"We who join together in this Water Congress come from every watershed in Colorado, and represent every classification of water user in the state. We recognize the necessity for unity of purpose and objective in supporting the formation and execution of a stable water policy for a unified state of Colorado" ... Preamble to the Constitution of Colorado Water Congress.

COLORADO WATER CONGRESS NEWSLETTER

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Your Water Congress ... What makes it tick?

As your Water Congress approaches its first annual convention (November 7th and 8th in Denver), take time to review a few of the fundamentals that make your Water Congress a going concern today.

Your Water Congress hangs its hat on this peg: No good purpose is served by public controversy over matters that have not been given enough preliminary investigation to assure constructive approaches in public expressions of view.

In other words: Water Congress members work together on things that they can agree upon. They leave matters of disagreement to solution by normal procedures ... compromise or litigation. They avoid like the plague the trying of internal water controversies in the court of public opinion.

Matters for discussion or action, other than routine business affairs and implementation of policies previously adopted, are limited by your Water Congress to matters on which there is substantial agreement among all areas of the state.

How? By giving the power to decide what matters can be discussed or acted upon to a Rules Committee, consisting of one representative from each of 19 districts.

Can any area or alignment of interests control your Rules Committee? No ... Because only three negative votes are required to stop any proposal before the Rules Committee.
Who is on this powerful Rules Committee? Temporarily, elected area representatives of the Organization Committee, formed on June 4th. Permanent members will be selected by vote in each of the 19 district organizations.

District organizations will be formed as quickly as possible after the first annual convention of the Colorado Water Congress on November 7th and 8th.

Each person taking out an individual membership before or during the annual convention will become a charter member of the Colorado Water Congress. Each member of the Congress will automatically become a member of the district organization where he resides.

Each district will select a chairman and adopt its own constitution within the limits of the Congress' constitution. Each district will select its member on the Rules Committee by vote of its individual members at a meeting held each year within the geographical boundaries of the district.

Who is likely to be on the Rules Committee? Probably non-technical people ... respected water users and community leaders. They will make Water Congress policy by exercising collective judgment.

An Executive Committee, consisting of 8 members plus 4 ex-officio members, will carry out Water Congress policy.

Executive Committee members each represent a major watershed area. Selection: By area caucuses at the annual convention. Each individual member who resides in a given area and attends the Congress has one vote in selecting his area's E. C. member.

Ex-officio members on the Executive Committee: the Chairman, Vice Chairman, and Secretary-treasurer of the Congress and the Colorado Director of the National Reclamation Association. Of the ex-officio members, only the chairman can vote, when necessary to break a tie.

Who is likely to be on your next Executive Committee? Probably technical people whose life work is water ... doers, with demonstrated capacity to get the job done.

There is this danger: Election to the Executive Committee could be a popularity contest. When you select your representative, remember: Respected veterans of Colorado's internal water wars . . . the men best qualified for the job ahead . . . are not likely
to be popular men. But when Colorado is fighting to save her water, she needs the best fighters on her team.

Your Water Congress Chairman will appoint nominating committees prior to the convention. Their job: To examine qualifications and to submit recommendations for membership on the Executive Committee and for the positions of Chairman, Vice Chairman and Secretary-Treasurer. Then you, the members, make the decision by vote.

There will not be enough places on the Executive Committee to include many of the lawyers and engineers who have worked hard to get your Water Congress started . . . men whose interest has been aroused and who are needed on the Water Congress team.

Solution: Appointment of a Technical Committee. This will be done at the convention by the Chairman. Terms will be staggered to provide continuity. Function: Advisors to the Executive Committee . . . idea men, without administrative or policy-making powers . . . talent pool for committee work on specific problems.

Rules Committee, Executive Committee, Technical Committee, Constitution and By-laws! . . . Are these the inevitable by-products of the technical mind? Have the lawyers and the engineers over-organized your Water Congress?

It has to be this way. Colorado has not been technically minded on water in the past. Other states have, and it has paid off for them. It is time that we got into the professional class in Colorado.

Before water men will join a team effort, the rules of the game have to be clearly defined. There have to be checks and balances. And it all has to be spelled out in black and white.

It was not easy. Meeting after meeting, revision after revision. Amazing: The unpaid personal time and effort that people have been willing to contribute to create a Water Congress to help prevent encroachment by other states.

Your Water Congress' organizational machinery has had some test runs. It works! At the annual convention on November 7th and 8th it will be up to the water users of Colorado to put the machinery into high gear.
Will they use it for the protection and utilization of Colorado's dwindling water supply?

Colorado water users have seen many a water organization come and go. Bad experiences have caused some mistrust of technical people. Typical question: Aren't the Water Congress high-binders trying to save the Colorado River for the Western Slope and have other areas pay the bill? What's more, aren't they telling the water users precisely how to do it!

