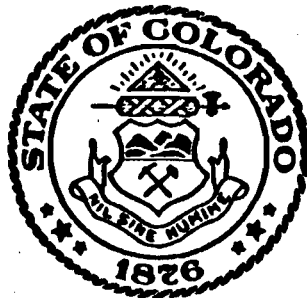


Report to the Colorado General Assembly:

PROPOSED AMENDMENTS TO 1969

WATER LEGISLATION



COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO.147

December 1969

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

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TO 1969
WATER LEGISLATION

Legislative Council
Report To The
Colorado General
Assembly

Research Publication No. 147
December, 1969

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LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL
DENVER, COLORADO 80203
892-2285
AREA CODE 303

December 12, 1969

To Members of the Forty-seventh Colorado General Assembly

Pursuant to provisions of House Joint Resolution No. 1034, 1969 Session, the Legislative Council submits the accompanying report of progress concerning water legislation in Colorado.

The Legislative Council Committee on Water submitted its report and recommendations to the Council at its meeting on December 15, 1969. The accompanying report was adopted by the Council at that meeting for transmission to the Governor and to the Second Regular Session of the Forty-seventh General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/mp

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AREA CODE 303

December 12, 1969

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
Room 46, State Capitol
Denver, Colorado 80203

Dear Representative Lamb:

Your Committee on Water herewith submits its report and recommendations concerning water legislation. This year the Committee has concentrated its attention on several aspects of vitally important 1969 water legislation and submits with this report two bills to amend a number of sections of Senate Bill 81 -- the Water Right Determination and Administration Act of 1969.

The first bill contains some substantive amendments to S.B. 81. Provisions are included for separating the abandonment and tabulation provisions in the bill which, in general, would provide more protection for water users against the inadvertent loss of a water right through administrative error.

A proposal of the executive committee to delay the tabulation of water rights until 1975 was accepted only in part. The full water committee accepted the idea that the dates for the tabulation should be delayed to permit the abandonment of certain unused water rights to be adjudicated and to allow the division engineers more time to complete the tabulation. The full committee did not, however, accept as necessary the delay of water rights tabulation until 1975. The full committee accepted the bill proposed by the executive committee with the explicit proviso that the specific dates to which the tabulation should be delayed would not be considered part of the water committee recommendation.

Other proposed changes in the first bill pertain to the publication of a list of changes to the initial tabulation,

rather than having a complete (and expensive) republication of the entire tabulation; allowance of three years, rather than two years, for correction of errors in the tabulation; and publication of the list of changes to the tabulation every fourth year to allow time for additional abandonment proceedings between publication of the list of changes.

The second bill included in the report concerns a number of amendments suggested by the judicial branch which would clarify some matters of legislative oversight relating to judicial administration under the act. Also included in this bill is a proposal drafted to reduce the publication costs by providing that monthly resumes of applications for water rights would need to be published only in the counties affected.

Finally, it should be emphasized that the water committee does not find any need to make sweeping changes to the law. Senate Bill 81 in general seems, on closer observation, to need only the few modifications suggested at this time.

Respectfully submitted,

/s/ Representative Harold McCormick
Chairman
Committee on Water

HMCM/mp

FOREWORD

To carry out provisions of H.J.R. No. 1034, 1969 Session, the Legislative Council appointed a water committee comprised of the membership of the House Natural Resources Committee and the Senate Water Committee. The directive of the committee was to conduct a further review of water laws to determine their sufficiency, need for modification, or need for further legislation to provide an effective system for administration, development, and control of water use in Colorado. Since the total membership of the two legislative committees would be thirty-seven members, an executive committee of eight members was established to coordinate the work of the full committee. The committee members are listed below with the executive committee members indicated by asterisks.

*Rep. Harold McCormick,
Chairman for 1969
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Rep. Forrest Burns
Rep. Charles DeMoulin
*Rep. George Fentress
Rep. Vincent Grace
*Rep. Wad Hinman
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Rep. Robert Schafer
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*Rep. George Woodard

*Sen. Wayne Denny,
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Sen. Will Nicholson
Sen. Norman Ohlson
Sen. Wilson Rockwell
Sen. Allegra Saunders
Sen. Joseph Shoemaker
*Sen. Sam Taylor
Sen. Kirk Wagner

During this year of the committee's study the executive committee held a series of five regional meetings throughout the state in an effort to acquaint water users with the 1969 water legislation and to obtain the viewpoints of water users. All members of the committee were invited to attend the meeting in their area. The committee is pleased with the number of persons attending these meetings and discussing their ideas with the committee. Also the committee is appreciative of the excellent cooperation received from water judges in taking an active interest assisting with the meetings.

Other meetings of the executive committee were held in Denver and a meeting of the full committee was held on November 21 in the Senate Chamber. At this meeting the draft committee report and bills were reviewed and modified by the full committee.

Many persons were involved in the committee's work this year and the excellent assistance of federal, state, and local officials, several private individuals, and representatives of private groups should be recognized. Mr. Tom Ten Eycke, Executive Director, Department of Natural Resources; Mr. Clarence Kuiper, State Engineer; Bill Mattern, Supervising Engineer; and Felix Sparks, Director of the Colorado Water Conservation Board, were in attendance at practically all of the regional meetings and participated actively in the discussions with water users. Mr. Ted Moulder and Dr. John Moore of the U.S. Geological Survey contributed to the meetings and arranged for other U.S.G.S. staff persons knowledgeable in particular water basins to make presentations of the geological conditions of each basin. Stanley Elofson, Principal Analyst of the Legislative Council staff, had primary responsibility for coordinating the committee work and was assisted by Robert Crites, Senior Research Assistant.

December 29, 1969

Lyle C. Kyle
Director

DRAFT BILL B -- Concerning judicial administration
and enforcement of "the water right
determination and administration
act of 1969"; and providing for the
powers and duties of water judges,
referees and clerks, and for fees
and publication requirements in
connection therewith..... 35

COMMITTEE REPORT AND RECOMMENDATIONS

With the enactment of Senate Bill 81, the Water Right Determination and Administration Act of 1969, the Colorado General Assembly established new procedures for the adjudication of water rights and for the administration of water law. Following passage of this important water legislation, House Joint Resolution No. 1034 was adopted directing that the Legislative Council appoint a committee to undertake:

A further review of the water laws of the state of Colorado to determine their sufficiency and the need for any modifications or supplementations thereto in order to provide an effective system for administration, development, and control of water use in Colorado.

The Legislative Council then established the Committee on Water consisting of the membership of the House Committee on Natural Resources and the Senate Committee on Water. Since the committee consisted of thirty-seven members, an executive committee of eight members was appointed to coordinate the work of the full committee. The principle interest of the water committee this year was to follow developments and to discover any problems which might have been caused by the enactment of the major water legislation in 1969.

