"The availability of water rights that are for sale, the costs of those rights and the costs of development, as well as the constraints of existing state water laws will have a great impact on the development of energy. These decisions will determine the course of Colorado's future and the future of our western neighbors." (Colorado Governor Richard Lamm at American Bar Association Conference, Grand Junction, February 6, 1975)

COLORADO WATER CONGRESS NEWSLETTER

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MINI-SUMMIT ON WATER IS SCHEDULED

A "NATIONAL CONFERENCE ON WATER" has been announced by Interior Secretary Rogers C. B. Morton in his capacity as Chairman of the Water Resources Council.

This announcement was published in the February 1975 issue of Washington Report - Water Resources Congress, and it firms up a tentative notice on the meeting as reported in the February 1, 1975 issue of the Colorado Water Congress Newsletter.

The meeting is scheduled to be held on April 22, 23 and 24, 1975, at the Washington-Hilton Hotel, 1919 Connecticut Avenue N.W., Washington, D.C. 20009.

A news release by the National Water Resources Association states that the objectives of the meeting are: To examine the role of water in national affairs through 1985 and to consider the adequacy of policies and programs and the probable effectiveness of Section 102 (b) of the Water Resources Planning Act in support of national aims. The proposed program will include panel discussions on energy, agriculture, environment, floods, laws, rights and institutions, municipal and industrial water, transportation and the respective roles of governments.
Carl H. Bronn, executive secretary of the National Water Resources Association, suggests that all water interests urge their Governor to advise the Assistant Secretary of Interior for Land and Water Resources how best to provide for meaningful state participation in the Conference.

**WATER BILLS PROPOSED BY JOINT WATER COMMITTEE INTRODUCED**

THREE BILLS proposing to amend Colorado water laws which were formulated and proposed by the Joint Legislative Council Committee on Water have been introduced in the 1975 session of the Colorado General Assembly. (See February 1, 1975 CWC Newsletter.)

A draft of these bills, as introduced, is stated as follows:

- **Senate Bill No. 7 by Senators Anderson, et al and Representatives Bledsoe, et al**

A Bill For An Act Concerning The Duties Of The State Engineer Relating To The Adequacy Of Subdivision Water Supplies. (Committee Bill No. 21)

**SECTION 1.** 30-28-136 (1) (h) and (3), Colorado Revised Statutes 1973, are amended to read:

30-28-136. Referral and review requirements (1) (h) When applicable except when the proposed subdivision is to be connected to an adequate existing municipal water supply, to the state engineer for an opinion regarding material injury to decreed water rights, historic use of an estimated water yield to supply the proposed development, and conditions associated with said water supply evidence. The state engineer shall consider the cumulative effect of on-lot wells on water rights and existing wells.

(3) (a) The provisions of this part 1 shall not modify the duties or enlarge the authority of the state engineer or the division engineers nor divest the water courts of jurisdiction over actions concerning water right determinations and administration; neither shall any opinion of the state engineer submitted under subsection (1) (h) of this section nor any finding by a board of county commissioners concerning subdivision water supply matters create any presumption concerning injury or noninjury to water rights; and neither the state engineer's opinion nor the finding of the board of county commissioners may be used as evidence in any administrative proceeding or in any judicial proceeding concerning water right determinations or administration.

(b) IN THE EVENT THE STATE ENGINEER DETERMINES THAT MATERIAL INJURY TO DECREED WATER RIGHTS WILL OCCUR IF THE PROPOSED DEVELOPMENT IS APPROVED AND THAT HE WILL NOT ISSUE WELL PERMITS AS A RESULT, HE SHALL NOTIFY THE BOARD OF COUNTY COMMISSIONERS. A COPY OF THIS OPINION SHALL BE FURNISHED TO THE SUBDIVIDER. IN THE EVENT THE SUBDIVISION IS APPROVED NOTWITHSTANDING
THE STATE ENGINEER'S OPINION, THE SUBDIVIDER SHALL FURNISH TO ALL PURCHASERS A COPY OF THE STATE ENGINEER'S OPINION PRIOR TO THE SALE.

