"It is significant to note that the vast majority of the ground water in Colorado is not in closed basins. That it is moving, and that much of it is tributary to streams both intrastate and interstate. The number of wells are increasing at an alarming rate. Most wells are constructed by junior appropriators to supplement their surface decrees. Something more definite and broader than case law is needed". (Honorable John A. Love, Governor of Colorado, January 2, 1964)

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COLORADO WATER CONGRESS SUGGESTS DIFFERENT APPROACH TO WATER CODE RECODIFICATION

THE EXECUTIVE COMMITTEE of the Colorado Water Congress termed the proposal to recodify Colorado's water laws into a one-package code as "unrealistic" at its meeting held in Glenwood Springs on July 18, 1964. Consensus of the meeting was that it is difficult to get the legislature to act on a total package because sectional fears prevent recodification unity. Glenn Saunders, of Denver, stated that "we should not now go back to the recodification idea which did not work. Let us push legislation on much needed specific changes and recodify later". The committee was unanimous in suggesting that the Governor should appoint a committee composed of the Attorney General, the Director of the Colorado Water Conservation Board and the Colorado State Engineer to implement the project. The following resolution was adopted:

BE IT RESOLVED that the Colorado Water Congress hereby requests the Governor to implement the improvement of the water laws of Colorado
by assigning specific areas of study and action rather than attempting the "complete code revision" approach which has proven ineffective to date; that the Governor seek such implementation by requesting the Attorney General of Colorado, the Colorado State Engineer and the Director of the Colorado Water Conservation Board to act as a committee to guide the water law improvements; that this committee of State officers work in harmony with the Colorado Legislative Water Study Committee, the Water Section of the Colorado Bar Association and the Colorado Engineers Water Law Committee; that work already done by these groups not be discarded but be utilized to the greatest practicable extent as background for appropriate improvements in the water code; and that the specifics to be studied and acted upon include the following:

1. Colorado Ground Water rights including their relation to surface water rights.

2. Adjustment of conditional decree procedures in relation to the new judicial code.

3. Create a simplified method of establishing private titles to water rights.

4. Removal of changes of point of diversion from the adjudication system to the permit system, with the right of appeal to the courts.

5. Clarification of procedures before the State Engineer and his subordinates and the securing of adequate jurisdiction for their actions based thereon.
ILLEGAL WELL DRILLING TO BE HALTED

INJUNCTION PROCEEDINGS will be initiated by the State Engineer's office against illegal well drillers in Baca County as well as elsewhere in the state. This statement was made by George Colburn, Senior Water Resources Engineer in the State Engineer's office at a water user meeting in Springfield on July 30. Colburn stressed the necessity of having wells drilled by licensed and bonded drillers to keep any possible water rights which might accrue from being clouded by any taint of illegality. He predicted that in the near future most of the land in Colorado will be irrigated from pumped wells which would require a sound program of water management and the possibility that some day water allocations may have to be made on an acre-foot basis rather than a second-foot basis.

ARKANSAS VALLEY FACES SHOWDOWN ON WATER

MAJOR DITCH OWNERS of the Arkansas Valley are taking steps to protect senior decreed rights against any unlawful junior diversions. At a recent meeting in Las Animas this group instructed their attorneys and engineering consultants to fully investigate undecreed water diversion in the Arkansas Valley by well operators. Ditch owners are intent on protecting their own rights in such a way that a major economic upset will not be caused to that part of the Valley economy that is dependent on wells.

A showdown between decreed diverters and undecreed well operators has been brewing for years. This is unquestionably a most urgent water
problem facing water users in Colorado today. Your NEWSLETTER will follow these developments as they occur and keep you informed. A meeting of the ditch owners is planned for late in August.

WATER FOR FISH

ON MANY OCCASIONS, water-users have asked the question — "just what is this Wildlife Coordination Act"? It is thought appropriate at this time to devote a few pages to explain the Act and its operation and significance as it applies to the use of water.

This Act was passed by the federal Congress in 1946 and it was amended in 1956. One of its purposes is to appropriate water for fish below project dams and diversions where part or all of the project is to be located on federal lands. If federal land is involved, a federally issued right-of-way must be obtained. In order to secure this right-of-way the applicant must first consult with the U.S. Fish and Wildlife Service and the local State Game and Fish Department.

Technicians from these two agencies study the proposed project and make field investigations of game and fish in the affected lands and waters. Based on these studies, the U.S. Fish and Wildlife Service submits a set of stipulations to the federal agency which is responsible for issuing the right-of-way. These stipulations contain recommendations by the Fish and Wildlife Service as to what they believe necessary to protect and develop fish and wildlife. As to water, these stipulations generally contain recommendations as to minimum levels to be maintained in the impoundment and minimum water flows to be released from the
reservoir to maintain the fishery below the dam and points of diversion. The Fish and Wildlife interests endeavor to see that these stipulations are made a condition of the right-of-way to which the applicant must agree before the right-of-way is issued.