Since the concept of an executive committee was new to Colorado, it is important to note its role with respect to the full committee. The executive committee assumed that it should be a fact-finding group which would submit its findings and recommendations to the full water committee. In carrying out this function, the executive committee held several meetings throughout the state, with other members of the water committee, to discuss the effect of the major water bills passed in the 1969 session directly with water users. These meetings were held in Greeley, Pueblo, Alamosa, Durango, and Glenwood Springs.

In view of the judicial nature of certain portions of the water bills passed in 1969, the committee sought permission to hold meetings in the courtrooms of the water courts and special invitations were extended to the water judges of the various divisions in which the meetings were to be held. The committee is appreciative of the excellent cooperation of the water courts in connection with these meetings.

Also attending these meetings were a number of state officials who are engaged in water administration or who have special knowledge with respect to water law or water situations. These officials included the executive director of the Department of Natural Resources, the state engineer, division engineers, and

the director of the Colorado Water Conservation Board. Representatives of the United States Geological Survey were asked to present a description of the geological situation in each basin, and to inform water users of the type of scientific information available concerning the water situation in each basin.

Meetings with water users were held in Greeley on September 2; in Pueblo on September 9; in Alamosa on September 29; in Durango on September 30; and in Glenwood Springs on October 1. The meetings were well attended with more than 125 people present at four of the five meetings. Active discussions of the problems of each basin followed the presentation by the U.S.G.S., the comments from the committee members, and the statements of the water administration personnel.

The U.S. Geological Survey presentation consisted of a brief outline of the geological principles of irrigation and water flow through the river valleys and underground aquifers. Facts about the quantity and quality of water available in each basin, the area's crop requirements, and some of the problems in water distribution in the basin were presented. Special attention was given to the hydrologic peculiarities of the water basin. Projects and studies being conducted in each basin and special reports of interest to the water users in the locality were mentioned.

Administrators from the Department of Natural Resources outlined the activities of their respective offices in each basin. Administrative problems were discussed by the state engineer and water projects coordinated by the Water Conservation Board were outlined by the director of the Board.

In the Greeley meeting the Geological Survey noted that, while the South Platte River basin had been highly developed by agricultural industries, the water supply in this water division was not inadequate. It was stated that some deficiencies in the management of water cause a substantial amount of water to be wasted or to be used at less than its maximum potential. The state engineer said that an improved system of basin-wide management would help solve the problems of distributing water at the times and to the places needed. In Pueblo, however, the U.S. Geological Survey staff noted that the Arkansas Valley presently has an acute shortage of water. There is no combination of pumping and water management which will provide enough water for all needs in the basin.

At the third meeting, in Alamosa, the U.S. Geological Survey said that the San Luis Valley geological structure was extremely complicated and that studies were continuing in an effort to determine the interrelationships between the three sources of water in the basin: surface flows, the "unconfined aquifer" in the stream bed, and the "confined aquifer" or the artesian aquifer. The most pressing problem in the San Luis Valley appeared

to be the inability of Colorado to meet conditions of the Rio Grande River Compact with New Mexico and Texas. A proposed federal project to supply water to meet the compact requirements was outlined at this meeting.

On the western slope, at the meetings in Durango and in Glenwood Springs, it was pointed out that these areas (water divisions 4, 5, 6, and 7) were in developmental stages and had a greater need for financial assistance in constructing reservoirs and other water development projects than for improvement in the administration of water. Since development of wells on the western slope is much less than on the South Platte and Arkansas rivers, many water users at these meetings were not convinced that legislation to integrate surface and underground water rights was necessary.

Suggestions From Water Users

The committee found that one area of great concern to water users was the tabulation and abandonment sections of Senate Bill No. 81 (Sections 148-21-27 and 148-21-28, C.R.S. 1963 (1969 Supp.)). Water users were apprehensive that the tabulation and the adjudication of the tabulation might adversely affect their rights. If a complete readjudication of the list of priorities was required every two years, it seemed akin to opening up the whole priority system for biennial adjudication.

Many water users opposed the abandonment procedures in Senate Bill 81. They felt that an abandonment case should be separate from the tabulation, and should include all the judicial procedures and safeguards required before the passage of Senate Bill 81. There was some feeling that the provisions for protest to the tabulation were inadequate to allow water users to protect their rights.

Water users stated that they were having difficulty deciding whether to use their wells as alternate points of diversion under Senate Bill 81. The state engineer was asked for assistance in the form of suggested guidelines and methods to integrate ground and surface water use.

The law was interpreted by some water users as permitting old surface rights from which water had never been obtained with any regularity, to be used to give the owners of such rights an unfair advantage in the priority system, especially over persons having only wells. In other words, wells with relatively junior priorities or dates of application, but attached to an unusable surface decree, might be given a relatively senior priority to wells which had been drilled much earlier, but which have no surface priority.

A number of water users and some committee members expressed the opinion that the state should do more to help local areas build water projects. There was, however, no concensus among the state water officials as to whether state moneys should be made available for specific water conservation and development projects at the local level. This topic will probably be given further consideration next year.

Objection was raised to the provisions of Section 148-21-35 (5) which would allow the state engineer to order the metering of all wells. When asked whether meters would be necessary in the future, the water administrators indicated that metering is inevitable, sooner or later. The deputy state engineer noted that on the high plains meters were unpopular as long as the state engineer had the option of requiring their use. As soon as the General Assembly required the use of meters on all wells the idea was accepted.

One interpretation given to Senate Bill 81, which some senior water appropriators thought unfair, concerned charging the use of a well against a surface right. It was stated that the division engineer would require a senior appropriator who had a well to use the well at his own expense before he could put a call on the river. The objection was that a senior should be allowed to leave his well idle and call the river, or if juniors upstream wish to divert water when the senior is short, the juniors should pay for the operation of the well. The well was drilled for the purpose of adding to the water supply in some areas, but it could become merely a more expensive point of diversion for the same amount of water as used in the past.

While several complaints from water users have been listed with respect to Senate Bill 81, it should be noted that the reaction to the 1969 water legislation was found to be generally positive. Most water users apparently considered legislation to be necessary, and that integration of ground and surface water was overdue in Colorado. Objections to Senate Bill 81 seem to center on the tabulation and abandonment provisions. Some of the fears of water users may have resulted from the complexities of the legislation. Other changes recommended are addressed to complaints expressed by water users. Other questions might be the subject of further study by the water committee.

Committee Recommendations

On the basis of the regional meetings, plus other meetings in Denver, two bills were prepared by the executive committee for consideration by the full committee. The first bill (Bill A) contains recommendations dealing with substantive aspects of Senate Bill 81. The second bill (Bill B) is concerned with more technical corrections, especially relating to judicial administration under the act.