SECTION 2. 37-92-602 (3) (b), Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

37-92-602. Exemptions - presumptions. (3) (b) (III) If the application is for a well as defined in subparagraph (II) of this paragraph (b) which will be located in a subdivision as defined in section 30-28-101 (10), C.R.S. 1973, for which the water supply plan has not been recommended for approval by the state engineer, the cumulative effect of all such wells in the subdivision shall be considered in determining material injury.

- Senate Bill No. 8 by Senators Anderson, et al and Representatives Bledsoe, et al

A Bill For An Act Concerning Tabulations Of Water Rights To Be Compiled Under The "Water Right Determination And Administration Act Of 1969." (Committee Bill No. 22)

SECTION 1. 37-92-401 (5), Colorado Revised Statutes 1973, is amended to read:

37-92-401. Lists of priorities. (5) The tabulation provided for in this section shall be used by the division engineer, the state engineer, and their staffs for administrative purposes and for the purpose of preparing the 1974 1975 tabulation specified in section 37-92-402. Subject to the foregoing procedures any person aggrieved by any portion of such tabulation may file a written protest with the water clerk and the division engineer setting forth the factual and legal basis for such protest. The fee for filing such protest with the water clerk shall be twenty dollars. Thereafter the water judge shall order such notice, conduct such proceedings, and enter such orders as he deems appropriate to deal with such protest pending the proceedings in section 37-92-402.

SECTION 2. 37-92-402 (1), the introductory portion of 37-92-402 (2), and 37-92-402 (2) (b), (2) (C), (2) (d), (2) (e), (2) (f), and (2) (k), Colorado Revised Statutes 1973, are amended to read:

37-92-402. Tabulations - abandonment. (1) No later than July 1, 1974 1975, and July 1 every four FIVE years thereafter the division engineer with the approval of the state engineer shall prepare a new tabulation of all water rights and conditional water rights in his division. The 1974 1975 tabulation shall reflect any changes in the 1970 tabulation PROVIDED FOR IN SECTION 37-92-401 which the division engineer and the state engineer determine to be advisable based on the principles set forth in section 37-92-401 to reflect correctly the priority of water rights. and The 1974 1975 tabulation and succeeding tabulations shall include the priorities awarded subsequent to those listed in the preceding tabulation, shall incorporate any changes of water rights that have been approved, shall note any changes from conditional water right to water right, REFLECT JUDGMENTS AND DECREES DETERMINING, CHANGING, OR OTHERWISE AFFECTING WATER RIGHTS AND CONDITIONAL WATER RIGHTS, WHICH JUDGMENTS AND DECREES HAVE BEEN ENTERED SUBSEQUENT TO THOSE REFLECTED IN THE PRECEDING TABULATION AND PRIOR TO JANUARY 1 OF THE YEAR OF THE CURRENT TABULATION, SHALL INCORPORATE ANY
CHANGES IN EARLIER TABULATIONS ORDERED BY THE WATER JUDGE, shall modify any water rights or conditional water rights which the division engineer determines to have been abandoned in part, and shall omit any water rights or conditional water rights which the division engineer determines have been totally abandoned. Except as specified in the preceding sentence, each tabulation pursuant to this section shall make no changes in the listings in previous tabulations except changes to correct clerical errors and changes ordered by the water judge pursuant to paragraph (i) of subsection (2) of this section, and any such changes, modifications, or omissions shall be especially noted by some appropriate means. In making his determination with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right, the water available under which has not been fully applied to a beneficial use. In making such tabulation, the division engineer may use such system of numbering and listing water rights and conditional water rights in order of seniority as is suited to the administrative needs of the particular division or portion thereof. He shall have separate priority lists as necessary so that only those water rights and conditional water rights which take or will take water from the same source and are in a position to affect one another will be on the same priority list.

(2) The following deadlines shall then be effective in 1974 and every four-years-thereafter FOR THE 1975 TABULATION AND FOR SUCCEEDING TABULATIONS:

(b) Not later than September DECEMBER 10, any person who wishes to object to the manner in which a water right or conditional water right is listed in the tabulation or to the omission of a water right or conditional water right from such tabulation shall file a statement of objection in writing with the division engineer. A fee of ten dollars shall be paid with such filing; except that no fee shall be required for any such filing to correct any clerical error.

