"The decision to go ahead or not to go ahead with a water project cannot rest solely with the technicians - the engineers, the economist, or the biologist. Nor can it rest with any one segment of society - the promoter, the businessman, the fisherman, or the wilderness crusader. The choice of action, essentially the decision itself, is a result of the political process by which we live." (John Sypulski, Regional River Basin supervisor, U. S. Fish and Wildlife Service, Albuquerque, New Mexico, June 1966)

COLORADO WATER CONGRESS NEWSLETTER

Vol. 9, No. 9
September 1, 1966

DEMANDS CONTINUE FOR WATER LAW CHANGES

"ANY LAW RELATING TO THE WATERS of this state should declare that the doctrine of appropriation as it relates to priority owners should include waters produced by the stockholders or landowners of a district and used on lands supplied by such priority owners." This recommendation was presented to the Legislative Council on water, meeting in Fort Morgan on July 18, by Attorney George A. Epperson representing the Irrigationist's Association of Water District No. 1.

"Wells not under ditches should take their decreed date or an attempt should be made to administer such wells under Senate Bill 367, which may give well owners more protection than securing priorities," Epperson said.

"An amendment to the change of diversion statute should be enacted, allowing pumps to be supplemental points of diversion.

"Priority owners should be required to bring such change for supplemental points of diversion and also be required to control the use of the pumps covered by such decree. This would, of course, entail some sort of
agreement between ditch companies and well owners to be on a voluntary basis.

"After such change or decree, all water produced from wells affected thereby should be charged against the direct decree of the priority owner.

"As to futile calls, case law should be enacted into statute law:

(a) No appropriator is entitled to command the whole or a substantial flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled.

(b) Junior appropriators should not be required to shut off their water when they are so situated that shutting them down would not result in improving the water supply of the senior appropriator."

Epperson recommended to the Committee that Senate Bill 3, introduced in the 1966 session of the Legislature, be amended by adding a section stating:

- Calls from a junior appropriator shall not be recognized when such call would not result in improving the water supply of the senior appropriator. In determining whether or not water would be available for the senior appropriator, the rule that an appropriator may not command the whole or a substantial flow of the stream merely to facilitate his taking the fraction of the whole flow to which he is entitled, must be considered and recognized. (reference Colorado Springs, V. Bender, 148:458)

Senate Bill 3, which was introduced by Senator Frank L. (Ted) Gill of Fort Morgan, basically provides that every appropriator of water shall use in a diligent manner, such methods and equipment as ditches, dams, headgates, wasteways, pumps, wells, measuring devices, and supplemental points of diversion where necessary to capture such appropriator's full decrees before placing a call on junior appropriators: and that in no event shall an appropriator be entitled to divert more water than the
total amount of his decreed water rights except at times when all other rights are satisfied.

T. Everett Cook, chairman of the House Natural Resources Committee and member of the Legislative Council Committee on Water, speaking after the Council meeting in La Junta on May 9, 1966 said:

"Laws should be passed requiring the satisfaction of water decrees by either pumped or diverted water, or both, whatever the river situation demands.

"The basin should form a district and then assess landowners therein a specified sum per acre or another form of levy to provide funds to pay for the cost of administering the pumping plan. This will create a system where the senior water right holder does not suffer as a result of the benefit accruing to the junior.

"It is true that someone may lose a little, but this loss will be small compared to what it will be if present unregulated water use techniques are allowed to continue.

"We in the Legislature must take a long look into the future. As the population increases, we must get as much use out of our water as possible. If we are going to spread out our water for more people, we are going to have to regulate it."

UNDERGROUND WATER LAW AGAIN UNDER ATTACK

LEGAL ARGUMENTS over Colorado's new underground water law, H.B. 1066, shifted from the Platte Valley to the Arkansas during the week of August 8 when the State Engineer's office brought action for an injunction against
an Arkansas Valley well owner. The injunction proceedings were taken to the District Court in Pueblo, presided over by Judge William E. Rhodes of Colorado Springs.

It all started during the latter part of June when Division Engineer John Patterson issued an order to Roger F. Fellhauer, a farmer near Fowler, to stop pumping from a well located in close proximity to the Arkansas River bed in order to satisfy senior calls. Patterson's order was in compliance with a zoning system previously agreed to by the majority of the well owners in the valley which set up different starting dates dependent upon the distance from the river. Some 44 well owners complied with Patterson's orders and shut down their wells. Fellhauer, however, refused to comply with the order and stated that he would seal his well only upon order of the Court.