Your Water Congress believes that water users in Colorado are looking for leadership and that when they find it they will stay hitched. It also believes that the water users have tired of joining, tired of forming captive audiences for the technicians and the politicians to exploit.

Is your Water Congress different? Is it a talker or is it a doer?

It has to be different. But it can't be all things to all people. It can't put any more water past the headgate for a while because it has to put first things first. It can't worry about the condition of the lawn when the house is on fire.

Right now, your Colorado River house is on fire. Your last Newsletter told a little about it. Your next Newsletter will tell more. The entire strength of your Water Congress has been directed toward saving the Colorado River for Colorado water users, while there is yet time to do it.

Your Water Congress has had to move fast and make quick decisions. It has done this effectively, using a relatively small number of people. But it has had little opportunity to interest the water user who is not yet fully informed and who wonders what the Water Congress can do for his local area.

The present strength of your Water Congress is at the same time its present weakness. While developing organization, leadership and effective action, it has not yet had time to develop a broad grass-roots base of water users. This base is essential for the long pull.

But the base is growing! 185 persons have received their individual memberships. Each has paid five dollars for 1958 dues (half-year). Additional applications are coming in each day. This has taken place during the past three months.
You Water Congress' income has amounted to $4,261 since June 4, 1958. Expenses have totalled $1,010, leaving a current bank balance of $3,251.

Efforts are being made to interest the Colorado Watershed Conservation Association in supporting your Water Congress' district organizations. The Association is organized by counties and watersheds. Many of its leaders are active in the Water Congress.

Other organizations are becoming interested in your Water Congress. Example: The Colorado League of Women Voters. Ladies that belong to the League's 16 local groups and the state organization have been intensively studying Colorado water problems for two years. Their fact-finding report on Colorado water will be published soon. League approach: First they educate themselves. Then they educate the voters through publications, TV and meetings. Sometimes they end up educating the legislators!

Colorado newspapers can help your Water Congress reach water users through thought-provoking water editorials. About 150 Colorado newspapers receive the Newsletter.

You can put your ideas in force by attending the annual convention . . . Bring your friends.

* * *

The Upper Colorado Basin Commission meeting at Santa Fe went about as expected. Colorado's Commissioner, Edwin C. Johnson, did his best to sell Colorado's strongly-worded policy statement on Glen Canyon. He asked the Commission to quit daydreaming, to get on the ball and stop wasting time. He told the Commission that it could not evade the issue much longer. But the meeting broke up without a decision.

Wyoming and Utah indicated that they would go along with Colorado if minor changes were made in language. Colorado agreed to this. But New Mexico wouldn't go along and asked for more time. Since unanimous agreement is required on first vote, the matter had to be postponed.

The showdown on Colorado's tough policy statement on Glen Canyon will occur at the Commission's next meeting . . . probably in late November. Four affirmative votes will
then be required. Three ayes are in sight: Colorado, Utah, Wyoming. But it appears doubtful that either New Mexico or the Federal Commissioner will provide the necessary fourth.

**What then?** Colorado will either have to go it alone or suffer losses of her Colorado River water supply by default.

**Director Sparks** of the Colorado Water Conservation Board: "We have indicated to the other states that the resolution as amended, is our final position in the matter, and that this resolution will be the official position of the State of Colorado, regardless of whatever action may be taken by the Commission."

**Shaping-up:** A last-ditch effort by Colorado to save her allotted share of Colorado River water.

**How?** By negotiations with the Interior Department and the lower states, drawing strong support from Colorado's technical studies and from Colorado's congressional delegation.

As Colorado approaches her fateful hour of decision on the Colorado River, you will want to step behind the scenes and view the struggle through your Water Congress Newsletter.

**Probable end result:** Major water lawsuit between Colorado and Southern California.

**Also at Santa Fe:** A proposal to move the Commission's main office from Grand Junction to Salt Lake City. It was defeated temporarily by Governor Johnson's negative vote. The four affirmative votes, if sustained, will pass this motion at the Commission's next meeting. **Why this move to Salt Lake?** To be closer to reclamations' principal Colorado River Storage Project office.

**Staff lawyer for the Commission?** Legal advisors of the U.C.R.C. were asked at Santa Fe to submit recommendations relating to employment of a full-time attorney.

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**The Colorado Water Investigation Commission . . .** established by the Colorado Water Conservation Board on recommendation by your Water Congress . . . continues to help that Board in its Glen Canyon studies. An engineering sub-committee has completed an analysis
for the Commission of upper basin obligations to release water at Glen Canyon Reservoir to meet Hoover power contract requirements. At the suggestion of the Study Commission, this sub-committee is now working on other phases of the power studies related to Glen Canyon filling.

