

AGENDA

Water Resources Review Committee

State Capitol Building
House Committee Room 0112

Wednesday, September 24, 2008
12:30 p.m.

SUMMARY FOLLOWS AGENDA

Call to Order

- 12:30 p.m.* **Update on Municipal Water Conservation Activities**
- Paul Lander, Executive Director, Colorado Water Wise Council
- 1:00 p.m.* **Continued Discussion on Substitute Water Supply Plans and Pre-2003 Depletions and Replacement of Out-of-Priority Diversions that Occurred Prior to March 15, 1974**
- Brad Grasmick, Central Colorado Water Conservancy District
 - Chris Treese, Colorado River Water Conservation District
 - James L. Newberry, Grand County Commissioner
 - John Akolt, Farmers Reservoir and Irrigation Company
 - Tim Buchanan, Harmony Ditch Company, Pawnee Well Users, Inc.
- 2:00 p.m.* **Public Testimony on Draft Legislation**
- Final Action on Draft Legislation**
- Bill 1 — Water Quality Grant Program for Small Communities
 - Bill 2 — Substitute Supply Plans for the Replacement of Pre-2003 Depletions
 - Bill 3 — Eliminating Future Repeal of the Water Supply Reserve Account
 - Bill 4 — Exempt Pre-1974 Well Depletions from Augmentation Requirements
 - Bill 5 — Move White River Basin to Water Division 6
- 2:45 p.m.* **Break**

3:00 p.m. **Update on the Southern Delivery System**
• Wayne Vanderschuer, Water Supply Manager, Colorado Springs Utilities

3:20 p.m. **Update on the Moffat Expansion Project**
• Travis Bray, Denver Water Department

3:40 p.m. **Update on the Northern Integrated Supply Project and the Windy Gap Firming Project**
• Eric W. Wilkinson, General Manager, Northern Colorado Water Conservancy District

4:20 p.m. **Comments on Proposed Water Diversions from Grand County**
• James L. Newberry, Grand County Commissioner

Adjourn

Final
STAFF SUMMARY OF MEETING

WATER RESOURCES REVIEW COMMITTEE

Date: 09/24/2008

ATTENDANCE

Time: **12:47 PM to 05:10 PM**

Place: HCR 0112

This Meeting was called to order by
Representative Curry

This Report was prepared by
David Beaujon

Brophy	X
Gardner C.	X
Hodge	X
McKinley	X
Schwartz	X
Taylor	E
Tochtrop	X
White	E
Isgar	X
Curry	X

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
Municipal Water Conservation Activities	Briefing only
Substitute Supply Plans and Pre-2003 Depletions	Briefing only
Final Action on Draft Bills	Recommended Draft Bill 1 to Legislative Council
Update on Southern Delivery System	Briefing only
Update on the Moffat Expansion Project	Briefing only
Update on the Northern Water District Projects	Briefing only
Comments Water Diversions from Grand County	Briefing only
Committee Discussion on a Draft Resolution	Briefing only

12:47 PM -- Municipal Water Conservation Activities

Paul Lander, Executive Director, Colorado Water Wise Council (CWWC), explained that the council is a nonprofit organization that assists local governments and other entities with municipal water conservation programs (Attachment A). Its members include cities, water districts, engineers, and other water professionals. He explained that the council received a grant from the Colorado Water Conservation Board to provide education on water conservation practices. The CWWC has also developed a number of publications on Xeriscape and partnered in the development of best management practices (BMPs) for indoor and outdoor efficient water use. It is also developing a method for measuring a municipality's water use efficiency level. He summarized the result of the 2007 survey of municipalities and their water conservation activities that was conducted by the CWCB in 2007. This survey determined that nearly 70 percent of the cities surveyed did not have a budget for water conservation programs. Mr. Lander responded to questions from the committee concerning program to increase municipal water efficiency and current water conservation practices.