The State Engineer's office then initiated an injunction suit prepared by Denver Attorney Benjamin Wright, Jr., who has been hired by the state to enforce the new underground water laws. A summons was delivered to Fellhauer by the office of Sheriff Robert J. Horvat of Pueblo ordering him to appear in Court on the injunctive action.

At the trial, Fellhauer was represented by Attorneys John Sayre and Clyde Martz of Denver who based their defense on two points of contention: (1) that H.B. 1066 is unconstitutional in that the statute unlawfully delegates the power of the State Legislature to the State Engineer to define a crime, and that the statute is deficient in that it sets forth no adequate standards to guide a diverter of water in the use of that water;
and (2) that before a man can be enjoined from pumping water from a well there must be some evidence of material injury to a senior water appropriator.

Counsel for the defense contended that the law requires the state show that defendant Fellhauer "has injured the vested rights of others" before an injunction can be issued, and that specific cases of injury be named in the complaint "so a proper defense can be prepared."

Wright brought technical witnesses before the Court who testified that the well was so close to the river that when it was in operation it was sucking water directly out of the bottom of the river bed to the detriment of senior right holders downstream. Wright said, "Water taken from the Arkansas River either from its surface or from underneath affects directly or indirectly every senior appropriator on the river."

Wright admitted Fellhauer has a 1935 water right but that it is so junior to other owners of water rights that fundamentally his right is nothing in real value compared to other appropriators of older rights. Wright contended that it is not up to the State Engineer to name specifically who is being injured by well pumping.

Fellhauer was cross examined by Glenn Saunders, Denver Attorney, who represented Amity, Bessemer, CF&I and Canyon City Hydraulic Ditches, all interveners in the case. Saunders contended that if wells pumping water directly from a stream are not equally required to conform to the doctrine of appropriation the same as ditches holding surface rights for the past 80 years, the result can only be chaos and confusion, with
rights being reduced to the survival of the fittest.

Judge Rhodes has taken the case under advisement.

WATER LAWSUIT WITHDRAWN

THE LAWSUIT FILED by the Weldon Ditch Company in Water District No. 1 against the State Engineer's office has been withdrawn, according to an announcement by James Geissinger, assistant attorney general. The ditch company's suit had demanded the State Engineer to enforce H.B. 1066 and his guidelines of May 12, 1966 relative to well use in the South Platte Basin, and sought a declaration providing that senior ditch calls should be ignored if water released by junior ditches could not reach the point of call.

Geissinger pointed out that the ditch company's legal representatives had presented the Court with a motion to dismiss the case without prejudice on July 25. The Attorney General's office had been planning to join all the senior ditches in District No. 64 in the defense of the suit.

WATER DISTRICT CHALLENGED

A GROUP OF IRATE WELL OWNERS in the Arkansas Valley, headed by John Werme, Jr., of Pueblo, has accused the Southeast Colorado Water Conservancy District Board with lavish expenditures to influence legislation during the 1965 session when H.B. 1066 and S.B. 367 were passed to control underground water use. The group has questioned expenditures at the Quorum Restaurant in Denver, out of state trips to water meetings, and other expenditures.
J. Sid Nichols, President of the Board, defends the action of the district by pointing out that it is the underwriter for the $182 million Fryingpan-Arkansas Project, and in order to protect the diverted water from being used by unregulated pumping the Board authorized its manager to work for ground water legislation.

"We can't get any water down the river if they pump it all out," Nichols said, "and the Board decided to try for some workable legislation, which naturally costs money."

At a hearing before District Judge S. Philip Cabibi considering a protest lodged by the group, District Judge William S. Eakes of Durango testified that the expenditure of money to obtain favorable action on the Fryingpan-Arkansas Project and the necessary ground water legislation was absolutely essential. "It was not to try to buy the legislator's support for the price of a meal, but to get their ear and to get their attention," Eakes said.

John Proctor, former Puebloan and now Colorado's Auditor, testified at the hearing that when he audited the district's records he came across no irregularities.

The hearing is under advisement.