At this point there begins a series of questions as to how basic laws apply and as to what are the consequences of the stipulations as imposed:

1. What legal weight can be given to an administrative action of the federal government as compared to the basic rights as granted by the Constitutions of the United States and of the State of Colorado? Article X of the U.S. Constitution states that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people". Under the provision of this Article, the Colorado Constitution in Article XVI, sections 5, 6, and 7, clearly states that the water of every natural stream, not heretofore appropriated, is declared to be the property of the public and is subject to appropriation under state law. Appropriations for beneficial uses are based on the principle of "first in time - first in right". The Colorado Constitution establishes preferences in beneficial uses in the following order: (1) Domestic use; (2) Agricultural use; and (3) Manufacturing use. The Constitution makes no provision for maintaining a fishery in a stream as a beneficial use. For this reason, the Wildlife Coordination Act connects the problem of fish and wildlife protection to the administrative action of agreeing to
stipulations before a right-of-way is granted, assuming that the federal government has the right to protect the natural resources under its jurisdiction.

2. What is the legal status of the water released at the impoundment dam or the point of diversion in order to maintain fishery values? Can this released water be picked up immediately below the dam or the project point of diversion by a holder of a senior irrigation right or must it be considered a permanent part of the stream not subject to state law appropriation.

If the latter is so, what will be its legal status after it leaves the boundary of Colorado? Can it be appropriated and used by a state lower down on the stream? If not, must it go to the sea, or could a neighboring nation on the stream use it in accordance with an international treaty? If no law prevents this water from being appropriated and used by lower basin states, then it seems clear that the upper state where the project is to be located is being injured to the amount of the water release.

This can be a sizeable injury. For example - 20 Colorado projects on the upper Colorado River and its tributaries with release schedules similar to those suggested for the Reudi Dam on the Fryingpan River would call for a million acre feet of unappropriated water a year in the Colorado River to pass the Utah–Colorado state line. This would reduce Colorado's share of consumptive use of Colorado River water in accordance with the Colorado River Compact by a million acre feet a year or
approximately a 25 percent reduction.

3. If a water use applicant should agree to the stipulations contained in the right-of-way, does this become a binding covenant forever on the applicant and on his successors and assigns not subject to any appeal through the courts? There may come a day when every drop of water is needed to sustain human life. It is reasonable to assume that legal doors should not be shut in the face of future generations.

In summary there are two main issues regarding the operation of the Federal Wildlife Coordination Act that should be the concern of every water user in Colorado:

1. If the water releases for fish are exempt from the right to appropriate, we come to the conclusion that the Act has superceded the Constitution of the State of Colorado and that it has made the waters of Colorado subject to the laws of riparian rights.

2. If the Act were tested and the courts should say that fish releases are subject to appropriation, then it would be possible for someone to appropriate these releases immediately below the point of diversion and thereby destroy the purpose of the Act.

These are serious questions. Everyone today recognizes that we must do everything we can to preserve and conserve our great natural values but on the other hand, our constitutions, both state and federal, clearly define our rights and we must defend them to the utmost.

Those to whom are assigned the duties of implementing the Wildlife Coordination Act have a major responsibility. They must keep the public
fully advised and work in an unbiased and completely cooperative manner. Water is the life blood of the nation. Its management must be strictly in the interest of everyone concerned. (Editor)

NATIONAL NEWS BRIEFS

THE SAVERY-POT HOOK project in northwestern Colorado and southwestern Wyoming and the Bostwick Park and Fruitland Mesa projects in western Colorado passed a major milestone toward reality. H.R. 3672 authorizing these projects was passed by the House on August 3, 1964. It is now in the Senate Interior Committee where hearings were begun on August 10th.

OUTDOOR RECREATION will receive a $2 billion shot in the arm when the Conservation Land Fund Bill is finally passed by Congress. The bill has passed both the House and Senate and it is now in conference. This money will be made available for expenditure throughout the nation during the next 10 years, and it will be provided by earmarking three sources of funds: (1) Sales of surplus federal property; (2) The 4 cent a gallon federal excise tax on fuel for motor boats; and (3) Admission or user fees paid by visitors to national parks, forests and other similar recreational areas.

THE LONG AWAITED WILDERNESS BILL has finally cleared Congress. A Senate-House conference committee approved, on August 17, a bill which followed in general the version passed by the House, setting aside 9.5 million acres for wilderness preservation. The Conferees set January 1, 1984 as the deadline for continuation of prospecting and mining
operations in national forest lands. The bill now goes to the President for his approval.