01:06 PM -- Substitute Water Supply Plans and Pre-2003 Depletions

Brad Grasmick, Central Colorado Water Conservancy District, spoke in support of Draft Bill 2 concerning substitute water supply plans and pre-2003 depletions. This bill has the same provisions as the introduced version of Senate Bill 08-247 that was postponed indefinitely in the Senate Committee on Agriculture, Natural Resources, and Energy. He explained that the bill allows additional sources of water to be used in an augmentation plan to offset well depletions that occurred prior to 2003 when the current well pumping regulations took effect. An augmentation plan is essentially a substitute supply plan that has been approved by water court. A substitute supply plan is used to replace depletions caused by junior groundwater users that would otherwise injure a senior water

right. He explained that the bill would allow the district and other groundwater users to rely less on augmentation wells to replace post-pumping depletions. Potential sources of water for the substitute supply plans include temporary transfers of irrigation water and water from the Colorado-Big Thompson Project (C-BT). C-BT water comes from the Colorado River Basin and is used by northeast Colorado farms and cities. He estimated that approximately 5000 to 8000 acre-feet of water depletions caused by pre-2003 pumping in the Central Colorado Water Conservancy District must be replaced in 2008. Due to hydrologic factors, the amount that must be replaced in the district will decline annually.

01:15 PM

Chris Treese, Colorado River Water Conservation District, explained that the district board has not formally taken a position on Draft Bill 2. However, it did oppose Senate Bill 08-247. He urged the committee to not recommend Draft Bill 2 to the Legislative Council to allow sufficient time for the district to discuss the bill. He also responded to questions from the committee regarding potential amendments that may address the district's concerns with Draft Bill 2 including a prohibition on the use of west slope water in substitute water supply plans.

01:21 PM

James L. Newberry, Grand County Commissioner, Colorado River Water Conservation District Board, Northwest Colorado Council of Government, described the impact of water transfers from Grand County on stream flows in the Frasier River (Attachment A). He expressed concern that Draft Bill 2 would allow additional transfers from the Grand County (Attachment B). He also responded to questions from the committee concerning amendments to Draft Bill 2 that would address his concerns.

01:28 PM

Dave Taussig, Water Counsel for Grand County, responded to questions from the committee regarding the information included in the hydrographs for the Fraser River provided by Commissioner Newberry (Attachment C and Attachment D).

01:31 PM

Commissioner Newberry and Mr. Taussig responded to questions from the committee about the amount of water that may be transferred from Grand County under the C-BT decree. Mr. Taussig explained that eastern farmers and cities own water rights to approximately 85 percent of the native stream flow in Grand County.

01:43 PM

Eric Wilkinson, General Manager of the Northern Colorado Water Conservancy District (NCWCD), explained how the C-BT water is allocated to entities that own allotments of the C-BT project. Specifically, the NCWCD Board declares an initial quota each November and reassesses the water supply situation the following April. The quota indicates what percentage of an acre-foot a C-BT allottee will receive during the current water year for every unit of C-BT water the allottee owns. For example, a 70-percent quota means that each C-BT unit will yield seven-tenths of an acre-foot. A 70-percent quota will make available 217,000 acre-feet of C-BT water through this water year for agricultural, municipal and industrial users in the Northern Water boundaries. The water year ends October 31. Mr. Wilkinson also explained how owners of C-BT quotas may lease water to other users within the NCWCD. He also spoke in support of Draft Bill 2. He explained that Draft Bill 2 would not result in additional transfers of west slope water through C-BT because C-BT quotas are based on water stored in NCWCD facilities and the snowpack. The quota in dry years is higher than the quota in wet years when less supplemental water is needed by water users in the district.

01:54 PM

Tim Buchanan, Harmony Ditch Company, Pawnee Well Users, Inc., described the provision of Section 37-92-305 (8), C.R.S. that allows the use of replacement water not expressly identified in a decree (Attachment E).

He explained that Draft Bill 2 is unnecessary because the NCWCD Board could amend its May 2005 Interim Rule concerning the use of C-BT Project water in substitute supply plans and plans for augmentation to allow C-BT water to be used in decreed augmentation plans. He also urged the committee to review the State Engineer's approval of substitute supply plans and the appeal process for these decisions. He also spoke in opposition to Draft Bill 2.

The following person testified:

02:03 PM -- Allen Curtis, Attorney for the City of Sterling, expressed concern about the effect of substitute supply plans approved by the Division of Water Resources on the city's water rights. He also spoke in opposition to Draft Bill 2 (Attachment F).

02:09 PM

Mr. Grasmick responded to earlier testimony and explained that Senate Bill 08-247 and Draft Bill 2 require the water court to hear appeals to the State Engineer's decision concerning substitute supply plans on an expedited basis (see Page 4 of Draft Bill 2, lines 17 through 21).

02:13 PM -- Mr. Curtis responded to Mr. Grasmick's testimony.