WATER PLANNING UNDER WAY

A PROGRAM DESIGNED to develop maximum utilization of the waters of Colorado has been initiated by Felix Sparks, Director of the Colorado Water Conservation Board. The first phase of the program, to begin in the Arkansas Valley, was unveiled by Fred Boydston of the Colorado Board
staff speaking at the recent meeting of the Arkansas-Red-White Rivers Interagency Committee in Colorado Springs. The plan encompasses the organization of a task force which will contact water users in the Arkansas Basin to investigate the possibility of setting up all water management under the jurisdiction of a water conservancy district. The plan envisions:

- The district to consolidate the necessary water rights.
- The district to be responsible for distributing water to the user.
- The district to manage all water use to provide maximum utilization.
- The State Engineer to be responsible for establishing regulations between districts.

The first meeting of the task force was held in Pueblo on August 8, attended by members of the Colorado Water Conservation Board staff, U.S. Bureau of Reclamation and the U.S. Geological Survey. The task force split the Arkansas study into four separate segments headed by Colorado Water Conservation Board staff members: (1) Above Pueblo Reservoir - T. J. Longley; (2) Pueblo Reservoir to Fort Lyon Canal - George A. Brown; (3) Fort Lyon Canal to John Martin Reservoir - Carter Hutchinson; and (4) John Martin Reservoir to the Kansas line - Fred Boydston. Each sub-task force will include representatives from the U.S. Bureau of Reclamation, U.S. Geological Survey, U.S. Soil Conservation Service and the local state water commissioners.

Boydston pointed out that the task force will develop proposals for necessary implementing legislation.

WATERGRAM

- Expect water pollution control agencies at some time in the future
to call for **drastic reduction** in the use of home water softeners under the claim that the salt used in the regeneration process is a source of contamination.

- Expect the Federal Pollution Control Administration to require **discontinuance** in the use of cesspools and septic tanks and that they be replaced with central sewage treatment plants.

- Expect **growing conflicts** among the states and the federal government as a result of the administration of the New Water Quality Act of 1965. Certain groups believe that the Act permits the federal to run rough-shod over state water control unless the states are alert and effective. Many also believe that tax incentive programs for clean water may prove to be a "license to pollute."

- **WATER NEWSLETTER** reports that the commercial fish take from the Illinois River has decreased from 24 million pounds in 1908 to less than 1 million pounds in 1964, and that during this time 18 varieties of fish have completely disappeared.

- Look for a possible meeting of the minds on Aurora joining the Metropolitan Sewer District No. 1.

- A Four Corner State Commission composed of the Governors of Colorado, Utah, New Mexico and Arizona may be formed to do **long-range planning** for that section of the four states.

**ITEMS IN BRIEF**

U.S. Forest Service announced the purchase of 860 acres of land including Monarch Lake for a public recreational area. The land is located on the South Fork of the Colorado River above Grand Lake. The purchase was made from funds provided by the Land and Water Conservation Fund Act enacted by Congress in 1964. The Act was sponsored by Congressman Wayne Aspinall (Colo). Regional Forester Dave Nordwall said this acquisition will **open up about 35,000 acres of forest land to public use.**

* * * * *

A gunslinging battle reminiscent of the wild west days of the 80's resulted in the death of a Barele, Colorado rancher on July 31. Kenneth Caudle was killed when he and John Paulich, a neighboring rancher, shot it out on the streets of Barele in a **dispute over water rights.** Water Commissioner, Robert Mariano attempted to stop the row but he was unsuccessful. Paulich was later apprehended in Raton, New Mexico.

* * * * *
House Interior and Insular Affairs Committee has passed and sent to Rules H.R. 4671, a bill to authorize the construction of the $1.7 billion Colorado River Basin Project. The committee version includes a compromise providing that a reconnaissance study of imports be made by the proposed National Water Commission, and if the reconnaissance study is favorable the Interior Department is to complete a feasibility study by 1972. It includes two dams on the lower Colorado River and five projects in Colorado. Conservationists and northwest state opposition create pessimistic prediction on passage this session.

* * * * *

The Grand Junction Daily Sentinel reports that "Consumers Public Power District in Columbus, Nebraska is yet studying with the Rocky Mountain Power Company how plans for the White River-Sweetwater Project might be integrated with the District's plan to construct an 800 megawatt electric generating plant."

