MEMORANDUM

March 10, 1964

TO: Members -- Colorado Water Conservation Board
   and the Colorado State Engineer

FROM: James D. Geissinger
   Assistant Attorney General

SUBJECT: Sixth Annual Meeting of the Interstate Conference
         on Water Problems -- Chicago, Illinois,
         December 5 - 6, 1963.

Since the last regular meeting of the Board, it was my
privilege to attend a meeting of the Interstate Conference on
Water Problems representing this Board and the State Engineer.
The meeting was held at the Palmer House in Chicago, Illinois on December 5 - 6, 1963.

The principal subjects discussed were: Water Resources
Research Coordination, Water Quality and State Water Resources
Programs, Federal-State Water Rights Jurisdiction, Outdoor
Recreation, and Report of Conference Policy Committee. The
subjects will be commented on in order.

WATER RESOURCES RESEARCH COORDINATION:

As the result of the Report of the Senate Select
Committee (Kerr-Committee), a federal committee on Water Resources
Research Coordination was formed. Twenty-six separate federal
agencies are represented on the committee, including what was
described as the "Big Four": Department of Health, Education
and Welfare, Department of Agriculture, Department of the Interior,
and Department of the Army. The Office of Science and Technology,
Executive Office of the President, is responsible for the co-
ordination of activities. Each of the Departments and the Office
of Science and Technology was represented on the panel which
discussed the subject. It was the concensus of opinion that
there was far better coordination among the 26 water research agencies than in other fields. The principal complaint was that there was too little being appropriated for research. For example, the Department of the Army received a one billion dollar appropriation for planning, design, construction and maintenance, but only 5 million for its entire research program. This seemed to be the experience of the other Departments also. In the past, much of the research has been oriented to construction activities. The Department of the Army has had approximately 100 years of civil engineering experience. Its research has been oriented to its construction programs. It was suggested that it might be well to coordinate the results of research such as cataloguing and making these results available by wide distribution. The Department of Agriculture presented some interesting statistics: Estimated U.S. population in 50 years, 500 million; U.S. annual precipitation, 5 billion acre feet with 70% of runoff being consumed without benefit; sedimentation and erosion annual loss, 1 billion; flood damage, 975 million; 20 million new acres of cropland can be developed through proper drainage.

WATER QUALITY AND STATE WATER RESOURCES PROGRAMS:

A great deal of the discussion was centered on the sewage and industrial waste problem in large population centers and how the problem had been solved. Through proper treatment, the waters of a river in Indiana were re-used five times within a hundred mile stretch of the river. The Superintendent of the Chicago Metropolitan Sanitary District detailed its sewage treatment program involving the 1500 second foot Chicago river. The District is one of the heaviest industrial areas in the United States and has a population of approximately 6 million.

FEDERAL-STATE WATER RIGHTS JURISDICTION:

The discussion was centered around S.1275. As you know, the purpose of this bill is to resolve conflicts between the federal government and the states in regard to the control, appropriation, use and distribution of water for beneficial purposes by both public and private interests. As to western waters, the federal government has laid claim to unappropriated water on the basis of original title rather than appropriation. In Federal Power Commission v. State of Oregon (1955), 349 U.S. 435, the Supreme Court held that under the Federal Power Act, and in the absence of modification by other federal legislation, the Federal Power Commission had exclusive jurisdiction to grant a license for a water power project on lands constituting
reservations of the United States located in Oregon and on a non-navigable river.

The first Section of S.1275 protects water rights acquired under state law whether acquired before or after a withdrawal or reservation of lands by the federal government; extends the provisions of the Flood Control Act of 1944, as amended, which subordinates the uses of water for navigation to irrigation and domestic uses to all works constructed by or under authority of the United States in states located West of the ninety-eighth meridian; requires the federal government to acquire its water rights in accordance with state law; provides that water rights are to be distributed in accordance with state law; and provides for compensation to the owner if water rights are taken by the federal government through eminent domain proceedings. The second section of S.1275 preserves existing laws for the benefit of both the states and the federal government, protects rights under existing interstate compacts, protects treaty obligations of the United States, protects the rights of the Indians and Indian tribes, and protects existing governmental uses. It was pointed out that the bill in no way attempts to interfere with the United States in the exercise of its sovereign powers. About fifty bills have been introduced in Congress on this subject in the past ten years. It appears that there is much more national support than ever before. It was regarded by the Conference as a national rather than a western problem. In many areas of the United States the federal government is a large landowner.

OUTDOOR RECREATION:

The Bureau of Outdoor Recreation was created by law in the Spring of 1963. Edward C. Crafts, Director of this Bureau, reported on the "Land and Water Conservation Fund Act" (H.R. 3846) introduced by Congressman Wayne Aspinall of Colorado. This bill is considered one of 12 major bills of this Congress by the administration. The states are to occupy the key role in this program. Considerable land and water must be acquired either by the states or the federal government because of increased national needs for recreation. Such land and water must be acquired before the land becomes too expensive. The program is to be paid for by a transfer of the gasoline tax on fuel used for boats from the highway fund to the fund provided in the Act. Sixty per cent of the money collected by the federal government from the gasoline tax and the user fee for federal facilities will be allotted to the states. There is also provision for additional matching funds.
REPORT OF CONFERENCE POLICY COMMITTEE:

The Chairman reported passage by the Senate of the Federal Water Resources Planning Act (S.1111). The Senate adopted the bill with the amendments sought by Colorado and the other states. These were designed to give the states equal representation on river basin commissions, to make use of existing interstate compact commissions, and to avoid duplication and competition between federal agencies. The report covered the various bills such as: S.629 (Water Pollution Control Act of 1963); S.1111, previously mentioned; S.1275 (Federal-State Water Rights Jurisdiction); S.2 (Federal Water Research Bill); H.R. 3846 (Land and Water Conservation Fund Act); Public Law 859 (Outdoor Recreation Act).

All of the above bills received favorable comment except S.629. Appropriate resolutions were adopted by the Conference in regard to many of the bills mentioned:


(2) S.1275, Federal-State Water Rights Jurisdiction. Urges Congress to enact such legislation.

(3) Public Law 859, Outdoor Recreation. As Bureau of Outdoor Recreation has been assigned responsibility of identifying and designating national recreational resources, urges cooperation with the several states because of commitment of water to recreational uses will require continued maintenance, operation, policing, and protection of the resources and their auxiliary facilities placing burdens on the state and local governments.

(4) Resolution IV urges the states to consider amendments of their laws when necessary to give recognition to recreation and fish and wildlife uses of water.

(5) S.629 (Water Pollution Control Act of 1963). This bill has already passed the Senate. It is clear if the states do not meet this problem, the federal government will. The bill gives the Secretary of Health, Education and Welfare discretionary authority
to establish and enforce quality standards for interstate waters - for all surface waters except a landlocked lake lying wholly within a single state. The bill also gives the Secretary the power to grant or deny permits for discharges of pollutants from federal installations. The Resolution urges the Congress to amend S.629 so federal action will be supplementary to state, interstate and local action and that it be taken only when non-federal efforts prove insufficient. Further, the legislation be amended requiring that federal installations obtain permits from the state before discharging pollutants into waters of U.S. or of a state. Here again, if the state doesn't act, the Secretary would be given the authority to grant or deny the permit.