The Colorado Rural Electric Association and the Public Service Company of Colorado have both volunteered technical services of their engineers for Study Commission work on power studies related to Glen Canyon filling. These engineers, along with others, have been put to work by the Commission. Remember: This is volunteer work ... no extra pay ... little if any personal or organizational recognition.

Investigation Commission lawyers are working on a detailed brief to support Colorado's statement of principles on Glen Canyon. Supporting research has included a page by page review of the minutes of the Colorado River Commission meetings which preceeded the signing of the compact in 1922 ... digesting, excerpting, classifying, referencing.

* * *

Colorado water users should know about two recent federal decisions in water law: The Pelton Dam Case and the Hawthorne Case. These cases are not easy to understand ... and they are not easy to accept once you understand them.

Background: Colorado's appropriation doctrine states "first in time, first in right". Colorado included this doctrine in her constitution, which the U. S. Congress accepted when Colorado was admitted to the Union. Did it apply to public lands? Congress did not clarify this point in the early days, and the U. S. Supreme Court regarded this as silent acquiescence of the federal government in the appropriation system of the West.

In 1866, Congress passed an Act which confirmed the acquisition of water rights in accordance with local custom. The U. S. Supreme Court interpreted this Act to mean that the courts were bound to protect water rights vested by local custom.

In 1877, Congress passed the Desert Land Act, which the U. S. Supreme Court
interpreted to mean that all non-navigable waters should be reserved for use by the public under state law.

In other words: Congress, by the Acts of 1866 and 1877, stated that the federal government must comply with state law in the appropriation of water on non-navigable streams. She also wrote this principle into the Reclamation Act of 1902 and required the Bureau of Reclamation to secure project waters in accordance with local water laws.

This understanding with regard to state sovereignty prevailed as the law of the West... until recently.

A few years ago, the Federal Power Commission licensed the construction of Pelton Dam on a non-navigable stream in Oregon. Purpose: entirely power... no consumptive use. On one side of the dam, an Indian Reservation. On the other side, land withdrawn for power purposes. The issue: Did the federal government have to obtain rights under state law for the use of water for federal purposes?

The U. S. Supreme Court held that the matter was exclusively federal and that no compliance with state law was necessary. It explained that the requirement of the federal government to observe local water law applied only to public lands and not to reserved lands... and that Congress, by permitting withdrawal of the land, had intended to withdraw the water.

Reserved lands? Reserved lands are all lands owned by the United States which are not open for sale or public settlement under the Public Land Laws, except National Parks and Monuments.

This Supreme Court decision shocked water lawyers in the West.

Then came another shocker: Nevada v. the United States, called the Hawthorne Case. At issue: The right of the federal government to drill wells and take water from an underground basin at the Navy's Hawthorne Ammunition Depot without permits from the Nevada State Engineer in accordance with state law.

Navy had complied with state law until the Pelton Dam decision. Then it informed the Nevada State Engineer that because of Pelton it would no longer comply.
Nevada filed action seeking declaratory judgment that would establish that Navy was required to comply with Nevada's water laws.

Six states supported Nevada in the case. California filed a brief as "Friend of the Court", upholding Nevada's position. Nebraska, North Dakota, South Dakota and Wyoming joined in California's brief. The State of Washington joined in briefs filed by Nevada. Question: Where was Colorado?

What did the U. S. District Court decide? It upheld the federal government, citing the Pelton case and others. Note the tone of the Court's language, quoting from the first page of its opinion:

"Both on reason and ... on authority, this court is forced to the conclusion that there is no mandate in constitutional, statutory, or decisional law that compels the Federal Government to bend its knee to this type of state law and regulation, whether it be arbitrary or benign."

The District Court also quoted at length from another case (McCulloch v. Maryland):

"No trace is to be found in the constitution of an intention to create a dependence of the government of the Union on those of the States, for the execution of the great powers assigned to it. Its means are adequate to its ends; and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments, which might disappoint its most important designs, and is incompatible with the language of the constitution."

The District Court held, in effect, that all percolating waters on reserved lands belong to the federal government, and that the states have no regulatory powers in connection with them. Nevada will appeal the decision.

Director Sparks on the Hawthorne Case: "This case marks another step taken by the federal courts to eventually destroy any state's sovereignty over the waters arising on federal lands. Since a major part of the water supply of all Western States originates on federal lands, this decision and others which have preceded it, poses a grave threat to the development of our water resources. It is apparent that only congressional action can remedy the situation."

These are troubled times on the Western water front!

* * *
"HE JUST KEEPS ROLLIN' ALONG"

The Colorado River Compact Commission, Denver, Colorado, and the Denver Post for permission to reproduce this excellent cartoon.