Demands creates flood of proposed water law changes

Many bills connected with efforts to regulate Colorado's ground water in relation to surface stream flows have been introduced into both Houses of the 1965 Colorado General Assembly. Senator Frank L. Gill (R-Hillrose), chairman of the Senate Water Committee, stated that "the Legislature will be shirking its duty unless it realistically tackles the subject of underground water legislation and comes up with at least a start on a workable ground water code in this session."

As a special service to Colorado Water Congress members, the following is a resume of the 16 water proposals introduced to date:

Senate Bill No. 21 by Senator Gill

To amend Article 2 of Chapter 148, CRS 1963, by adding a new section 148-2-9 to read:

Underground waters - presumption. In any proceedings before any officer, board, commission, or court between surface and underground water users, there shall be no presumption that any underground water either is or is not a tributary to any surface stream.
SENATE BILL NO. 22 BY SENATOR GILL

To amend Chapter 148-5-2, CRS 1963, by adding a clause that requires an owner of a reservoir to install appropriate inflow and outflow measuring devices in order to properly allow for evaporation and other losses from natural causes.

SENATE BILL NO. 23 BY SENATOR GILL

To amend and re-enact, with amendments, Chapter 148-18-3, 4 and 13, CRS 1963. This bill would authorize the Colorado Ground Water Commission, upon its own initiative, or at the request of the state engineer, or upon petition of what the commission considers to be a substantial number of the ground water users within any area of the state of Colorado to determine that it is in the public interest to declare such an area a ground water district in order to conserve the ground water supply thereof for its maximum beneficial use.

Within sixty days after the designation of a ground water district the commission shall hold a hearing or a series of hearings within the district designated for the purpose of obtaining local views relative to said designation. The commission would then conduct an election to select a district board of five members to cooperate with the commission and the state engineer in promoting and maintaining legally equitable and efficient diversion and use of ground water in such a district.

The bill defines a "qualified voter" as a duly authorized agent of a political sub-division or corporation within the district or a person, resident or nonresident of the district who owns real property within the district and has paid general taxes thereon in the twelve months preceding.

The district boards would have the duty and responsibility of consulting with the commission on all ground water matters affecting the districts; and they would have the authority to regulate the use, control, and conservation of ground water in the district by regulations approved by the ground water commission and by the qualified voters. Control regulations would regulate the drilling and spacing of wells, their use and other measures.

The district board would have the authority to raise funds by levying ad valorem taxes, pumping charges, water use charges or assessments against the acres of land irrigated. The bill would permit aggrieved persons to initiate proceedings in the district court having jurisdiction.

SENATE BILL NO. 24 BY SENATOR GILL

To amend Chapter 148-18-3, CRS 1963, by amending existing ground water laws for their improvement in the creation and operation of a ground water
district. The district board would be advisory only and its function would be to cooperate with and assist the commission in assembling data on ground water aquifers and to recommend to the commission regulations it may determine as necessary. The bill provides that the state engineer shall issue new well permits upon request of the district advisory board with approval of the commission.

SENATE BILL NO. 25 BY SENATOR OLIVER

To provide for an act creating a state board of examiners of water well and pump installation contractors; and prescribing the powers and duties of said board with respect to the licensing and regulation of such contractors, and with respect to the regulation of water well construction and pump installation.

The board would be composed of five members: The state engineer or his designated representative; a representative of the state department of public health; and three members appointed by the governor, two of whom shall be water well contractors, each with a minimum of ten years experience in the water well contracting business; and one of whom shall be an engineer or geologist with a minimum of 10 years experience in water supply and water well construction.

The board would be responsible for the administration of the act; would have general supervision and authority over the construction and abandonment of water wells; would adopt necessary rules and regulations to implement the act; employ necessary personnel; control the issuance, revocation, suspension and renewal of licenses; conduct hearings; and cause the prosecution of persons violating the act.

The bill would require every person, before engaging in the business of water well construction, to obtain a license from the board. It also provides for license fees and bonds, procedures for revocation or suspension of licenses and establishes basic principles and minimum standards. It also would give the board the right to enjoin unlawful activities through the attorney general.

SENATE BILL NO. 31 BY SENATOR GILL

To amend Chapter 148-2-2, CRS 1963, by adding underground water to the priority of right to waters of the state. The bill reads:

Priority of right to waters of the state. All ditches, DRAINS, OR WELLS constructed for the purpose of utilizing the waste, seepage, UNDERGROUND, or spring waters of the state, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the water of running streams; provided, that the person upon whose land the seepage, underground, or spring waters
first arise, OR ARE PUMPED TO THE SURFACE, shall have the prior right to such waters if capable of being used upon his lands.

SENATE BILL NO. 93 BY SENATORS GILL AND OLIVER

To repeal and re-enact, with amendments, Chapter 148-2-1, CRS 1963, to provide that all waters originating in or flowing into this state, whether found on the surface or underground, and whether tributary or non tributary to a natural stream, have always been and are hereby declared to be the property of the public, dedicated to the use of the people of the state, subject to appropriation or use in accordance with law.

To amend Chapter 148-2-2, CRS 1963, by striking out that portion of the law which provides that the person upon whose lands seepage or spring waters first arise, shall have the prior rights to such waters if capable of being used upon his lands.

SENATE BILL NO. 98 BY SENATOR GILL

This bill is a refined version of Senate Bill No. 23. These refinements include provisions that the governor, the state engineer, and the director of the State Water Conservation Board have the right to vote as members of the Ground Water Commission. Refinements also include a provision that a qualified voter in the district election must be a well owner; and a provision designating a river management district as any area where the waters of the stream and ground water are hydrologically and geologically connected in such a manner that pumping of ground water may reduce the historical flow of the stream. In the latter instance the qualified voter designation would include holders of surface rights.

