Mr. Delph E. Carpenter,
1112 - 10th St.,
Greeley,
Colorado.

My dear Delph:

Supplementary to my verbal request, by 'phone this date, that you favor me with some comments pertinent to the subject of "Forethought in Planning the Development of Water Resources," and "Penalties of Lack of Forethought and Uncoordinated Effort," the latter part of which has been assigned to the writer, for discussion at the forthcoming Fourth Annual Conference of the Association of Western State Engineers, at Sacramento, on October 28th, I am taking the liberty of offering the following thoughts as noted in the enclosure, which I believe are pertinent to the subject assigned me, and which may be of some aid to you in more definitely crystallizing your thoughts in this regard.

You will doubtless have in mind other topics pertinent to this subject, upon which your thoughts will be greatly appreciated.

I have but ten days in which to prepare this paper, which is of course all too limited for the proper preparation of the same. The principal purpose at this time, however, is to outline the subject in reasonable fullness, and in such manner that it will supply the essentials leading to a full discussion of the subject at the Conference.

May we have your suggestions as fully as may be within the next five days.

Thanking you in advance, I am,

Very sincerely yours,
SUGGESTED ITEMS FOR CONSIDERATION UNDER THE FIRST PART OF THE SUBJECT.

LACK OF FORETHOUGHT

(a) Penalties as a result of failure to envision the values of public water supplies as an indispensable requisite to the necessities of the state or nation.

(b) Penalties as a result of failure to obtain full and adequate data on the water resources thereof.

(c) Penalties as a result of failure to properly visualize and analyze the extent and nature of future requirements for water, and its application to almost every phase of the growth and existence incident to an advanced civilization.

(d) Penalties as a result of failure to visualize and analyze in advance of development and requirements, the most efficient application and use of available water supplies.

(e) Penalties as a result of failure to provide proper methods for the orderly determination of ownership, character of use, conservation, and re-use.

(f) Penalties as a result of failure to provide orderly methods for administration of the relative uses thereof.

(g) Penalties as a result of failure to provide means or measures for the strict regulation and most efficient use, as for instance in the upper reaches of a stream system, first.

(h) Penalties as a result of failure to recognize interchanges of water supplies of different drainage basins.
(i) **Definite determination of the relative rights and interests as between states and the nation, and the different departments thereof.**

**UNDER THAT PART OF THE SUBJECT, "UNCOORDINATED EFFORT,"

**SUGGESTED ITEMS FOR CONSIDERATION:**

(a) Provision for collective or community effort in appropriating and applying public water supplies.

(b) Provisions for cooperative effort among individual appropriators, for the most efficient uses, as for instance, loans, exchange, limitations in time of application to any particular use, etc.

(c) Provision for determination as between states and departments of the National Government, of their relative interests in streams of an interstate or international character, relative nature of such uses prior to major developments.
(d) Provision for cooperation between states and the federal departments of the Nation, particularly with respect to consumptive and industrial uses, power development, flood and silt control, navigation, scenic and other purposes.

(e) Provision for the protection of the forest cover of drainage basins.

(f) Provision for adequate accounting for, recording and reporting all uses of water.

(g) Provisions for ascertainment of the relative needs between states, based upon their economic necessities.
STATE OF COLORADO
ENGINEERING DEPARTMENT
DENVER

November 15, 1931

SUBJECT:

Delph E. Carpenter, Esq.,
Interstate River Commissioner,
1112-10th St.,
Greeley,
Colorado.

My dear Delph:

I enclose herewith copy of Financial Statement showing the status of the Water Defense Fund as of November 1st, which shows a total expenditure from all funds of about 12%.

Governor Adams has been furnished a copy of this statement.

Sincerely yours,

[Signature]
State Engineer.

MCH/T
enc
# Statement of Water Defense Funds

**As of Nov. 1, 1931.**

## Arkansas River:

**Appropriation:**

$20,000.00

**Disbursements:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering Salaries</td>
<td>1,446.00</td>
</tr>
<tr>
<td>Traveling Expense</td>
<td>209.09</td>
</tr>
<tr>
<td>Blue Prints</td>
<td>36.39</td>
</tr>
<tr>
<td>Gage Readers</td>
<td>259.00</td>
</tr>
<tr>
<td>Telephone &amp; Telegraph</td>
<td>2.46</td>
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</tbody>
</table>