Five Colorado national forest areas embracing more than 256,000 acres will immediately be incorporated into the wilderness system:

1. Maroon Bells-Snowmass in the White River National Forest;
2. Remote La Garita in the Gunnison and Rio Grande Forests;
3. Mt. Zirkel-Dome Peaks in the Routt Forest;
4. The West Elk in the Gunnison Forest;
5. The Rawah in the Roosevelt Forest.

GLEN CANYON power turbine testing began on August 20th. Early reports stated that everything was running perfectly. Reclamation Commissioner, Floyd E. Dominy, stated that the Bureau plans to sell the power that will be generated during the test period. Power revenues from Glen Canyon are to be a major source of income to meet repayment requirements of the Colorado River Storage Project, which includes several participating projects in the Upper Colorado River Basin in Colorado. The level of Lake Powell will be kept at elevation 3490 by increasing releases at Glen Canyon from 1,000 cubic feet a second to the inflow.

LOCAL NEWS BRIEFS

MORE WATER will be squeezed from the clouds as they pass over the Continental Divide if a project being initiated by the State of Colorado proves successful. The last session of the legislature voted an appropriation of $70,000 to begin a study of weather modification. The first phase of the project calls for pilot cloud seeding in the San
MORE MONEY will be available to the county governments, if a proposal by the Colorado Wildlife Federation is adopted. The Federation, at its last meeting held near Meeker on July 18, adopted a resolution urging the Game, Fish and Parks Department to pay 25 percent of the agricultural lease revenues on the Little Hills game station to Rio Blanco County in lieu of taxes. It is reported that the Federation will consider a resolution at its next meeting in October urging the Department to pay 25 percent of all its land lease revenues to the respective counties in which the lands are located.

THE COLORADO RIVER WATER CONSERVATION DISTRICT Board voted to retain the law firm of Robert Delaney and Kenneth Balcomb as district counsel when Frank Delaney, present counsel, decides to withdraw as board attorney. Frank Delaney had notified the board that he wished to be relieved of the duties of attorney, but he did not specify any date. (The Daily Sentinel - July 21, 1964)

SILT PROJECT STARTED. The Bureau of Reclamation has awarded a contract to construct Rifle Gap Dam in Western Colorado, signalling initiation of construction on the $6.6 million Silt Project. The contract was awarded to Northwestern Engineering Company, Commerce City, Colorado, on the firm's low bid of $2,727,178. The company had claimed errors in estimating the cost of its work and requested permission to withdraw its bid. The Department of the Interior, after reviewing the case, disallowed the claim for an increase in the bid
and rejected the request to withdraw.


THE CITY OF PUEBLO has added an expected 3,000 acre feet of water a year to its domestic water supply. This additional water will be available upon completion of the extension to the Wurts Ditch. The ditch extension will collect water from Yoder Creek, a tributary to the Upper Eagle. Yoder Creek water will cross the Continental Divide and will be discharged into the Arkansas River where it will be exchanged for an equal amount of water stored in Clear Creek Reservoir near Granite.

DENVER WEATHER CRACKS RECORDS. Two - and possibly three - records were broken in Denver last month. One was the weather. The U. S. Weather Bureau said Denver experienced temperatures of 90 degrees or above on 27 days - the longest 90-or-above streak since the bureau began keeping records in 1871. The second record was water consumption. Robert S. Millar, Denver Water Board manager, said capital city residents consumed 8.85 billion gallons during July. The previous record was 8.74 billion gallons in July 1963. There were no figures to back up the third claimed record, but a beer company spokes-
man said that never before have so many persons bought quarter-kegs of beer for patio parties. (The Daily Sentinel, August 2, 1964)

MORE NATIONAL NEWS

THE UPPER COLORADO RIVER BASIN FUND will have to pay for power deficiencies at Hoover Dam as the result of filling Lake Powell to power head if the State of California has its say. The California Colorado River Board has urged the government to use Upper Basin Funds to pay for the speed up in power generation at Glen Canyon. The Board argues that the Upper Basin will benefit from the sale of Glen Canyon power and accordingly should provide the funds to offset the deficiencies of power at Hoover Dam. Senator Allott (R-Colo) has introduced legislation that will relieve the Upper Colorado Basin States from paying for power deficiencies. Allott's bill proposes that the cost of purchasing power to meet these deficiencies be charged to the Colorado River Development Fund, which was established by the Boulder Canyon Project Act.

LATE FLASH. The Senate, on August 20, passed by voice vote and returned to the House for conference the bill authorizing the Savery-Pot Hook, Bostwick Park and Fruitland Mesa irrigation projects. The Senate amended the bill to provide that no surplus crops be grown on the projects within 10 years after the enactment of the legislation. Early concurrence by the House is expected.