Separation of Abandonment and Tabulation

The water committee recommends that abandonment procedures be separated from the provisions relating to the tabulation of water rights. The first bill attached to this report would add a new section (148-21-24) which would contain more detail on abandonment proceedings than is found in the present act (Bill A, page 13).

A water right is a property right which the committee considers to be too important to be declared abandoned without a full, direct hearing provided under specified procedures. As noted above, it was feared by many water users that inadvertent omission of a water right in the tabulation prepared by the division engineer would be tantamount to abandonment of the right once the tabulation was decreed by the water judge and the two year period for correcting mistakes had lapsed. The proposed draft would set forth criteria under which intent to abandon would have to be proved by the state engineer.

It was further concluded that the tabulation would be easier to compile and more understandable if water rights which are no longer being used are eliminated before the tabulation is published. For this reason the amendments would provide for early proceedings against abandoned water rights. Further, early elimination of abandoned rights would also reduce the extent of speculation in water rights. Eliminating the "paper decree" water rights would help prevent persons buying such rights in the hope that they would be perfected as a surface right.

A recommendation of the executive committee rejected by the full committee was that provisions for forfeiture should be added along with the abandonment provisions in the law. Rejection of the forfeiture concept was for the reason that the idea is new to Colorado and should be considered during a long session of the General Assembly.

Tabulation Date

(Bill A, Section 148-21-27, page 17). The water committee agreed that the dates of the initial tabulation should be delayed to permit abandonment proceedings to take place first. However, the committee could not agree that the date should be set back to 1975, as had been recommended by the executive committee. Thus, the dates for the tabulation included in the bill are not to be considered as specific recommendations to the General Assembly. While the bill could have been printed without the dates included, the dates suggested by the executive committee have been included in brackets for purposes of comparison with the present legislation. Appropriate notes indicate the dates which are not to be considered as recommendations from the full committee.

The committee defeated by a close margin a motion which would have limited the recommendations in Bill A to changes in the date of the tabulation from July 1, 1970, to a later, unspecified date. As this motion was defeated, other changes to Senate Bill 81 involving the listing of changes to and the correction of errors in the tabulation are included in Bill A and are discussed immediately below.

Delay of the tabulation was deemed advisable in order to allow some of the changes in water rights, such as adjudication of wells as alternate or supplemental points of diversion, to be completed before the tabulation is published. Further, if abandonment is adjudicated separately, as proposed by the committee, delay in the tabulation will not encourage speculation in water rights. Delay of the tabulation is suggested to permit many abandonment proceedings to be completed prior to tabulation. Finally, some postponement of the tabulation apparently will be necessary since the division engineers in some divisions will probably not be able to complete the initial tabulation before the present deadline of July 1, 1970.

In the same series of amendments, the executive committee had recommended changing the month of the tabulations from July to December. This change would provide for publication of the list at a time of year when division engineers and agricultural water users would have more time to review and consider the list. This matter will be considered by the General Assembly without specific endorsement of the full committee.

Adjudication of water rights would follow the first tabulation but, again, suggested dates for adjudication proceedings are not part of the full committee's recommendations. The present adjudication provision is based on the thought that the division engineer would use the initial tabulation for four years before it is adjudicated. In its recommendations the executive committee had reasoned that if the tabulation is adjudicated after being used for one year, most water users should be aware of any mistake in the tabulation and should then be allowed to protest. The General Assembly will want to give careful attention to the timetable for adjudication proceedings following the tabulation.

List of Changes

(Sections 148-21-27 and 148-21-28, page 17). After the initial tabulation is published throughout the division, the water committee recommends that subsequent tabulations consist only of lists of changes to the tabulation. A list of changes would allow the revisions to be checked more easily by water users and would substantially reduce the cost of publication of subsequent

lists. The cost of publishing a full tabulation is estimated at \$150,000 to \$200,000 and publishing a list of changes would probably be much less expensive than republishing the entire tabulation. Another reason for publishing and adjudicating only changes to the tabulation is to remove the possibility of inadvertently omitting, and thus eliminating, a water right in a subsequent tabulation.

Correction of Errors

Under the bill as recommended by the committee, three years, rather than two years, would be allowed for correction of any clerical mistakes and substantive errors made in a judgment and decree of a water right. [Section 148-21-27 (5) (f), page 247]. Similar changes have been made in sections 148-21-28 (2) (i), Bill A, page 32, and 148-21-20 (10), Bill B, page 42.

Abandonment Not Affected by Tabulation

The water committee recommends the addition of a new subsection (6), page 25, to section 148-21-27 concerning tabulation. The proposed addition would provide that the listing of a water right in the tabulation could not be used as evidence that the water right was being put to beneficial use.

List of Changes Every Fourth Year

It will be noted that the recommendations provide that a list of changes to the tabulation be compiled every fourth year instead of every second year. [Section 148-21-28 (1), page 257]. The thought was that abandonment and tabulation proceedings would take place every fourth year, each alternating on the even-numbered years. Changes in the tabulation would be needed less frequently since (a) the rulings of the referee are effective immediately; and (b) rulings are reviewed and decreed by the water judge twice a year. If abandonment also occurs every fourth year, the courts will be busy with abandonment when they are not reviewing the tabulation or the rulings of the referee. The list of changes would merely be a compendium of the events of an intervening four year period.

Recommendations from the Judiciary

Several recommendations were made as a result of questions raised by the judicial branch relating to Senate Bill 81. These suggestions are discussed below in the order recommended by the committee. (Bill B, page 35).

Assignment of Judges. An amendment was suggested to Section 148-21-10, page 35, to bring the statute into conformity with Article VI of the Constitution. This article provides that the chief justice may make temporary assignments of judges. The change recommended would state that the Court may make temporary assignments of judges from other areas.

There could be a number of reasons why it may be necessary to assign a judge other than the water judge to hear a case. For example, a judge may need another judge to assist with an excessive caseload or in the event of an illness. It is possible that a judge may have an interest in a water case in his division which would disqualify him to hear the case.

Duties of Water Clerks and Referees. Proposed amendments to Sections 148-21-10 (6), page 35, and 148-21-11 (2), page 37, and (3), page 38, would clarify the duties of the water clerks and referees. These officers may be required to execute an oath of office and the water clerk may be required to post a bond. The changes suggested would also allow the water clerk to be assigned additional duties if the water judge or the supreme court deems it advisable. These changes are submitted primarily for the convenience of the judiciary.

Filing Fees. [Section 148-21-18 (1), page 38]. In order to clarify a possible ambiguity, it is recommended that additional fees be specified for applications containing more than one water right. The recommendation is that a fee of five dollars be charged for every additional water right listed on an application. The fee for filing an application would remain twenty-five dollars.

It is further recommended that a fee of twenty dollars be required for an application for a show cause order to stay the effectiveness of a ruling by the referee. [Section 148-21-20 (11), page 43]. This fee might reduce the number of frivolous applications for show cause orders.