**Total:** 1,932.94

**Balance Nov. 1, 1931:** $18,067.06

## Colorado River:

**Appropriation:**

15,000.00

**Disbursements:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Engineering Salaries</td>
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<td>Traveling Expense</td>
<td>60.00</td>
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<tr>
<td>Gage Readers</td>
<td>45.00</td>
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</tbody>
</table>

**Total:** 195.00

**Balance Nov. 1, 1931:** $14,805.00
LARAMIE RIVER:

**APPROPRIATION:** $15,000.00

**DISBURSEMENTS:**

Engineering Salaries, $2,354.18
Traveling Expense, 1,061.52
Blueprints, 21.95
Miscellaneous Supplies, 11.47

Total, 3,469.10

Balance Nov. 1, 1931, $11,530.90

RIO GRANDE:

**APPROPRIATION:** 15,000.00

**DISBURSEMENTS:**

Engineering Salaries $1,165.32
Traveling Expense, 562.12
Gage Readers, 180.00
Aerial Photography, 353.40
Telephone & Telegraph, 2.50
Blueprints, 2.00
Equipment, 5.00

Total, 2,270.34

Balance Nov. 1, 1931, $12,729.66
Delph E. Carpenter, Esq.,
1112-10th St.,
Greeley,
Colorado.

My dear Senator Carpenter:

I have been somewhat concerned, since my conversation with you last Thursday, concerning the position the writer has taken with respect to the right of a ditch to demand water for direct irrigation against the demand for storage by a reservoir with a priority senior to that of the ditch.

Section 4, Chapter 85, of the Session Laws of 1901, provides:

"The owners or possessors of reservoirs shall not have the right to impound any water whatever in such reservoir during the time that such water is required in ditches for direct irrigation or for reservoirs holding senior rights."

Section 4, of Chapter 153, of the Session Laws of 1911, known as Senate Bill 134, by Senator Carpenter, provides:

The owner or possessors of reservoirs shall not have the right to impound any water in such reservoirs during the time that such water is required in senior ditches for immediate use for direct irrigation or for storage in reservoirs holding senior rights."

The above particular part of section 4 was referred in 1912 to the people, under the title, "FOR part of Section 4 of Senate Bill No. 134, Laws of 1911," and

AGAINST same.

Reference to the abstract of votes filed in the Secretary of
Delph E. Carpenter, Esq., ---#2

State's office discloses that the result of this referendum vote was "FOR the Amendment 22931, and AGAINST the Amendment 47,614."

In order to assure myself of the form under which the title of the measure was referred to the people, I have examined the original record filed in the sub-basement of the Secretary of State's office, and find the measure was submitted as noted above.

It would therefore appear to the writer that, since the people rejected that particular part of section 4, of Senate Bill 134, the law as it now stands does not permit of the storage of water in reservoirs when such water is required for direct application under decreed ditches, and until the Supreme Court definitely declares otherwise, I take it that it is the duty of the administrative officials to be guided by the statute.

There has always been a serious question in my mind as to the constitutionality of the statute, but as stated, until the courts determine otherwise, it is my understanding that we are bound to observe the same. I shall be very much interested in having your further comments in this regard.

Sincerely yours,

State Engineer.

MCH/T
January 14, 1932.

M. C. Hinderlider,
State Engineer,
Denver, Colorado.

Re: Reservoir legislation.

My dear Hinderlider:

Yours of the 11th inst, respecting the legislation of 1901 and 1911, regarding the storage of water received. Your quotations and recital of part of the history of the legislation in question seem to be correct. The principal trouble is that you fail to state that the law of 1901 was repealed by the law of 1911, both by legislation and by popular vote, and no longer exists.

The history of the legislation is substantially as follows:

As chairman of a holdover senate committee on irrigation, I investigated the reason for incorporation of the storage sentence in the original Act of 1901 and found that it had been incorporated to prevent certain junior reservoirs in the Poudre Valley from storing water needed by ditches which were senior in priority and that the author of the bill of 1901 considered the sentence both wrong and useless but had consented to its inclusion in the gauge-rod bill by way of amendment for the purpose of securing support for the bill. I found that it was causing considerable confusion and that all constitutional lawyers, considered the sentence unconstitutional and being of that opinion, I recommended its repeal. I drew the bill specifically as an amendment to the law of 1901 (not as an original piece of legislation) and attached a general repealing clause as the last section of the bill. I simply omitted altogether the objectionable sentence of the 1901 Act in my bill to that, when the bill passed as drawn, the sentence in question would be repealed by omission.