02:13 PM

Senator Isgar recommended that Draft Bill 2 be tabled to allow time for amendments to be drafted and to address the opponents of Draft Bill 2 concerns.

02:14 PM - Final Action on Draft Bill 2

Representative Curry asked if anyone on the committee wanted offer a motion Draft Bill 2 concerning substitute water supply plans and pre-2003 depletions.. No motion was offered. Consequently, Draft Bill 2 will not be recommended to Legislative Council.

02:15 PM -- Final Action on Draft Bill 1

Draft Bill 1 creates a grant program to fund public drinking water and wastewater projects from unanticipated State Severance Tax revenue and other potential funding sources. The following persons testified on Draft Bill 1:

02:15 PM -- Kevin Bommer, Colorado Municipal League, explained that the Water Resources Review Committee has considered the funding needs for small community drinking water and wastewater projects for the past three years and it discussed this issue at its meeting in Gunnison on July 21, 2008 (Attachment G). He described the need for grants to help reduce the cost for these communities to fund drinking water and waste water project and he spoke in support of Draft Bill 1 (Attachment H).

02:21 PM -- Barbara Biggs, Colorado Water Conservation Board, explained that federal legislation may provide additional money for small community drinking and wastewater project. She also spoke in opposition to recommending Draft Bill 1 to the Legislative Council and urged the committee to allow additional time to identify alternative funding sources for the grant program. She expressed concern that Draft Bill 1 would reduce the moneys available for raw water projects.

02:28 PM -- Tom Morris, Office of Legislative Legal Service, identified entities that would qualify for the grants under Draft Bill 1.

02:30 PM -- Pat Ratliff, Colorado Counties, Inc., spoke in support of Draft Bill 1 and explained how it

would benefit counties and water providers in unincorporated areas.

02:35 PM -- Mr. Bommer expressed opposition to requiring the Colorado Department of Public Health and Environment to submit the list of proposed drinking water or wastewater projects to the General Assembly for its approval or modification in a joint resolution that is presented to the Governor for signature.

02:39 PM -- Eric Wilkinson, Colorado Water Conservation Board, spoke in opposition to the bill.

02:42 PM -- Mr. Morris identified alternative methods for appropriating money from the fund including continuously appropriating the money or requiring the General Assembly to annually appropriate the moneys.

02:44 PM

Committee discussion followed about alternatives for appropriating the money in the fund including an annual "block" appropriation with an annual reporting requirement to a committee of reference. Mr. Morris responded to questions about Section 2 of the Draft Bill and how it limits the amount of Severance Tax money that may be transferred annually to the grant program.

02:55 PM

Committee discussion followed on whether the bill should be recommended to Legislative Council. There was no motion on Draft Bill 1. Consequently, Draft Bill 1 will not be recommended to Legislative Council.

02:59 PM

The Committee recessed.

03:21 PM -- Final Action on Draft Bill 3

The committee returned from recess. Kate Meyer, Office of Legislative Legal Services, described the provision of Draft Bill 3 that extends indefinitely the funding of the Water Supply Reserve Account which is continuously appropriated with moneys transferred from the Operational Account of the Severance Tax Trust Fund (Attachment I).

03:28 PM

Committee discussion followed about amendments including a requirement for an annual report to the House Agriculture, Livestock, and Natural Resources and the Senate Committee on Agriculture, Natural Resources, and Energy and to require an annual appropriation of moneys in the Water Supply Reserve Account. The committee also discussed whether the bill should be recommended to Legislative Council. There was no motion to recommend Draft Bill 3. Consequently, Draft Bill 3 will not be recommended to Legislative Council.

03:33 PM --- Final Action on Draft Bill 4

The following persons testified on Draft Bill 4 that has the same provisions as the revised version of House Bill 08-1030 concerning the replacement of out-of-priority depletions that occurred prior to March 15, 1974 (Attachment J). A similar bill was recommended by the Water Resources Review Committee in 2007.

03:34 PM -- Eli Feldman, explained that he represents front range water users, including the City of Golden; west slope water users including Eagle Park Reservoir Company, Clinton Ditch and Reservoir Company, Upper Eagle Regional Water Authority, and the Eagle River Water and Sanitation District; and he represents senior

surface water rights owners in the Republican River Basin including the Pioneer Irrigation District and certain members of the Laird Ditch. He explained that all of these clients oppose Draft Bill 4. He expressed concern about the effect of the bill on senior water rights in the South Platte and Republican River Basin. He also expressed concern that it may result in additional transfers from the Colorado River basin and its effect on Colorado's ability to comply with the Republican River Compact. He urged the committee to amend the bill by clarify that it only applies to groundwater users in the South Platte River Basin. He also responded to questions from the committee concerning how the bill would affect water diversions from the Colorado River Basin and other issues.