SENATE BILL NO. 94 BY SENATORS ORCUTT AND OLIVER

A bill for an act for the establishment of underground water conservation districts, including a closed-basin district within the Ogallala Formation of Eastern Colorado.

The bill would provide for the creation of a district, election of a board and the power to tax and to collect taxes. It provides that the Board of County Commissioners is to act on a petition to create the district by holding a hearing and elections thereon.

In the bill, "underground water" is defined as water suitable for agricultural, gardening, domestic, or stock raising purposes, percolating below the earth's surface but does not include defined subterranean streams or the underflow of rivers.
SENATE CONCURRENT RESOLUTION NO. 3 BY SENATORS LOCKE, DEBERARD, GILL AND OLIVER

This resolution would initiate a constitutional amendment which would give the state power to prevent waste of water even if a water user has a decreed right. To become effective the proposal would require a two-thirds majority of both the House and the Senate and would need to be approved by the voters in the 1966 general election.

The amendment, if passed, would insert in the Colorado Constitution a section stating:

"Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and the water resources of the state shall be put to beneficial use to the fullest extent of which they are capable.

"The right to water or to the use or flow of water in or from any natural stream does not and shall not extend to the waste or unreasonable use or unreasonable method of use, or unreasonable method of diversion by law.

"No existing appropriation of water shall be denied except when demanded by public interest to prevent waste. The General Assembly may prescribe by law reasonable limitations upon the right of any appropriator of water to demand water, when such demand results in the unreasonable waste of water."

HOUSE BILL NO. 1066 BY REPRESENTATIVE WOOLF

To amend Article 11 of Chapter 148, CRS 1963, by adding a new section to read in part:

State engineer to administer all water laws. (1) The state engineer shall execute and administer the laws of the state relative to the distribution of the surface waters of the state and the underground waters tributary thereto in accordance with the right of priority of appropriation as established by judicial decrees.

The bill also provides that the state engineer may apply for an injunction against illegal diversions, including wells, and it provides a penalty for convicted violations by a fine of not more than $500 or by imprisonment in the county jail for not more than 90 days.

HOUSE BILL NO. 1067 and 1068 BY REPRESENTATIVE WOOLF

These bills repeal Chapters 148-2-2 and 148-2-1 of Colorado Revised Statutes of 1963.
HOUSE BILL NO. 1074 BY REPRESENTATIVE WOOLF

To amend Chapter 148-2-4, CRS 1963. The bill reads:

148-2-4. Not to impair vested rights. Nothing contained in SECTION 148-2-3 shall be construed to impair, diminish, or destroy any valid appropriation of water for any beneficial use which shall have been made or decreed in accordance with law; or modify, amend, or affect any decree of court or the statutes limiting the time wherein appropriators must have appeared for determination of priorities of right for diversions from natural streams, or the decisions of the courts construing the statutes.

HOUSE BILL NO. 1100 BY REPRESENTATIVE WOOLF

To amend Chapter 148-2-3, CRS 1963. The bill reads:

148-2-3. Appropriation of nontributary waters. WATERS WHICH ARE NOT TRIBUTARY TO A NATURAL STREAM may be appropriated for all beneficial uses, including domestic, COMMERCIAL, MUNICIPAL, irrigation, manufacturing, and mining, the same as natural streams AND THE WATER TRIBUTARY THERETO. Claims therefor may be filed with the state engineer and such appropriations may be adjudicated in any proceedings brought or pending for determination of priorities of the use of water for irrigation or other beneficial purposes in the water district WHERE THE POINT OF DIVERSION may be situated. The court shall fix and decree the rights of appropriators from such WATERS among themselves.

SENATE JOINT RESOLUTION NO. 4 BY SENATOR LOCKE

(1) That in an effort to conserve the waters of the state and eliminate waste, the state engineer is hereby requested to determine those instances in which there is much loss of water by a call on water upstream by a senior appropriator downstream to the detriment of the beneficial use of water which is ultimately lost; and that the state engineer shall not make such calls on upstream water to satisfy downstream decrees; provided, that no priorities by the use of such water in the high country shall be established by such procedure; and

(2) That the elimination of waste of the waters of the state be submitted to the people of the state in the form of a constitutional amendment at the 1966 general election; and

(3) That a copy of this Resolution be transmitted to the state engineer
February 3, 1965

TO ALL WATER CONGRESS MEMBERS:

As a special service to our membership, a legislative supplement to the Colorado Water Congress Newsletter has been prepared by Editor Cleland N. Feast. You should find this new service of the Water Congress very valuable since such a detailed analysis of proposed water legislation is not readily available elsewhere.

This analysis includes every measure introduced through February 2, 1965. In the weeks ahead public hearings will be held by the Water Resources Committee of the Senate under the chairmanship of Frank L. Gill and by the Natural Resources Committee of the House under the chairmanship of T. Everett Cook.

Your Water Congress will attempt to keep you informed on developments in the General Assembly during the remainder of this session and future sessions.

Just a final reminder--the Water Congress Annual Meeting will include discussion of legislation and the election of officers and the executive committee. Be sure to attend next Wednesday, February 10, at 2:00 P.M. in the Century Room of the Cosmopolitan Hotel.

Sincerely,

Gordon Scheer
Executive Director

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— The limit of Colorado's future is its water —