Correction of Errors. It was pointed out that the provision in Section 148-21-20 (10), page 42, concerning the correction of clerical mistakes and substantive errors, might be construed to prevent appellate review after corrections were made by a water judge. The present language in subsection (10) provides for appellate review by reference to subsection (9). Subsection (9) requires, as a condition of appellate review, that a protest must have been filed. However, subsection (10) provides that no protest has been filed as a condition of the application for correction of substantive errors. The suggested change in subsection (10) would delete the reference to subsection (9) which could possibly preclude appellate review. Similar changes have been made in Sections 148-21-28 (2) (i), Bill A, page 32, and 148-21-27 (5) (f), Bill A, page 24.

Publication Costs. [Section 148-21-18 (3), page 39]. Publication of the resume in every county in the division for every water right for which a determination is sought by the referee could cost a substantial amount of money. Reliable estimates of costs are not available, but one estimate by the judicial branch was that if resumes are published in the manner in which the first few resumes have been published, the cost may eventually be as high as one million dollars. The full committee changed the suggestion of the executive committee which concerned publication of resumes. The recommendation is now that publication of the resume, or a portion thereof, be required in each county in which the water judge deems such notice to be necessary.

The committee recognizes that a caution should be observed. There may be some difficulties in having a judge decide what portion of the resume is to be published and in what counties the publication should occur. However, the committee decided that there is no official more qualified than the water judge to determine the extent to which resumes would need to be published. This recommendation could result in a substantial savings of publication expenses and yet would provide adequate notice of resumes of water right determinations.

Technical Change. The language of sections 148-21-20 (3), page 41, and 148-21-28 (2) (e), page 34, is suggested for change, striking the term "trial practice and procedure" and substituting "Colorado Rules of Civil Procedure."

Pending Cases. (Section 148-21-44, page 45). A technical ambiguity would be corrected concerning the provision that a district judge hearing a case pending at the time of the effective date of Senate Bill 81 should continue to hear the case in accordance with the statutes under which the case was instituted.

The committee also recommends that section 148-21-44, page 46, be changed to authorize the chief justice of the supreme court to assign a judge other than the water judge to finish hearing cases still pending on July 1, 1972. While the chief justice could probably make the assignment using his constitutional authority, this change would specifically authorize such action if he finds it necessary.

Subjects for Further Study

Primarily due to a lack of time, there were several subjects which the committee did not undertake to study but which are worthy of further consideration. The committee has been created for a two-year period and may consider some of these matters in 1970.

Speculation. The subject of speculation in water rights was raised several times during the course of the committee hearings. The committee might undertake a study next year of the extent to which speculation in water rights actually occurs and under what circumstances it is detrimental to the best interests of the state or area.

Weather Modification. Perhaps the only remaining source of additional water for Colorado is the sky. Several experiments have been conducted in different parts of the state to determine the effectiveness of cloud seeding. The committee did not have time to study this matter but possibly some consideration may be given next year to the potential uses of weather modification.

State Financing. The state engineer mentioned several times that there was a need for the state to invest money in water projects which would be in the state's interest through improved water management. The Attorney General answered a series of questions raised by the committee concerning different possible methods by which the state might finance water projects. Some data was collected concerning the methods used by other states to finance water projects and this material will be studied further in 1970.

Definitions. Several committee members have noted that several key terms of water use are not defined in the statutes. Definitions are often difficult to agree upon, but definitions of some terms, such as "waste" or "material injury", would be helpful in the administration of water.

Waste of Water. A complaint repeatedly heard was that the water needs on the eastern slope are being supplied by water obtained from the western slope, yet large quantities of western slope water are being used nonbeneficially by phreatophytes. The committee might want to study what could be done to encourage more efficient use of all water in Colorado by greater control of nonbeneficial uses of water throughout the state.

Other Recommendations Submitted

Following the meeting of the full water committee, some additional suggestions for changes in the 1969 water legislation were received from Representative Fentress. While it was too late for the 1969 interim committee to consider further amendments to the water bill, the suggestions, which relate to the cost of water courts, are worthy of note in this report. The view was expressed that water users docket fees should be used to pay the additional costs in the district courts which costs are directly attributable to the enactment of the 1969 water legislation. In this way the water users, not the general fund taxpayers, would bear the cost of water courts which were created for the benefit of water users.

Also the position was taken that the General Assembly should assume closer supervision by making the expenditures of water courts subject to legislative review. Legislative control should assure an efficient hiring policy under which staff positions under water clerks would be subject to approval by the General Assembly..

BILL A

COMMENTS

A BILL FOR AN ACT

CONCERNING THE POWERS AND DUTIES OF THE DIVISION OF WATER RESOURCES, INCLUDING THE STATE ENGINEER AND DIVISION ENGINEERS, WITH RESPECT TO PUBLICATION OF A TABULATION OF WATER RIGHT PRIORITIES AND LISTS OF CHANGES THERETO AND PROVIDING FOR ABANDONMENT PROCEEDINGS PRIOR TO PUBLICATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 21 of Chapter 148, Colorado Revised Statutes 1963 (1969 Supp.), is amended BY THE ADDITION OF A NEW SECTION to read:

148-21-24. Abandonment - proceedings. (1) (a) Not later than March 1, 1972, and every four years thereafter, the division engineer shall prepare a list of all decreed water rights within his division, which he determines to have been abandoned in whole or in part under the provisions of this section, and shall cause such publication of the list to be made in such newspapers as may be designated by the water judge, as is necessary to obtain general circulation once in each county or portion thereof in the division.

Abandonment would be separated from tabulation (a) to allow the state engineer to eliminate old, unused decrees before preparing the tabulation; (b) to assure careful attention to abandonment; and (c) to allow the state engineer to proceed immediately with abandonment instead of waiting until December, 1974. This change should mitigate speculation in water rights.

TEXT

COMMENTS

(b) Such list shall specify those water rights which the division engineer determines to have been abandoned and shall include the name or names of the owner or owners thereof or the name or names of last known owner or claimant thereof as the same are known to the division engineer.

(2) Not later than March 31 of the year in which the abandonment list is prepared, the division engineer shall file a petition with the water clerk of the division setting forth the list and requesting that the court enter a decree declaring the abandonment of the decrees or parts thereof as set forth in the petition.

(3) After the filing of the list and petition with the water clerk the matter, including process, time, and answer, shall proceed before the water judge under the Colorado rules of civil procedure, as any other civil case, except that publication of process, if any, shall be made in the county in which the water right is diverted.

(4) Copies of the abandonment petition filed by the division engineer and the final decree of the court on such

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petition shall be furnished to any person by the division engineer or the water clerk upon payment of a fee of one dollar per page, but not to exceed ten dollars.

(5) In action on abandonment the burden of proof to show intent to abandon shall be on the state engineer.

