TO: L. R. Kuiper, Acting Director.

The "Water Resources Planning Act of 1961" was transmitted to the Congress by President Kennedy on July 13, 1961. The Act was introduced in the Senate by Senator Anderson and in the House by Congressman Aspinall. As you well know, the Senate Select Committee on Water Resources issued reports strongly recommending that the nation develop plans for its major river basins so as to meet the needs of the people over the next 20 years. The Senate Select Committee further recommended that the Federal Government give at least $5 million per year to the states to assist in financing river basin planning and also plan other aspects of water resources development within the state. The legislation under consideration is the Administration's answer to these recommendations.

Joint hearings in the Senate on the proposed legislation were held during the last session of Congress. At these hearings many members of the Executive Branch of the Federal government testified favorably on the legislation. This is also true of many members of Congress. During the recent White House Regional Conference held in Denver, it became quite apparent that this legislation will be given high priority during the next session of Congress.

This Act is the most far-reaching legislation on water resources planning and development to be presented to Congress in many, many years. Because of its magnitude and its impact on water resources development as is presently carried on by the Federal government within the State of Colorado, it behooves us to
obtain as much comment on the Act as possible so that the will of the people of Colorado can be fully expressed.

To more fully understand this proposed legislation, I am attaching hereto a section-by-section analysis of the bill which analysis was attached to President Kennedy's letter to Congress.

Comments on S. 2246 and H. R. 8177

Section 1 of the legislation states the title of the Act is the "Water Resources Planning Act of 1961".

Section 2 sets forth desirable objectives with which everyone is in general agreement. Section 2 also expresses an extremely broad Congressional policy for development and utilization of the water. The policy stated lays the groundwork for the organizational structure proposed in the bill, which structure provides for local and state government water resource planning to be woven into a water policy, which policy will ultimately be determined by the Federal government.

TITLE I - WATER RESOURCES COUNCIL

Sec. 101 establishes a Cabinet-level Water Resources Council composed of the Secretaries of Interior, Agriculture, Army, and Health, Education and Welfare. Each of the above agencies has a real interest in water development. Because of past rivalries between these departments in water development, it appears that it is the hope of the drafters of the bill that if they are on one Council, their different views could be reconciled. However, there certainly is no guarantee of this as "joint department head" method of operation has failed in the past.

It also seems likely that since Cabinet officers are so busy, the bulk of the activities to be carried on by the Council would be done by subordinates of the individual members or employees of the Council. As a matter of fact, it seems that this is anticipated by Sec. 403 which provides for delegation of functions to employees of the Council. On the other hand, the prestige of such a Council to advance the overall long-range planning should not be underestimated. This would also create a top level agency in the executive branch of the Federal government responsible for water resource planning, which has been lacking in the past.

Sec. 102 provides for a continuing study to be made of the maintenance of an adequate supply of good quality water to meet
the requirements of the regions commensurate with the national interest. The section itself does not define "the national interest". What might be construed as in "the national interest" in the eyes of the Council might be totally incompatible with locally conceived interests.

The "good quality of water in each water resources region" is also not defined. Does this mean that an upper region project could be stopped if it effects the quality of water for uses in the lower region? This language should probably be more fully developed so as to fully ascertain what is meant.

Sec. 103 allows the Council, with the approval of the President, to establish the principles, standards and procedures for the preparation of regional water plans. At first blush this appears to create a new power in the executive branch of the Federal government. However, the executive branch presently exercises this power under the famous Bureau of the Budget Circular A-47, which prescribes feasibility standards. This Section would place this power with the Council and, thereby, provide the opportunity for states to comment and suggest the proper criteria for such standards.

Sec. 104 would give the Council a powerful role in planning the development of the nation's water resources. The Council would have the power to modify in whatever way it deemed desirable in the national interest whatever plans were submitted to it by the Title II Commissions. States and local agencies would have the right to comment and make recommendations with respect to the plan. What effect these comments and/or recommendations would have on Congress when the plan is submitted is impossible to ascertain.

Section 105 establishes the methods whereby the Council may perform the tasks assigned to it.

TITLE II - RIVER BASIN COMMISSIONS

Section 201 provides that the President, upon request of one governor from a state of a basin, may create a river basin water resources commission. This means that the governor of any one state could draw into a river basin study other states without their consent. It seems that the proper approach would be to allow the creation of the commission upon the request of the majority of the governors of the affected states.