(c) On or before October MAY 10 OF THE SUCCEEDING YEAR, the division engineer shall make such revisions, if any, as he deems proper in the aforesaid tabulation. In considering the matter raised by statements of objections, the division engineer may consult with interested persons. The division engineer shall consult with the state engineer and shall make any revisions in the tabulation determined by the state engineer to be necessary or advisable. The revised tabulation or, if there are no revisions, the original tabulation, signed by the division engineer and by the state engineer, shall be filed on or before October MAY 10 OF THE SUCCEEDING YEAR with the water clerk. A copy of such tabulation, together with any revisions, shall be available in the office of each division engineer and the offices of each water commissioner and each county clerk and recorder for inspection at any time during regular office hours, and the division engineer shall furnish or mail a copy to anyone requesting same upon payment of a fee of five dollars. If the tabulation is revised, the division engineer on or before October-20 JUNE 10 OF THE SUCCEEDING YEAR shall publish a notice that the tabulation has been revised and that the revision may be inspected or a copy thereof obtained as specified in this paragraph (c). Such publication shall be made as is necessary to obtain general circulation once in each county or portion thereof which is in the division by means of one or more newspapers which, if feasible, are published in the division.
(d) Any person who wishes to protest the manner in which a water right or conditional water right is listed in the tabulation, including any revisions, or the omission of a water right or conditional water right from such tabulation shall file a written protest with the water clerk and with the division engineer not later than August 30 of the succeeding year. Such protest shall set forth in detail the facts and legal basis therefor. Service of a copy of the protest or any other document is not necessary for jurisdictional purposes, but the water judge may order service of a copy of the protest or any other document on any person and in any manner which he may deem appropriate. The fee for filing such protest with the water clerk shall be twenty dollars.

(e) Commencing the second week in December on the September or October term day (as the case may be) of the succeeding year, in the respective divisions pursuant to section 37-92-304 (1), and continuing for as long as may be necessary, the water judge of each division shall conduct hearings on the tabulation filed by the division engineer and any protests that have been filed with respect thereto. The hearings shall be conducted in accordance with trial practice and procedure; except that no pleadings other than the protest shall be required. The protestant shall appear either in person or by counsel in support of the protest. The division engineer shall appear in support of the tabulation, and, if requested by the division engineer, the attorney general shall represent the division engineer. All persons interested in the portions of the tabulation which are being protested shall be permitted to participate in the hearing either in person or by counsel if they enter their appearance in writing prior to the date on which hearings are to commence. Such entry of appearance shall identify the portion of the tabulation with respect to which the appearance is being made. The water judges of the various divisions shall arrange their hearings, if necessary in their discretion, to accommodate counsel and other persons who may be involved in hearings in more than one division. Promptly after hearing all protests the water judge shall enter a judgment and decree which shall either incorporate the tabulation of the division engineer as filed or shall incorporate same with such modifications as the water judge may determine proper after the hearings.

(f) If no protests have been filed, then promptly after August 30 of the succeeding year the water judge shall enter a judgment and decree incorporating and confirming the tabulation of the division engineer without modification.

(k) Proceedings set forth in this section shall be considered general adjudication proceedings. For the purpose of the 1975 tabulation specified in subsection (1) of this section, the tabulations promulgated by the division engineers in July of 1974, as supplemented, shall be considered the tabulations required by said subsection (1), and the statements of objection filed with the division engineers in 1974, as supplemented, shall be considered the statements of objection provided for in paragraph (b) of this subsection (2).

- Senate Bill No. 6 by Senators Anderson, et al and Representatives Burns, et al

A Bill For An Act Concerning The Powers Of Counties To Control Floods, And Authorizing State Assistance To Local Governments For Such Purposes.
(Committee Bill No. 23)
SECTION 1. Article 30 of title 30, Colorado Revised Statutes 1973 (numbered as article 31 of chapter 36, C.R.S. 1963) as enacted by section 1 of chapter 43, Session Laws of Colorado 1974, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

ARTICLE 30
Controls of Floods

30-30-101. Legislative declaration. For the purpose of protecting life and property, the board of county commissioners of each county of this state shall have the powers granted by this article for the control of floods and the abatement of stream channel erosion.