(6) (a) Intent to abandon may be shown by evidence of acts, statements made, and omissions to act.

(b) (i) Proof of non-use of such water right in whole or in part for a continuous period of at least ten years up to the date of institution of the action under any of the following circumstances shall establish a presumption of abandonment, and shall be prima facie evidence thereof:

(ii) The fact that water was available for the use of said right or part thereof without any request for or diversion during such period;

(iii) The fact that the water right or part thereof was decreed for land which has not been under cultivation for such period;

(iv) The fact that water has not been available to such

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water right or part thereof at any time within such period and that a request for diversion to such right would have been futile.

(v) The fact that the water user has never constructed sufficient facilities or has not used sufficient facilities in such period to divert his decreed amount of water.

(7) (a) A presumption of abandonment may be rebutted by evidence:

(b) That use of such water right or part thereof has been made during such period by other means of diversion than the method originally used, although such original method of diversion may have been abandoned;

(c) That sufficient water has not been available during such period to enable the right or part thereof to be exercised by reason of the intervening acts of others, but that such right or part thereof would have been used had water been available;

(d) That circumstances beyond the control of the owner of the right prevented any use of such right or part thereof during such period;

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(e) That the right is decreed to or owned by a municipal or industrial user which does not require cultivation of land for beneficial use and that such user or owner has projected need for said water and intends to build sufficient facilities.

(8) A copy of such judgment and decree as is issued pursuant to provisions of this section shall be filed with the state engineer and the division engineer and shall be provided by the water clerk to any other person requesting same upon payment of a fee of one dollar per page with a maximum of ten dollars. Promptly after receiving a judgment and decree the division engineer and the state engineer shall enter in their records the determinations therein made as to priority, location, and use of the water rights and conditional water rights and shall regulate the distribution of water accordingly.

SECTION 2. 148-21-27, (1) (a), (2), (3), and (4), Colorado Revised Statutes 1963 (1969 Supp.), are amended to read:

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148-21-27. Tabulation of priorities. (1) (a) No later than ~~July 1, 1970,~~ [DECEMBER 1, 1974,] the division engineer of each division with the approval of the state engineer shall prepare a tabulation in order of seniority of all decreed water rights and conditional water rights in his division. Such tabulations shall describe each water right and conditional water right by some appropriate means and shall set forth the priority and amount thereof as established by court decrees. In making such tabulation, the division engineer may use such system or systems 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 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.

The dates for tabulation in this bill are bracketed to indicate that they are not part of the recommendations of the full water committee. The dates shown in capital letters were suggested by the executive committee but are included in this draft bill without the recommendation of the full water committee.

The date of tabulation of priorities would begin in 1974, rather than in 1970, so the state engineer can proceed with abandonment prior to the tabulation. There was concern that the tabulation might be confusing if abandoned water rights were not removed first. The division engineers were expecting difficulty meeting the 1970 deadline for the initial tabulation. A one year delay between the tabulation and the protest deadline would provide the experience of an entire irrigation season in which water users would work with the tabulation of water rights. Publication

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COMMENTS

(2) No later than ~~July-10, -1970,~~ DECEMBER 31, 1974, the division engineer shall cause such publication to be made of the tabulation as is necessary to obtain general circulation once in each county or portion thereof in the division by means of one or more newspapers, which, if feasible, are published in the division, and he shall mail a copy of such tabulation to each person whose name is on the list specified in section 148-21-18 (3). Copies of such tabulation shall also be available in the office of the division engineer for any person specifically requesting same upon the payment of a fee of two dollars.

(3) Not later than ~~September-10, -1970,~~ DECEMBER 31, 1975, any person wishing 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.

would be changed to December because July is a busy time of the year for irrigators and division engineers.

The bracketed 1974, 1975, and 1976 dates in subsections (2), (3), and (4) are not part of the water committee's recommendation but are included in the bill for comparative purposes.

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(4) On or before ~~October-10, -1970,~~ [JULY 1, 1976], the division engineer shall make such revisions, if any, as he deems proper in such tabulation. In considering the matters raised by statements of objection, the division engineer may consult with any 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 tabulation, together with any revisions, signed by the division engineer and the state engineer or his duly authorized deputy, shall be filed on or before ~~October-10, -1970,~~ [JULY 1, 1976], with the water clerk. Copies of such CHANGES AS ARE MADE TO THE tabulation shall be available in the office of the division engineer, and a copy shall be mailed by him to any person requesting same upon payment of a fee of two dollars. If the tabulation is revised, the division engineer, on or before ~~October-20, -1970,~~ [JULY 10, 1976], shall cause such publication of CHANGES TO the ~~revised~~ tabulation to be made as is necessary to obtain general circulation once in each county or portion thereof in

It is suggested that only one publication of the tabulation is necessary with the list of changes to the tabulation published subsequently. This change would save the cost of republishing the entire tabulation a second time. The cost of publishing an entire tabulation is estimated to be approximately \$150,000.

TEXT

COMMENTS

the division by means of one or more newspapers, which, if feasible, are published in the division.

SECTION 3. 148-21-27 (5) is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

148-21-27. Tabulation of priorities. (5) (a) Not later than September 1, 1976, any person wishing to object to the manner in which a water right or conditional water right is listed in the tabulation including the changes thereto made pursuant to subsection (4) of this section 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 water clerk and the division engineer in the division in which the tabulation shall have been made setting forth the factual and legal basis for such protest.

(b) Commencing the first week in September, 1976, 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 con-

The 1976 dates in this section are not specifically recommended by the water committee.

Subsection (5) was expanded using language already in the bill (148-21-28 (2)) to provide for full adjudication of the initial tabulation.

TEXT

COMMENTS

ducted in accordance with Colorado rules of civil 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

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or shall incorporate same with such modifications as the water judge may determine proper after the hearings.

(c) If no protests have been filed, then promptly after [September 1, 1976], the water judge shall enter a judgment and decree incorporating and confirming the tabulation of the division engineer without modification.

(d) A copy of such judgment and decree shall be filed with the state engineer and the division engineer and shall be provided by the water clerk to any other person requesting same upon payment of a fee of one dollar per page with a maximum of ten dollars. Promptly after receiving a judgment and decree the division engineer and the state engineer shall enter in their records the determinations therein made as to priority, location, and use of the water rights and conditional water rights and shall regulate the distribution of water accordingly.

(e) Appellate review shall be allowed to the judgment and decree or any part thereof as in other civil actions, but no appellate review shall be allowed with respect to that

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part of the judgment or decree which confirms a portion of the tabulation with respect to which no protest was filed.

(f) Clerical mistakes in said judgment and decree may be corrected by the water judge on his own initiative or on the petition of any person, and substantive errors therein may be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest with the water clerk within the time specified in this section. Any petition referred to in the preceding sentence shall be filed with the water clerk within three years after the date of the entry of said judgment and decree. The water judge may order such notice of any such correction proceedings as he determines to be appropriate. Any order of the water judge making such corrections shall be subject to appellate review as in other civil actions.