Senator John Cross of Larimer County, was a practical joker and also a little suspicious of the motives of all lawyers and began to tease me about my "reservoir trust". Belford, the reporter on The News, made a serious write up of the joke and the fireworks started. Debate in the Senate occurred daily and was so prolonged that Senator Brelsfo stated that it was the most protracted he had witnessed. It made good reading and the reporters vied with each other for first page material. I filled several speaking engagements each week. The Senate was with me from the start but it was advisable to prolong debate to educate the public.
L. R. Ghoades and Russell Fleming (later Attorney General) of Fort Collins, were then engaged in an irrigation season suit with the Fort Morgan ditches, involving the 1881 immediate use act, and Fleming, while approving my bill as drawn and introduced, hit upon the idea of redrafting the omitted and objectionable sentence so as to protect senior reservoirs from junior ditches and, also, to cover the immediate use phase of the 1881 Act in that respect. Accordingly, he came to Denver and conferred during two or three days with the result that Senator Parish of Lamar introduced the Fleming redraft of the objectionable sentence as an amendment to my bill. In compromise, I accepted the amendment and the bill passed.

1911 was the year of initiative and referendum legislation and the Direct Election League of Denver was on the lookout for legislation upon which to try out their new implement. Accordingly, we were cited to appear at a meeting and there to show cause why the entire 1911 Act should not be beheaded. Senator Charles S. Thomas presided. At the conclusion, Senator Thomas stated that in his opinion, the objectionable sentence of the 1901 Act was unconstitutional and should have been repealed by omission as I had proposed in my bill as introduced. The League thereupon voted to refer only the Parish amendment prepared by Fleming, viz: The objectionable sentence of the 1901 Act as redrawn, amended and included in the 1911 Act. It was so referred and stricken by the people as you state in your letter.

The action of the voters did not restore the objectionable sentence of the 1901 Act but simply struck out the Parish amendment from my bill, leaving the Act exactly as I introduced the bill, viz: with the objectionable sentence entirely omitted in and repealed by the 1911 Act.

The 1911 Act repealed the 1901 Act and the action of the voters did not restore it. Such action simply struck out the Parish amendment leaving the objectionable sentence of the 1901 Act repealed by complete omission.

In order to have restored and re-enacted the 1901 sentence, it would have been necessary to have initiated a bill for that purpose. The sole question before the people was whether or not the sentence (Parish amendment) should be stricken. Nothing is said about substitution, resurrection or preservation of the objectionable and repealed sentence of the 1901 Act. The repealing clause of the bill was not referred and nothing was done to stay the repealing effect of the 1911 Act. It is now the law.

In order to understand the situation, you must have the 1901 and 1911 Session Laws before you. You will find that the
referendum did not resurrect the dead sentence and that it has been dead ever since 1911 and if you follow it, you will be pursuing a dead one. Since 1911, the statutes have not conflicted with the Constitution.

State Engineer Comstock issued a general order putting the 1911 Act as the rule of official conduct by the water officials.

A moment's reflection is sufficient to convince that it would be both unconstitutional and unconscionable to permit the water supply of an expensive reservoir system to be taken away without compensation and given to a subsequent, junior and cheap and wasteful ditch system. Such a procedure would put the instrumentality and method of making uses as the sole criterion and not priority of appropriation. Under such a system of law, a ditch constructed one hundred years hence could dry up a whole Cache la Poudre reservoir system.

In 1911, this very question was pending in the Union Reservoir case before our Supreme Court. It was an appeal from an adjudication decree in Boulder County. All the attorneys on both sides agreed that my interpretation of the unconstitutionality of the 1901 Act and joined in requesting Judge Herbert M. Baker, my associate, and me to appear as friends of the Court. We prepared a brief and argued the case orally but the Court dodged the issue and remanded the case on other grounds. But copies of our brief were forwarded to Kinney of Salt Lake and Wiel of San Francisco, both of whom approved our position. In 1912, Kinney issued his new three volume work on Irrigation and Water Rights and included portions of our brief as text upon the point that priority is the sole criterion and that the method of making the beneficial use is immaterial.

There is much more that I could write, as the whole controversy covered a period of two years, but I think the above may cast some light upon this very peculiar legislative history. Now, as you know, I am not very robust and it would be difficult for me to again dictate a letter similar to this, and accordingly, I request that you file this letter where it will be available to those inquiring respecting the same subject matter as Senator Parish and Senator Cross and General Fleming are all dead and the rest of us may pass on any time.