It should also be remembered that there are a number of river basin commissions now functioning. This is particularly true
in Colorado. It seems that the law should recognize these commissions and, more importantly, there should be language which recognizes compacts and the effect they have upon basins. Possibly this is understood as the law. Also, in the case of basins divided into sub-basins by a compact, they should be treated as separate basins.

Since the commission will have the primary job of proposing a plan of development and establishing a long-range schedule of priorities, there is the possibility that smaller, less important areas (in the eyes of the commission) could be overlooked.

Sec. 202 provides the method of establishing the membership of a basin commission. It seems clear from the appointments to be made that the commission would be federally dominated. This is so from the makeup of the commission and also the fact that the appointment made by the governor of the state would have to be a person satisfactory to the President. Also under Sec. 203(a) the President may abolish any commission at any time.

It seems obvious that the success or failure of any basin or regional commission will depend considerably on the participation of the state government and local people. Consequently, it seems that persons appointed by state governments should have a larger representation on the commission.

Sec. 203 provides for the organization of the commission, providing further that the commission can be terminated by the President.

Sec. 204 states the duties of the commission in developing a water resources plan to be transmitted to the Council. Annual reports are mandatory and each member reports to the agency that appoints him and carries back that agency's comments to the proposed plan.

The overall development of water resources by basin areas idea has arisen by recommendations promulgated by the Senate Select Committee wherein it stated:

"** a water control system in each basin may well become as important to the national productive plant as the National System of Defense and Interstate Highways is to the nation's transportation network **.""
river. Otherwise, it is possible to preclude development in one area for the benefit of development in another under guises of greater national interests which could be damaging in cases such as the upper basin development.

Sec. 205 sets forth the administration machinery to be followed by the commission and Sec. 206 provides for the compensation of the members of the commission. Those appointed from federal agencies are not given additional compensation while state and other members are paid on a per diem basis. All payments are made by the Federal government.

TITLE III - FINANCIAL ASSISTANCE TO THE STATE FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATION

Title III arises as a direct result of Recommendation No. 2 of the Senate Select Committee on Water Resources. It authorizes $5 million per year for 10 years for grants to the states to assist in developing a comprehensive water resources plan. These grants would be on the basis of population, land area, need for comprehensive water resource plan and financial need. The federal share of the cost of the state program would vary from 33-1/3 percent to 56-2/3 percent.

Sec. 303 requires that the proposed state program should be approved by the Council under certain outlined conditions. It seems that the purpose of this state plan is to place the state in a position to actively enter into the national and regional planning envisioned by Titles I and II of the bill.

There is some inherent danger in Title III that the Council might dictate to the state the type of plan the state is to follow; however, the conditions placed on the financial assistance seem reasonable.

TITLE IV - MISCELLANEOUS

Sec. 401 provides for appropriations for the Act, while Sec. 402 provides for making rules and regulations.

Sec. 403 authorizes the Council to delegate to any member or employee of the Council its administrative functions under Section 105 and detailed administration under Title III. Since Cabinet members are so busy, it seems obvious that this is what would transpire. It would appear that this would be a considerable amount of power to place in the hands of an administrator appointed by the Council.
Sec. 404 states that personnel of existing federal agencies may be utilized.

Sec. 405 provides that the law with respect to federal agencies in the water development field is left unchanged. It would seem proper also to say, although it is not said, that state water law and compact terms would not be abridged.

Observations

I make the following observations concerning the proposed legislation:

1. It is hoped that legislation of this nature would not subordinate actual construction of federal reclamation projects to the planning function as established in this bill. Also that the end result of this legislation would not slow down the authorization of sound projects that may be proposed through presently established channels.

2. It seems that this legislation would mean that projects of the reclamation states would have to compete with projects in all 50 states rather than the 17 reclamation states.

3. It is hoped that this legislation would not open the door to creation of basin authorities in opposition to the will of the majority of the people and in opposition to the majority of governors of the various states involved.

4. It is hoped that this legislation would not relegate the role of states to a mere advisory one on water policy. As presently drafted, the legislation definitely establishes federal leadership for planning of water resource development.