(g) Proceedings set forth in this section shall be considered general adjudication proceedings.

Paragraph (f) changes the time from two to three years in which the water judge could correct clerical mistakes or substantive errors.

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(6) The tabulation of a water right under this section shall not create a presumption of the validity of such right in any abandonment proceeding against such right, nor shall it be used in evidence therein.

SECTION 4. 148-21-28 (1), (2), (2) (a), (b), (c), (d), (e), (f), (h), and (i), Colorado Revised Statutes 1963 (1969 Supp.), are amended to read:

148-21-28. List of changes to tabulations. (1) No later than ~~July 1, 1974, and July 1~~ DECEMBER 1 of each even-numbered FOURTH year ~~there-after-1974~~ BEGINNING IN 1977 the division engineer with the approval of the state engineer shall prepare a ~~new-tabulation~~ LIST OF CHANGES TO THE TABULATION AS SET FORTH IN SECTION 148-21-27 of all water rights and conditional water rights in his division. The ~~1974 NEW tabulation~~ LIST OF CHANGES shall ~~reflect-any~~ INCLUDE ONLY changes in the ~~1970~~ tabulation which the division engineer and the state engineer determine to be advisable ~~based-on-the principles-set-forth-in-section-148-21-27~~ to reflect correctly the priority of water rights. ~~and-the-1974-tabulation-and-sue-~~

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The addition of (6) is to prevent the tabulation from being used in abandonment proceedings.

The dates in this section are not a specific recommendation of the water committee.

The biennial tabulation would be redesignated a list of changes to avoid republishing the entire tabulation.

Revision of the tabulation was changed from July to December when water users and division engineers would have more time to give to the matter.

Struck type in subsection (1) and the repeal of subsection (2) (j) reflects the separation of

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eeding-tabulations SAID LIST OF CHANGES shall include the priorities awarded subsequent to those listed in the preceding tabulation, shall ~~inereperate~~ LIST any changes of water rights that have been approved, shall ~~note~~ LIST any changes from conditional water right to water right, shall ~~medify~~ LIST any water rights or conditional water rights which the ~~division-engineer-determines~~ WATER JUDGE HAS DECREED to have been abandoned in part, and shall ~~omit~~ LIST any water rights or conditional water rights which the ~~division-engineer-determines~~ WATER JUDGE HAS DECREED to have been totally abandoned. Except as specified in the preceding sentence, each ~~tabulation-pur-suant-to-this-section-shall-list~~ SUCCEEDING LIST OF CHANGES SHALL MAKE no changes in the listings in ~~previous~~ THE tabulation except changes to correct clerical errors and changes ordered by the water judge pursuant to subsection (2) (i) of this section. ~~and-any-such-changes,modifications,or-emissions-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-wa-~~

COMMENTS

abandonment procedures from the tabulation provisions.

Tabulation and abandonment would be staggered, with one occurring every second year. Abandonment procedures would be completed before the tabulation is prepared. It was thought that every fourth year would be often enough to revise the tabulation.

TEXT

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ter-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 or systems 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 each even-numbered FOURTH year beginning in 1974 [1977]:

(a) No later than July 10, [DECEMBER 10], the division engineer shall cause such publication of the tabulation LIST OF CHANGES to be made as is necessary to obtain general circulation once in each county or portion thereof in the division by means of one or more newspapers, which, if feasible, are published in the division, and he shall mail a copy of such tabulation LIST to each person whose name is on the list spec-

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ified in section 148-21-18 (3), and shall mail a copy of such ~~tabulation~~ LIST OF CHANGES by registered mail to the owner, or last known owner or claimant, of every water right or conditional water right ~~which-the-division-engineer-has-found-to have-been-abandoned-in-whole-or-in-part-or~~ which has been changed adversely. Copies of such ~~tabulation~~ LIST OF CHANGES shall also be available in the office of the division engineer for any person requesting same upon the payment of a fee of two dollars.

(b) No later than ~~September 10,~~ DECEMBER 31, OF THE YEAR FOLLOWING PUBLICATION OF THE LIST OF CHANGES AS SET FORTH IN THIS SECTION, 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~~ LIST OF CHANGES 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.

This date is not a recommendation of the water committee. If this date was accepted, the deadline for protest to list of changes would be one year after publication of the list.

TEXT

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(c) On or before ~~October-10~~; JULY 17 OF THE YEAR FOLLOWING THE LAST DATE FOR FILING OBJECTIONS TO THE LIST OF CHANGES, the division engineer shall make such revisions, if any, as he deems proper in the aforesaid ~~tabulation~~. LIST OF CHANGES. In considering the matters 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~~ LIST OF CHANGES determined by the state engineer to be necessary or advisable. The revised ~~tabulation~~ LIST OF CHANGES or, if there are no revisions, the original ~~tabulation~~ LIST OF CHANGES, signed by the division engineer and by the state engineer, shall be filed on or before ~~October-10~~ JULY 17 with the water clerk. Copies of such ~~tabulation~~ LIST OF CHANGES shall be available in the office of the division engineer and a copy shall be mailed by him to any person requesting same on payment of a fee of two dollars. If the ~~tabulation~~ LIST OF CHANGES is revised the division engineer on or before ~~October-20~~; JULY 10, shall cause such publication of the

Date not recommended by the water committee. If this date was used, seven months would be allowed for the division engineer to revise the list of changes.

TEXT

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revised ~~tabulation~~ LIST OF CHANGES to be made as is necessary to obtain general circulation once in each county or portion thereof 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~~ LIST OF CHANGES shall file a written protest with the water clerk and with the division engineer not later than ~~November-30~~, SEPTEMBER 17. 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~~ SEPTEMBER and continuing for as long as may be necessary, the water judge of

Date not recommended by water committee. If this date was adopted, water users would have fifty days to protest the revised list of changes.

TEXT

COMMENTS

each division shall conduct hearings on the ~~tabulation~~ LIST OF CHANGES 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~~ COLORADO RULES OF CIVIL 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~~, LIST OF CHANGES, and if requested by the division engineer, the attorney general shall represent the division engineer. All persons interested in the portions of the ~~tabulation~~ LIST OF CHANGES 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~~ LIST OF CHANGES 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

Technical change.

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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~~ LIST OF CHANGES 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 ~~November-30~~ SEPTEMBER 17 the water judge shall enter a judgment and decree incorporating and confirming the ~~tabulation~~ LIST OF CHANGES of the division engineer without modification.

(h) Appellate review shall be allowed to the judgment and decree or any part thereof as in other civil actions, but no appellate review shall be allowed with respect to that part of the judgment or decree which confirms a portion of the ~~tabulation~~ LIST OF CHANGES with respect to which no protest was filed.

