 the maintenance and continued operation of such pro-
31 jects.

32 149-1-21. Colorado water conservation board con-
33 struction fund - creation of - nature of fund - funds
34 for investigations - contributions. There is created
35 a fund to be known as the Colorado water conservation
36 board construction fund, which shall consist of all
37 moneys which may be appropriated thereto by the gener-
38 al assembly or which may be otherwise made available
39 to it by the general assembly, and such charges may

The board could make water available to the state engineer for river management.

The constitution requires that no aid or grants shall be given except as to such ownership as will accrue to the state.

This section sets out the purpose for which money from the fund can be spent.

TEXT

EXPLANATION

1 become a part thereof under the terms of section 149-
2 1-19. Such fund shall be a continuing fund and shall
3 not revert to the general fund of the state at the end
4 of any fiscal year, except that any balance in excess
5 of ten (10) million dollars shall revert to the gen-
6 eral fund of the state. The board in addition to the
7 amount allocated to a project to cover the actual cost
8 of construction, may allocate to the project con-
9 structed by it, under contract or otherwise, such
10 amounts as may be determined by it for investigating,
11 engineering, inspection and other expenses, and may
12 provide for the repayment of the same out of the first
13 moneys repayable from the project under the contract
14 for its construction, and such moneys so repaid shall
15 be accounted for within the purpose of making investi-
16 gations for the development of the water resources of
17 the state. Contributions of money, property or equip-
18 ment may be received from any county, municipality,
19 federal agency, water conservation district, metropol-
20 itan water district, conservancy district, water users'
21 association, person or corporation for use in making
22 investigations, contracting projects, or otherwise car-
23 rying out the purposes of this act.

24 149-1-22. General assembly approval. (1) Funds
25 in the Colorado water conservation board construction
26 fund shall be expended in the following manner and un-
27 der the following circumstances

28 (2) The Colorado water conservation board shall
29 submit to the appropriate standing committees of each
30 general assembly a report containing all applications
31 for contracts as specified in section 149-1-11 (13)
32 together with an analysis of said application by the
33 water conservation board. Said report shall also in-
34 clude a list of said applications in order of priority
35 suggested by the water conservation board, shall in-
36 clude the proposed contract terms between the state
37 and the federal government, any political subdivision
38 of the state, corporation or person, and shall include
39 a comment by the water conservation board as to how

The general assembly would get a report from the board during each long session. The report would list applications for use of the construction fund, and would include comments and suggested priorities by the board.

TEXT

EXPLANATION

1 the proposed project will carry out the state water
2 plan.

3 (3) The general assembly may select such pro-
4 jects as it deems to be to the advantage of the peo-
5 ple of the state of Colorado and shall direct the wa-
6 ter conservation board to proceed with construction
7 of said projects in the priorities established by the
8 general assembly under such terms as shall be deter-
9 mined by the general assembly.

10 149-1-23. Conformity with state water plan.

11 All applications for contracts and all expenditures
12 of funds from the water conservation board construc-
13 tion fund shall be in substantial conformity with the
14 state water plan as authorized by section 149-1-18.

This section states that the state water
plan should be considered. The water
plan will not be ready until 1973.

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