5. It is hoped that this legislation would not be a further encroachment upon state water laws by federal agencies when planning overall basin development. Also, that no action could be taken without full appreciation of established effects of compact agreements.

6. How effective objections made by local authorities and states would be on a proposed basin plan when said plan is presented to Congress cannot be definitely stated. A larger representation on the river basin commissions might overcome any objections.

7. To adequately develop entire river basins calls for such vast expenditures that federal aid is almost a necessity.
Consequently local policies and laws must be closely examined to determine if we can proceed on a status quo or must we re-evaluate our operating water policy so as to get a greater use of our water resources by a method such as is proposed by this legislation.

8. Every water agency of this state should closely examine this legislation and recommend desirable amendments if they believe them necessary.

DHH/1k
Enclosure
Section Analysis of Proposed "Water Resources Planning Act of 1961"

SHORT TITLE

Section 1 designates the short title as the "Water Resources Planning Act of 1961".

STATEMENT OF POLICY

Section 2 expresses broad Congressional policy that the conservation, development and utilization of water and related land resources shall be planned and conducted on a comprehensive and coordinated basis with the cooperation of all affected Federal, State and local agencies.

TITLE I -- WATER RESOURCES COUNCIL

Section 101 and the remaining sections of Title I establish a Water Resources Council and define its duties and responsibilities. The Council will be composed of the Secretaries of the Interior, Agriculture, the Army, and Health, Education, and Welfare, with the chairman designated by the President. The heads of other departments and agencies will participate with the Council when matters affecting their responsibilities are up for consideration.

Section 102 requires the Council to maintain a continuing study of the adequacy of supplies of good quality water in each water resource region in the United States and to make recommendations to the President with respect to the adequacy of existing policies and programs to meet such requirements.

Section 103 directs the Council to establish, with the approval of the President, principles, standards and procedures both for the preparation of comprehensive river basin plans and for the evaluation of Federal water resources projects.

Section 104 describes the duties of the Council in reviewing the comprehensive plans prepared by the river basin commissions established under Title II. Under this broad review authority the Council shall evaluate the plan in terms of the national interest, assess its adequacy to achieve optimum use of water and related resources, appraise its effect on other resources programs and revise or modify the plan accordingly. After completing its study of any plan the Council shall transmit its report thereon to the President for his review and transmittal to the Congress. The report shall include the original plan, any modifications of revisions thereof and the comments of affected parties.
Section 105 provides the general administrative authorities of the Council, including authority to employ such personnel as it deems advisable, including a staff director with compensation at the rate of $19,500 per annum and one person in addition to the staff director above the level of grade GS-15, to procure consulting services at rates not to exceed $100 per day, and to hold hearings and receive testimony with or without oath. Subsection (d) authorizes the head of any Federal department or agency, upon the request of the Council, to furnish the Council available necessary information and to detail to temporary duty with the Council on a reimbursable basis such personnel as may be useful to the Council's work. It should be noted that section 403 in Title IV authorizes the Council to delegate to any member or employee its administrative functions described in this section.

TITLE II -- RIVER BASIN COMMISSIONS

CREATION OF COMMISSIONS

Section 201 and the subsequent sections of Title II provide for the establishment by the President of river basin water resources commissions, describe their membership and manner of organization, and set forth their duties, procedures, powers and administrative authority. As provided in subsection (a) the President may establish a commission upon the request of the governor of one or more of the affected States or of the Council. The area for study by a commission may consist of a region, a major river basin or a group of related river basins in the United States.

Subsection (b) places in each commission the responsibilities for (1) coordinating Federal, State and local plans for the development of water and related land resources; (2) preparing and keeping up to date a comprehensive, integrated, joint plan for Federal, State and local development of these resources; (3) recommending long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning and construction of projects; and (4) fostering and undertaking studies of water and related land resources problems.

MEMBERSHIPS OF COMMISSIONS

Section 202 provides that each river basin commission shall be composed of members appointed by the President to include (a) a chairman who shall not hold any other position as an officer or employee of the United States; (b) a representative of each Federal department or agency having a substantial interest in the work of the Commission; (c) one or more members from each State lying wholly or
partially within the area to be studied, such State representative to be nominated by the governor and to hold office no longer than the governor's tenure; (d) one representative of affected interstate compact commissions; and (e) one member of any affected international commission.