(i) Clerical mistakes in said judgment and decree may be corrected by the water judge on his own initiative or on

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the petition of any person, and substantive errors therein may be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest with the water clerk within the time specified in this section. Any petition referred to in the preceding sentence shall be filed with the water clerk within ~~two~~ THREE years after the date of the entry of said judgment and decree. The water judge may order such notice of any such correction proceedings as he determines to be appropriate. Any order of the water judge making such corrections CONCERNING SUBSTANTIVE ERRORS shall be subject to appellate review ~~as specified in subsection (h) of this section.~~ AS IN OTHER CIVIL ACTIONS.

SECTION 5. Repeal. 148-21-28 (2) (j), Colorado Revised Statutes 1963 (1969 Supp.), is repealed.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL B

COMMENTS

A BILL FOR AN ACT
CONCERNING JUDICIAL ADMINISTRATION AND ENFORCEMENT OF "THE
WATER RIGHT DETERMINATION AND ADMINISTRATION ACT OF 1969";
AND PROVIDING FOR THE POWERS AND DUTIES OF WATER JUDGES,
REFEREES AND CLERKS, AND FOR FEES AND PUBLICATION RE-
QUIREMENTS IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Colorado Revised Statutes 1963 (1969 Supp.),
148-21-10 (2) and (6) are amended to read:

(2) Within ten days after this article becomes effective,
and on or before January 10 of each year thereafter, the su-
preme court shall designate or redesignate a water judge for
each division to hear all pending and new water matters in that
division for the year in which the designation is made, and any
vacancy that occurs during such year shall be filled by desig-
nation of the supreme court. The services of the water judge
shall be in addition to his regular duties as a district judge
but shall take priority over such regular duties, and the
schedules of the judges in the various divisions shall be

The amendment would give the chief justice of the Supreme Court authority over the appointment of water judges to the division, including specific authority to make temporary assignments. Art. VI, Sec. 2 and Sec. 5 of the Constitution might conflict with this provision as written, because the Constitution gives the Supreme Court "general superintending control" and also provides that the chief justice can make temporary assignments of judges.

TEXT

COMMENTS

arranged and adjusted so that the water judge shall be free to hear water matters. If it becomes necessary during any year for the proper handling of water matters in any division, the supreme court shall designate one or more additional water judges of the district courts in that division and the term "water judge", as used in this article, shall be deemed to refer to all water judges acting in a division. The water judge for a particular division shall be selected from among the judges of the district courts of the counties situated entirely or partly within the division, EXCEPT THAT THE CHIEF JUSTICE MAY MAKE TEMPORARY ASSIGNMENTS OF OTHER JUDGES.

(6) Persons appointed as water referees shall possess such training and experience as to qualify them to render expert opinions and decisions on the complex matters of water rights and administration. The persons may, as the situation requires, be either full time, part time or contractual court employees of the state of Colorado. All expenses in connection with the performance of the functions of water referees, including salaries and other compensation, office space, cler-

Subsection (6) as amended would permit the Supreme Court to prescribe an oath of office for water referees. Referees would not post a bond because they do not handle money.

TEXT

COMMENTS

ical and technical assistance shall be paid from funds appropriated to the supreme court. EACH WATER REFEREE SHALL EXECUTE SUCH OATH OF OFFICE AS MAY BE PRESCRIBED BY THE SUPREME COURT.

SECTION 2. Colorado Revised Statutes 1963 (1969 Supp.), 148-21-11 (2), and (3) are amended to read:

(2) The water clerk shall maintain the records of all proceedings related to appropriations, determinations of water rights and conditional water rights and the amount and priority thereof, changes of water rights, plans for augmentation, abandonment of water rights and conditional water rights, and the records of all proceedings of the water judge and of all rulings and actions of the referee required by this article to be filed with the water clerk. The clerks of the various district courts in each division, if requested by the water clerk of that division, shall transfer to the water clerk duplicate copies of any of the files, or parts thereof, of cases relating to water rights. THE WATER CLERK SHALL PERFORM SUCH OTHER DUTIES AS MAY BE PRESCRIBED BY THE WATER JUDGE OR THE

The change would permit a water clerk to be assigned additional duties such as librarian for the district court.

TEXT

COMMENTS

SUPREME COURT.

(3) Subject to the approval of the water judge, the water clerk in each division shall employ such assistants and deputies as may be necessary for him to carry out his duties. THE WATER CLERK, ASSISTANTS, AND DEPUTIES SHALL EXECUTE SUCH OATH OF OFFICE AND SUCH BOND AS MAY BE PRESCRIBED BY THE SUPREME COURT.

SECTION 3. Colorado Revised Statutes 1963 (1969 Supp.), 148-21-18 (1) and (3) are amended to read:

148-21-18. Applications for water rights or changes of such rights - plans for augmentation. (1) Any person who desires a determination of a water right or a conditional water right and the amount and priority thereof, including a determination that a conditional water right has become a water right by reason of the completion of the appropriation, a determination with respect to a change of a water right, approval of a plan for augmentation or biennial finding of reasonable diligence, shall file with the water clerk in duplicate a verified application setting forth facts supporting the ruling

The changes in (3) provide for an oath of office and bond to be prescribed by the supreme court.

TEXT

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sought. Any person who wishes to oppose the application may file with the water clerk in duplicate a verified statement of opposition setting forth facts as to why the application should not be granted or why it should be granted only in part or on certain conditions. Such statement of opposition must be filed by the last day of the second month following the month in which the application is filed. The fee for filing an application shall be twenty-five dollars; and for filing a statement of opposition, the fee shall be fifteen dollars. IF MORE THAN ONE WATER RIGHT IS REQUESTED IN ANY APPLICATION, A FEE OF FIVE DOLLARS FOR EACH ADDITIONAL RIGHT SHALL BE ASSESSED.

(3) (a) Not later than the ~~fifth~~ FIFTEENTH day of each month, the water clerk shall prepare a resume of all applications IN THE WATER DIVISION WHICH HAVE BEEN filed in his office during the preceding month. The resume shall give the name and address of the applicant, a description of the water right or conditional water right involved, and a description of the ruling sought.

This amendment would clarify any ambiguity as to whether a separate fee is to be charged for each water right for which a change is requested.

TEXT

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(b) No later than the tenth-day END of such month, the water clerk shall cause such publication to be made of the EACH resume OR PORTION THEREOF IN A NEWSPAPER OR NEWSPAPERS as is necessary to obtain general circulation once in each EVERY county AFFECTED AS DETERMINED BY THE WATER JUDGE.

As means of reducing publication costs, this amendment would provide that monthly resumes would need to be published only in the county affected. The dates were changed because in some areas in some months there is no newspaper published between the fifth and the tenth of the month.