* * * * *

One hundred and twenty persons living in Ouray and Ridgway signed and forwarded to Congress a petition opposing the Dallas Creek Project which is included in the proposed Colorado River Basin Bill. The opposition questioned the project's feasibility and objected to removing valuable land and property from the tax rolls.

* * * * *

City of Golden water chief Walter Fletcher reports a new process for the removal of contaminants from water. Fletcher says the process will remove 99.9 percent of all suspended materials; cost less than present methods and eliminate the need for chemical after-treatment.

* * * * *

Petitions for the creation of a ground water management district in the newly created High Plains Designated Ground Water Basin and for the election of a Board of Directors have been received by the Colorado Ground Water Commission. The district, to be known as the Sand Hills District, proposes to encompass part of Yuma County. A public hearing to accept testimony on the proposal is scheduled in Wray, Colorado on September 2. If favorable action is obtained on the petition, the management district will be the first to be created under the provisions of Senate Bill 367.
The Ground Water Commission, on August 17, heard testimony on applications for new wells in the Bijou-Kiowa Designated Ground Water Basin presented by Ogalalla, Inc., and W. A. Jackson of Denver, at a meeting in Strasburg. George W. Colburn, hearing officer, conducted the hearing and he will give a report on the testimony at the regular meeting of the Commission in Denver on October 7.

* * * * *

The national per capita water consumption for 1965 was estimated at about 170 gallons a day. Home use: 47% for toilets; 31% for bathing; 6% in the kitchen; 5% for drinking; 4% for laundry; 3% for lawn sprinkling; 3% for cleaning; and 1% for car washing.

* * * * *

Ute Water District and the City of Grand Junction are deep in serious negotiation over water service in the area north of the city. Ute is contending that if the city buys the Bookcliff Water Company, located within the Ute district, as contemplated the two agencies will go to court instead of the conference table. City recently purchased the Fruitridge Water Company which is also within the Ute district, and it is the opinion of Albin Anderson, attorney for the Ute, that the city cannot sell water within the Ute district without its approval. Ute Board has tentatively approved long-term sale of water to Grand Junction.

* * * * *

A "pulsing" nuclear reactor is scheduled to be installed in the U.S. Geological laboratories in Denver, according to an announcement by the Department of the Interior. Among other purposes, the reactor will be used to study pollutants in water and soil and analysis of fresh and ocean water sediments.

THROUGH THE WATER METER

The U.S. Corps of Engineers has completed its preliminary report on proposed flood control for Sand Creek and Toll Gate Creek east of Denver. Paul H. Berg, assistant regional director, U.S. Bureau of Reclamation in Denver, has been named planning director of the Missouri River Basin Project. Floyd Dominy, Reclamation Bureau Chief, charges the Sierra Club of California and Dr. Richard C. Bradley, physics professor of Colorado College, as "engaging in a deliberate campaign of misrepresentation"
in their opposition to two dams on the Lower Colorado River . . . Town of Beulah is considering an $85,000 expenditure to construct a new water system. Farmers Home Administration would share in the cost . . . Bids for the construction of the Silver Jack Dam on the Cimarron River, a phase of the Bostwick Park Project, will be received by the U.S. Bureau of Reclamation in Montrose until 10:00 A.M. September 8 . . . Delta Municipal Power reports a 1965 net earning of $138,284, a 37.6 percent increase over 1964 . . . Grand Junction plans to spend $2,650,000 during the next six years on a water development project . . . Senator Clinton P. Anderson (N.M.) predicts that the "odds are heavily against" the passage of the Colorado River Basin (Central Arizona) Bill this session . . . The final draft of the feasibility report on the Narrows Project has been completed and sent to the printers, according to news release by the lower South Platte Water Conservancy District.

DEATHS

William M. White, Sr., 54, Pueblo, one of Colorado's leading bankers and industrialists, in a two-car accident in Pueblo on August 16. White was the president of the Minnequa Bank in Pueblo, the First National Banks in Alamosa, Durango and Salida and the Bank of Aspen, all of which have assets estimated at $36 million. White was also a director of numerous large Colorado corporations.

George Tyner, retired water commissioner, in a tractor accident near Durango on August 5.

COMING EVENTS

National Reclamation Association convention, Western Skies Hotel, Albuquerque, New Mexico, November 13 to 19, 1966. For reservations write to P.O. Box 2267, Albuquerque.