03:46 PM -- Alexandra Davis, Assistant Director of the Colorado Department of Natural Resources, explained that the State Engineer estimated that depletions caused by pre-1974 well pumping reduced stream flows in the South Platte River Basin in 2007 by approximately 800 acre-feet. The amount of depletion affecting the river will decline each year. She also explained that the depletions from well pumping that occurred prior to 1974 are less than the depletions caused by exempt well pumping and evaporation from gravel mines. She also spoke in support of the Draft Bill 4.

03:53 PM -- John Akolt, Farmers Reservoir and Irrigation Company (FRICO), described FRICO's water diversions and the priorities of its water rights which he explained are relatively junior. He spoke in opposition to Draft Bill 4 and its impact on the ability of FRICO to divert water during water shortages.

04:01 PM -- Tom Morris, Office of Legislative Legal Service, responded to questions from the committee about provisions of the bill that allow a water judge to review all terms and conditions of amended plans for augmentation (Page 2 of the draft bill, lines 14 through 21).

BILL:	Final Action on Draft Bills	
TIME:	04:03:28 PM	
MOVED:	Brophy	
MOTION:	Moved to recommend Draft Bill 4, without amendment, to the Legislative Council. The motion failed on a vote of 6-2. According to Section 37-98-103, C.R.S. no bill may be recommended to Legislative Council unless a two-thirds majority (at least 7 members) approve the recommendation.	
SECONDED:	Gardner C.	
		VOTE
	Brophy	Yes
	Gardner C.	Yes
	Hodge	Yes
	McKinley	No
	Schwartz	No
	Taylor	Excused
	Tochtrop	Yes
	White	Excused
	Isgar	Yes
	Curry	Yes
Not Final YES: 6 NO: 2 EXC: 2 ABS: 0 FINAL ACTION: PASS		

04:06 PM -- Draft Bill 5

Draft Bill 5 moves the White River Basin to the jurisdiction of the water court for Water Division 6 (Attachment K). This draft bill was recommended by the Water Court Committee of the Colorado Supreme Court.

BILL:	Final Action on Draft Bills	
TIME:	04:06:29 PM	
MOVED:	Tochtrop	
MOTION:	Moved to refer Draft Bill 5, without amendment, to the Legislative Council. The motion passed on a vote of 8-0. If approved by Legislative Council on October 15, 2008, the bill will be considered in the 2009 legislative session. It will start in the House and be sponsored by Representative C. Gardner and Senator Tochtrop.	
SECONDED:	Hodge	
		VOTE
	Brophy	Yes
	Gardner C.	Yes
	Hodge	Yes
	McKinley	Yes
	Schwartz	Yes
	Taylor	Excused
	Tochtrop	Yes
	White	Excused
	Isgar	Yes
	Curry	Yes
Not Final YES: 8 NO: 0 EXC: 2 ABS: 0 FINAL ACTION: PASS		

04:09 PM -- Update on the Southern Delivery System

Wayne Vandershuere, Water Supply Manager, Colorado Springs Utilities, explained the purpose of the southern delivery system (SDS), and distributed a handout on the southern delivery system (Attachment L). Mr. Vandershuere discussed the need for the system to provide a long-term water supply for growing communities, protect against drought, and for a more reliable water system. He introduced representatives from the municipalities of Pueblo West, Fountain, and Security in the audience and explained that these areas would be served by the SDS. Mr. Vandershuere discussed the specific details of the SDS that will supply 43,000 acre-feet of water to these communities each year at full build-out. He discussed the process and timeline of the projects and explained that the water would come from existing water rights from the Arkansas River and trans-mountain diversions. The preferred option for this project would pipe water 43 miles north from Pueblo Reservoir to Jimmy Camp Creek Reservoir in Colorado Springs. An alternative plan requires 53 miles of pipe from Arkansas River as well as three pump stations, two storage reservoirs, and one treatment facility. Mr. Vandershuere talked about the Environmental Impact Statement (EIS) and explained that the comment period that has been reopened to address specific issues. The final decision on the EIS will be late 2008 or early 2009. Mr. Vandershuere discussed mitigation requirements in the EIS including Federal 404 Permits, land acquisitions, a 1041 Permit from Pueblo County to address areas and activities of state interest, and a special use permit from Fremont County. Mr. Vandershuere responded to questions concerning Fountain Creek and water quality issues. Mr. Vandershuere discussed the return flows that are discharged into Fountain Creek, which is addressed in the EIS.