(c) NOT LATER THAN THE END OF SUCH MONTH, a copy of such resume shall be mailed to each person whom the referee has reason to believe would be affected or who has requested the same be submitting his name and address to the water clerk. The water clerk shall maintain a quarterly mailing list of such names and addresses so submitted, and persons desiring to have their names and addresses retained on such list must resubmit the same ~~within-twelve-months~~ BY JANUARY 31. ~~after-the-previous submission.~~ Persons who have not so resubmitted their names and addresses shall not be retained on such list, but they may submit their names and addresses at any time thereafter for

The reason for the insertion of "Not later than the end of such month" is that no time limit was specified for mailing the resume. The reason for the quarterly subscription to the resume is to make the maintenance of the water clerk's mailing list easier.

TEXT

COMMENTS

inclusion on the list subject to the foregoing. In order to obtain a copy of a resume for a particular month, a person's name and address must be received not later than the fifth day of THE MONTH OF PUBLICATION OF THE RESUME. ~~that-month.~~ A fee of twelve dollars shall be payable each time a person's name is submitted for inclusion in said mailing list.

SECTION 4. 148-21-20 (3), (10), and (11), C.R.S. 1963 (1969 Supp.) are amended to read:

148-21-20. Proceedings by water judge. (3) As to the rulings with respect to which a protest has been filed and as to matters which have been rereferred to the water judge by the referee, there shall be hearings conducted in accordance with ~~trial-practice-and-procedure;~~ COLORADO RULES OF CIVIL PROCEDURE except that no pleadings shall be required. The court shall not be bound by findings of the referee. The division engineer shall appear to furnish pertinent information and may be examined by any party, and if requested by the division engineer, the attorney general shall represent the division engineer. The applicant or applicants shall appear

Technical change to specify procedures to be used in the hearings on water rights.

TEXT

COMMENTS

either in person or by counsel and shall have the burden of sustaining the application, whether it has been granted or denied by the ruling or been rereferred by the referee and in the case of a change of water right the burden of showing absence of any injurious effect alleged in the protest or a statement of opposition. All persons interested 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 as specified in subsection (1) of this section. Such entry of appearance shall identify the matter with respect to which the appearance is being made. Service of copies of applications, statements of opposition, protests or any other documents is not necessary for jurisdictional purposes, but the water judge may order service of copies of any documents on any persons and in any manner which he may deem appropriate.

(10) Clerical mistakes in said judgment and decree may be corrected by the water judge on his own initiative or on the petition of any person, and substantive errors therein may

The amendment in subsection (10) would allow appellate review for those who have not filed a protest; otherwise a protest

TEXT

be corrected by the water judge on the petition of any person whose rights have been adversely affected thereby and a showing satisfactory to the water judge that such person, due to mistake, inadvertence, or excusable neglect, failed to file a protest with the water clerk within the time specified in this section. Any petition referred to in the preceding sentence shall be filed with the water clerk within two THREE years after the date of the entry of said judgment and decree. The water judge may order such notice of any such correction proceedings as he determines to be appropriate. Any order of the water judge making such corrections shall be subject to appellate review ~~as specified in subsection (9) of this section,~~ AS IN OTHER CIVIL ACTIONS.

(11) If any application is granted in whole or in part by the referee pursuant to this article, any person who asserts that he will be damaged by any acts authorized by such ruling may UPON PAYMENT OF A FILING FEE OF TWENTY DOLLARS PLUS AN ADDITIONAL AMOUNT WHICH IS SUFFICIENT TO COVER THE COSTS OF MAILING COPIES THEREOF AS REQUIRED IN THIS SUBSECTION within

COMMENTS

is now required under subsection (9).

The proposed change would allow three years, rather than two years, for correction of mistakes and errors.

This change would require a fee for the application for a show cause order.

TEXT

COMMENTS

thirty days after the issuance thereof apply ex parte to the water judge of such division for an order directed to the applicant to show cause why the operation of such ruling should not be stayed until judicial review thereof under the provisions of this section. Such application shall be verified, shall have attached to it a copy of the ruling of the referee and shall allege facts upon the basis of which it is claimed that damages are likely to result from the acts authorized thereby. If the application for an order to show cause is found to be in proper form, the court shall issue its order to show cause and set the same down for hearing. At the hearing on the order to show cause, the party to whom such order is directed shall have the burden of proving that no material damage is likely to result from the operations authorized by the ruling of the referee. The court shall thereupon make its findings and if it finds that material damage is likely to result to the party at whose instance the show cause order was issued prior to the time that judicial review of the ruling of the referee can be had pursuant to the provisions of

TEXT

COMMENTS

this section, he shall stay the effectiveness of said ruling pending such judicial review.

SECTION 5. 148-21-44, Colorado Revised Statutes 1963 (1969 Supp.), is amended to read:

148-21-44. Disposition of pending proceedings. All proceedings pending on the effective date of this article for the adjudication of water rights, for a change of water rights, or for the disposition of other matters which are of the type to be handled by proceedings provided for in this article shall be concluded by July 1, 1972, IN ACCORDANCE WITH THE PROVISIONS OF THE STATUTE UNDER WHICH THEY WERE INSTITUTED and priorities and changes of WATER rights which are determined in such pending proceedings shall be integrated by the various division engineers in their current records and shall be included in tabulations prepared by the division engineers pursuant to the provisions of this article. Any such proceedings which are not concluded by July 1, 1972 shall be heard from that time on to completion by the water judge for the division in which the proceedings are pending, under procedures pro-

The first change in this section was suggested by Mr. Welborn to clear up a technical-legal ambiguity.

The insertion of the word "water" is to correct an inadvertent omission.

TEXT

COMMENTS

vided for herein EXCEPT THAT THE CHIEF JUSTICE OF THE SUPREME COURT MAY PROVIDE THAT A JUDGE, OTHER THAN THE WATER JUDGE, SHALL COMPLETE PROCEEDINGS IN SPECIFIC CASES. Persons who have filed statements of claim in such pending proceedings may withdraw therefrom at any time and file applications or otherwise proceed in accordance with this article. Showings of reasonable diligence under existing conditional decrees or conditional decrees entered in such pending proceedings shall be made in accordance with the provisions of this article in the year 1970 and every even-numbered year thereafter. Applications for biennial findings of reasonable diligence shall be filed with the water clerk pursuant to section 148-21-18 (1) not later than June 1 of each such years. When and if a conditional water right awarded in any such conditional decree becomes a water right pursuant to the procedures in this article, the priority awarded such water right shall be the same as if the proceedings in which the conditional decree was entered had remained open until the final determination with respect to such water right.

The Constitution now provides that the chief justice may assign judges as deemed necessary. The committee may also want to extend the time for completion of water cases not completed by July 1, 1972.

TEXT

COMMENTS

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.