In conclusion, permit me to urge that you follow the Constitution and not a repealed statute. Farmers who have given their lives and treasure to build our reservoirs are entitled to be protected and you are the official charged with the duty of such protection. Knowing you and your high motives as I do, I have no doubt of your action.

Very truly yours,

Delph E. Carpenter.

DE: DM
January 19th, 1932

IN RE: LEGISLATION.

Delph E. Carpenter, Esq.,
1112 - 10th St.,
Greeley,
Colorado.

My dear Delph:

I was very glad to have your letter of January 14th, in which you have given me a clear insight into the history of Senate Bill 134, of the Statutes of 1911. I regret that I did not have this information previously.

It throws much light on the whole situation, and had I been familiar with the history of the legislation, as you have outlined the same, it might have changed the procedure we have followed in the administration of the decrees, which has at times affected storage in reservoirs. I am now having compiled a list of the more junior ditches in the state, and the more senior reservoirs, and expect to make a study of the effect of the past administration of the decrees, to ascertain what actual effect such administration has had in general upon senior reservoirs. I am inclined to think at this time that the result of our administration has not materially affected such reservoirs. Needless to say that, regardless of our previous views in this regard, it is my desire to comply strictly with the law. As you know, a case is now pending in the District Court at Montrose, which case was brought by the Park Reservoir Company, of Delta, for the purpose of definitely getting this matter
before the Supreme Court for a final determination of the question.

The case in question will doubtless be decided by the lower court before the irrigation season. This office will probably be guided by the result of such decision, until it is reversed by the Supreme Court, and I do not think it wise to contemplate any immediate change in our present procedure until the lower court has made its decision. In the meantime I want to thank you for the effort you have put forth in furnishing me with the history of the legislation, and in accordance with your request your letter will be filed for future reference pending a final determination of the matter by the Supreme Court.

Very truly yours,

[Signature]
State Engineer.

MCH/T
January 14, 1932.

M. C. Hinderlider,
State Engineer,
Denver, Colorado.

Re: Reservoir legislation.

My dear Hinderlider:

Yours of the 11th inst., respecting the legislation of 1901 and 1911, regarding the storage of water received. Your quotations and recital of part of the history of the legislation in question seem to be correct. The principal trouble is that you fail to state that the law of 1901 was repealed by the law of 1911, both by legislation and by popular vote, and no longer exists.

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referendum did not resurrect the dead sentence and that it has been dead ever since 1911 and if you follow it, you will be persuading a dead one. Since 1911, the statutes have not conflicted with the Constitution.

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Very truly yours,

Delph E. Carpenter.
Copy

Nov. 13, 1934

My dear Hindesider:

Received yours of the 5th inst. enclosing sketch of provisions for possible Republican River Compact with Nebraska. My time has been occupied with other matters, but I have read with deep interest the sketch of provisions and have been sorely tempted to enter with you upon the task of preparing a draft of compact such as the importance of the occasion demands. But I have forborne so doing in obedience to my recent resolve to have no part in the preparation of any interstate rivers compact in any state where I am not a commissioner or a duly employed counsel.

Such compacts are very important documents. They fix in perpetuity the rights of the signatories and acquire the most careful, painstaking and deliberate preparation by three responsible persons. It is not ill place for
the work of a gratuitous volunteer. Accordingly, I am returning herewith your sketch without comment. I then urge you to proceed only with the most deliberate and careful recognition of nothing in Nebraska but "grant" her upon specific conditions and don't forget the Colorado Constitution.

With fondest regards to you personally and regrets that I am not in a position to assist you. I am

Sincerely yours,

Delph. E. Carpenter
Delph E. Carpenter, Esq.
1112 - 10th Street
Greeley, Colorado

My dear Delph:

As announced to you yesterday over the phone, I am enclosing a rough draft for a compact on the North Fork of the Republican and Arickaree Rivers, which I would much appreciate your reviewing and furnishing any corrections you may see fit to make, or any added suggestions, etc.

I am also enclosing Nebraska's Bill of Complaint against Wyoming in the North Platte River case.

Your early return of the enclosed draft for a compact with your comments will be duly appreciated.

Sincerely yours,

[Signature]

M.C. Hinderlider
STATE ENGINEER

C.C. Hezmalhalch
DEPUTY

L.T. Burgess
CHIEF HYDROGRAPHER

STATE OF COLORADO
ENGINEERING DEPARTMENT
DENVER

November 5, 1934

SUBJECT:

ENC. (Encl. [Enclosure])