04:22 PM -- Update on the Moffat Expansion Project

Travis Bray, Denver Water Department, provided an update on the Moffat Expansion Project and distributed copies of his handout to the committee (Attachment M). He discussed the issues of supply, vulnerability, and reliability that Denver Water is addressing through the expansion of the Moffat project. He discussed the vulnerability of Denver Water that delivers a majority of its water supply through the Moffat Tunnel. He explained that Denver Water is projected to have a 34,000 acre feet short fall by 2030 and discussed the need to improve supply and conservation by Denver Water users. Mr. Bray explained that the Moffat Project would provide 18,000 acre-feet per year to the Moffat Treatment Plant and raw water customers upstream of the plant. He

also discussed the EIS for the project and other alternatives that were considered by Denver Water. Mr. Bray addressed questions about alternatives for the project and the first draft of the EIS, which should be available for public comment by December 2008.

04:30 PM -- Update on Northern Integrated Supply Project and the Windy Gap Firing Project

Carl Brower, Project Manager, Northern Integrated Supply Project (NISP), discussed the supply project and distributed a packet of information to the committee (Attachment N). He explained that NISP involves 15 water providers and talked about how the project would partner with ditch companies in the region to allow more productive agriculture land to remain in production. He discussed front-range communities that are rapidly growing and in need of water supply and talked about the amount of water that would be supplied to these communities. Mr. Brower explained that Glade Reservoir would have a capacity of 170,000 acre-feet and Galeton Reservoir could supply 40,000 acre-feet to the project. He discussed the diversions of the project from the Poudre River and sources for junior water rights on the South Platte. Mr. Brower also talked about issues addressed by the EIS, which just concluded its comment period on September 20, 2008. He discussed mitigation and habitat preservation with flow releases down the Poudre during dry-up periods of the season and addressed question concerning development pressure along the front range and the buy-and-dry policies. He explained that the project would prevent drying up 40,000 to 60,000 acres of agricultural land in the Poudre and St. Vrain river basins. He also explained that the project would not use water from the Colorado-Big Thompson Project for long-term operation. Mr. Brower addressed questions from the committee concerning funding sources including cash, revenue bonds, or loans from the CWCB or the Colorado Water Resources and Power Development Authority for the project. He estimated that the project would cost approximately \$400 million or \$10,000 per acre-foot. Construction for the project could begin by 2012.

04:51 PM

Jeff Drager, Project Manager, Windy Gap Firing Project, addressed the committee to discuss the project and distributed a packet of information to the committee concerning the project (Attachment O). Mr. Drager explained that the project will help complete an existing project constructed in the 1980 to divert water from the Colorado River. The Windy Gap Project would divert Colorado River water rights into Chimney Hollow Reservoir, which would be constructed west of Carter Lake Reservoir. This project would create a more reliable supply of 30,000 acre-feet for the subdistricts of Northern Colorado Water Conservancy District (NCWCD). This would allow the district to coordinate on behalf of municipal subdistricts, several water providers, and a power provider. He discussed future water shortages, the need for storage to benefit the cities and water districts, and talked about the EIS for the project, which will conclude its public comment period in October, 2008.

05:00 PM -- Comments on Proposed Water Diversions from Grand County

James L. Newberry, Grand County Commissioner, addressed the committee to comment on proposed water diversions from Grand County by Denver and Northern Colorado Water Conservancy District. Commissioner Newberry discussed the priorities of Grand County to have healthy and clean water while also allowing the front range water districts to acquire the water they are entitled to. He addressed questions from the committee concerning small-hydro electricity generation on the Colorado Big Thompson or Moffat Projects.

05:03 PM

Eric Wilkinson, Northern Colorado Water Conservancy District, commented on the NISP and Windy Gap Projects and the relationship with Grand County.

05:07 PM -- Committee Discussion on Draft Resolution

Representative Curry distributed a draft resolution concerning the General Assembly's continuing support for existing terms of the Colorado River Compact (Attachment P). No action was taken on the resolution.

05:10 PM

The meeting adjourned.