30-30-102. Authority to construct works. (1) To carry out the purposes of this article, and subject to the review and approval by the Colorado water conservation board of plans involving construction of works, the board of county commissioners of each county shall have the authority within its respective county to:

(a) Construct any works necessary for the control of floods;

(b) Construct any works necessary for the abatement of stream channel erosion;

(c) Remove or cause to be removed any obstruction in the channel of any natural stream which creates a flood hazard. Water diversion devices may not be removed or modified except as provided in subsection 30-30-103 (5).

30-30-103. Adoption of plan - acquisition of lands or rights-of-way. (1) A board of county commissioners by resolution may, after public hearing, adopt plans to carry out the purposes of this article, which plans, with respect to the construction of works, shall not be carried out until and unless they have been approved in the form of a resolution adopted by the Colorado water conservation board at a regular or special meeting of that board.

(2) The board of county commissioners shall have the power to acquire by gift, purchase, or voluntary agreement all lands or rights-of-way necessary to accomplish the adopted plan.

(3) For the purpose of ascertaining flood hazard conditions, the board of county commissioners and its authorized agents and employees shall have reasonable access rights to any stream. Such access shall be through existing gates, roads, and lanes where possible, and, except in an emergency, the board shall give at least five days' prior notice of a need for access. In any event, the board or its authorized agents and employees shall be liable for damages resulting to water diversion facilities, fences, growing crops, and other private property arising out of the exercise of such access rights.

(4) (a) If the board of county commissioners determines that there are obstructions on the property owner's property which in their opinion create a flood hazard, they shall give him written notice of those conditions. Thereafter the board of county commissioners shall negotiate with the owner to reach agreement as to the existence of such conditions and as to the
procedures necessary for the elimination thereof. If such agreement is reached, the owner, if he requests, shall be given a reasonable time within which to eliminate such conditions himself, and such agreement may provide for compensation to the owner for such work.

(b) If the board of county commissioners and the owner cannot reach such agreement, then, unless the owner consents to access by the board of county commissioners, the board of county commissioners shall have access only through the institution of proceedings in the district court for a mandatory order compelling the owner to permit access for the purposes specified in section 30-30-102. In such court proceedings, it shall be appropriate for the court to consider the necessity for and the reasonableness of the request of the board of county commissioners for access and to award to the owner such payment, if any, as may be proper to compensate him for damages to his property resulting from the flood control work on his property as authorized by the board of county commissioners.

(5) The board of county commissioners shall have the authority and right to modify, at its own expense and risk, existing water diversion devices for the purposes of this article, but it shall in no way alter or diminish the quality or quantity of water entitled to be received under any vested water right.

(6) Notice of the public hearing required under subsection (1) of this section shall be given by publishing a brief description and estimated cost of the proposed flood control works, along with notice of the time and place of the hearing, published once a week for two successive weeks in a newspaper of general circulation within the county in which said flood control works are proposed, the last publication of which shall be not less than ten days nor more than thirty days prior to the date set for said hearing.

30-30-104. Contracts and agreements. The board of county commissioners may enter into contracts and agreements with adjoining counties, the state of Colorado, or any agency or political subdivision thereof for the purposes of implementing or carrying out the purposes of this article.

30-30-105. Tax levy. For the purposes of this article, the board of county commissioners of each county is hereby authorized to assess a levy not to exceed three mills per dollar of valuation for assessment against all taxable property within the county, the revenues from which shall be used to establish a flood control fund to be expended only to carry out the purposes of this article; except that no such levy shall be made against any taxable property within the boundaries of any special district organized under state law which has the authority to and is levying a property tax for flood control purposes.

30-30-106. Colorado water conservation board - grants to counties. The Colorado water conservation board may make grants to counties or other local governmental agencies, out of moneys appropriated to it by the general assembly or other funds available for such purpose, to assist such governmental agencies in carrying out the purposes of this article in the manner and under such terms and conditions as may be prescribed by said board. Grants under this section may be made upon application by the county or other local governmental agency therefor and on the basis of the
urgency of the flood control problems and the financial need therefor, not to exceed fifty percent of the costs incurred by a county or other local governmental agency.

All of these Bills were introduced in the Senate and referred to the Committee on Agriculture, Livestock, and Water.

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