ORGANIZATION OF COMMISSIONS

Section 203 requires each commission to organize within 30 days after the initial members have been appointed and to elect a vice-chairman from among its members. The President in his discretion may terminate the commission and transfer its assets to another Federal agency. Vacancies on the commission are filled in the same manner as for original appointments.

DUTIES OF THE COMMISSIONS

Section 204 places upon each river basin commission the duties to (1) make the necessary studies and investigations; (2) submit a report of its activities at least once each year; (3) send to the Water Resources Council a comprehensive, integrated, joint plan for water and related land resources development in the area, such plan first having been submitted for comment to each Federal department or agency, the governor of each affected State, each interstate commission and the United States section of any international commission concerned, each of whom shall have 90 days to report its views and recommendations to the commission. The commission may modify the plan in accordance with such comments and recommendations and also shall submit them to the Council along with its plan.

POWERS AND ADMINISTRATIVE PROVISIONS OF THE COMMISSIONS

Section 205 confers on each commission general administrative authorities, including authority to hold hearings, take testimony with or without oath, employ necessary personnel with one position above the level of grade GS-15, and procure consulting services at rates not to exceed $100 per day. The chairman of the commission is given authority to administer oaths, to request the head of any Federal department or agency to furnish necessary available information or to detail personnel on temporary duty with the commission on a reimbursable basis, to appoint and supervise personnel employed by the commission, and to administer the funds available to the commission.

COMPENSATION OF COMMISSION MEMBERS

Section 206 governs the compensation of the members of the
commission, which varies according to the status of such member. A chairman employed on a full-time annual basis shall receive not to exceed the maximum scheduled rate for grade GS-18; if engaged on an intermittent basis, his compensation shall be not more than $100 per day or $12,000 per annum. Representatives of any Federal department or agency or United States section of an international commission shall receive no additional compensation by virtue of their membership on the commission. Commission members who represent States or interstate commissions shall be paid not more than $75 per day when performing work for the commission, but their total annual compensation shall not exceed $7,500.

TITLE III -- FINANCIAL ASSISTANCE TO THE STATES FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATION

Section 301 authorizes annual appropriations of $5,000,000 for a period of ten years for grants to States to assist them in developing comprehensive water resources plans and in participating in the work of the river basin commissions.

ALLOTMENTS

Section 302 directs the Council to make allotments in accordance with its regulations on the basis of (1) population, (2) land area, (3) the need for comprehensive water resources planning programs and (4) the financial need of the respective States. The monies allotted will be used for the State programs to be approved by the Council under section 303, together with costs of administration and for training personnel.

STATE PROGRAMS

Section 303 sets forth the major criteria for the State planning program, which is subject to the approval of the Council. The program must (1) provide for comprehensive water resources planning to meet the needs for water and water related activities; (2) designate a State agency to administer the program; (3) provide that a State will make appropriate reports; (4) set forth adequate procedure for the State's work; and (5) provide adequate budgeting, accounting and other efficient administrative procedures.

REVIEW

Section 304 authorizes the Council to suspend payments whenever there is a major departure from an approved program or substantial failure in administration.
FEDERAL SHARE

Section 305 provides for adjusting the Federal contribution according to the State's per capita income. The Federal share will vary between 33-1/3 percent and 66-2/3 percent of the cost of the State program, provided, however, that obviously in no case can it exceed the State's allotment.

PAYMENTS

Section 306 provides that payments may be made quarterly or on such other basis as the Council may determine based on estimates and subject to later adjustment for errors in the original estimates.

DEFINITION

Section 307 defines the term "State" as used in the Act to include the District of Columbia, Puerto Rico and the Virgin Islands.

TITLE IV -- MISCELLANEOUS

Section 401 authorizes necessary appropriations for Titles I and II and for the administration of Title III. The annual amount of the grants under Title III is authorized separately by section 301.

Section 402 authorizes the Council to make such rules and regulations as it may deem necessary or appropriate for carrying out the provisions of the Act.

Section 403 authorizes the Council to delegate to any member or employee of the Council its administrative functions under section 105 and for administering the Title III grant program.

Section 404 empowers the Council to utilize officers and employees of other Federal agencies with the consent of the head of such agency.

Section 405 is a general provision that nothing in the Act shall supersede, modify, or repeal any existing law.