

A G E N D A

Water Resources Review Committee

Holiday Inn Frisco — Fireside Room
 1129 N. Summit Boulevard
 Frisco, Colorado

Wednesday, July 20, 2005
 1:30 p.m.

SUMMARY FOLLOWS AGENDA

8:00 a.m. — Noon

Prior to its afternoon meeting, members of the Water Resources Review Committee will attend the Colorado Water Conservation Board's hearing on the Town of Silverthorne's application for a recreational in-channel diversion, Case Number 2004CWC217, Water Division 5, in the Lakeside Room at the Holiday Inn Frisco. The agenda for this hearing will be available at <http://cwcb.state.co.us>.

Noon — Lunch

1:30 p.m. — Call to Order

- I. Update on implementation of HB05-1177 - Russell George, Executive Director, Colorado Department of Natural Resources
- II. Committee discussion about agenda for upcoming meetings of the Water Resources Review Committee

Adjourn

STAFF SUMMARY OF MEETING

WATER RESOURCES REVIEW COMMITTEE

Date:	07/20/2005	ATTENDANCE	
Time:	01:44 PM to 04:26 PM	Butcher	E
		Entz	X
Place:	Frisco Holiday Inn, Frisco, Co.	Fitz-Gerald	X
		Grossman	E
This Meeting was called to order by		Hodge	X

	<u>Senator Isgar</u>	Hoppe	X
		Taylor	X
This Report was prepared by		White	X
	<u>David Beaujon</u>	Curry	X
		Isgar	X
X = Present, E = Excused, A = Absent, * = Present after roll call			

Bills Addressed:		Action Taken:	
Meeting in Frisco		Briefing	

1:44 PM -- Call to Order

The meeting was called to order. Senator Isgar, chairman, explained that the Water Resources Review Committee was in Frisco, Colorado to attend the Colorado Water Conservation Board's (CWCB) hearing to review the Town of Silverthorne's application for a recreational in-channel diversion (RICD) below Dillon Dam. Information about the CWCB's hearing and RICD program is available at: www.cwcb.state.co.us/isf/Programs/RICD.

1:46 PM -- Update on Implementation of HB05-1177

Russell George, Executive Director of the Colorado Department of Natural Resources, summarized the provisions of HB05-1177 concerning interbasin compact negotiations and its implementation. On June 7, 2005, Mr. George was appointed the Director of Compact Negotiations by the Governor. Mr. George explained that the new law creates nine roundtables; one in each of the state's eight major river basins and one in the Denver Metropolitan area. The roundtables are authorized to select their members, adopt by-laws, assist with collaboration within a basin and between basins, and develop a basin water needs assessment. Mr. George explained that letters have been sent to local governments and water districts seeking appointments to their basin's roundtable by July 15, 2005. These members will then appoint ten at-large members to represent environmental, agricultural, recreational, and other interests identified in the law. Shortly after being formed, the roundtables will select two basin representatives to serve on the 27-member Interbasin Compact Committee. The first roundtable meeting is tentatively scheduled for August 2005 in Rangely, Colorado. He explained that roundtable meetings will be held at open public forums, such as community colleges. Assistance with organizing meetings and other activities is available from the Director of Compact Negotiations, to the extent requested by a roundtable.

1:46 PM

Mr. George explained that the Interbasin Compact Committee is charged with negotiating interbasin compacts regarding use of Colorado's rivers within the state. The committee is authorized to establish a charter to guide negotiations between basin roundtables, conduct public education events, and make reports and recommendations annually to the General Assembly and the Governor. The nine basin roundtables will appoint 18 members of the committee and the Governor will appoint six at-large members with expertise in environmental, municipal, agricultural, industrial, and recreational matters. Also, the chairpersons of the House and Senate Agriculture and Natural Resources Committees will each appoint one member to the Interbasin Compact Committee. The Director of Compact Negotiations, also appointed by the Governor, chairs the Interbasin Compact Committee. Mr. George expects the Interbasin Compact Committee to be appointed by November 2005. Drafting of the committee's charter is

tentatively scheduled to begin in January 2006 and to be completed by February 2006. The charter will then be submitted to the General Assembly for its approval prior to sine die of the Second Regular Session of the Sixty-Fifth General Assembly on May 10, 2006. HB05-1177 is repealed if the Interbasin Compact Committee fails to submit the charter to the General Assembly by July 1, 2006.

2:11 PM

In response to questions from the committee, Mr. George explained that appointments to the roundtables and the Interbasin Compact Committee are not subject to approval by the General Assembly. Rather, the primary role of the General Assembly is to approve the charter of the Interbasin Compact Committee. Appropriation of state money for water projects recommended by the committee would also require approval by the General Assembly. Committee discussion followed about the charge of basin roundtables and their authority to assist with intra-basin water supplies issues. There was some concern about travel and other costs associated with participating in basin roundtable meetings. Mr. George explained that HB05-1177 provides an appropriation of \$247,000 to implement the act, some of which may be made available to offset expenses of meeting participants.

2:23 PM -- Discussion of Upcoming Meetings and Tours of the Water Resources Review Committee

Chairman Isgar explained that the Water Resources Review Committee is authorized to take two tours during the 2005 interim. The first tour is scheduled for August 23 through August 26 in northwest Colorado. Tentative tour sites include portions of the Colorado-Big Thompson Project, Wolford Mountain Reservoir, Elk Head Reservoir, Stage Coach Reservoir, and a briefing on Shell Oil Company's research concerning oil shale. The second tour, originally scheduled for southwestern Colorado from September 20 and 21 was cancelled and rescheduled for September 27 and 28, location to be determined.

2:45 PM

The chairman identified agenda items for upcoming meetings that had been requested by committee members prior to the meeting. After discussing the proposed agenda, committee members also requested an update on well pumping in the South Platte River Basin and a briefing on funding needs for endangered species recovery programs in Colorado. Staff was instructed to contact potential presenters and determine appropriate meeting dates and times (Attachment A).

3:08 PM -- Recess

The committee recessed.

3:21 PM -- Overview of Recreational In-Channel Diversions (RICD)

At the invitation of Chairman Isgar, Ted Kowalski, the CWCB's RICD Coordinator, provided a history of recreational water rights in Colorado (Attachment B). He explained that the Colorado General Assembly enacted Senate Bill 97 in 1973 which allowed a water right to remain in a stream for environmental protections. Such water rights differed from traditional water rights that are obtained by diverting water from a stream. In 1992, the Colorado Supreme Court expanded recognition of in-channel water rights to include a water right for the City of Fort Collins' boat shoot and fish ladder. In 1998, the City of Golden applied for a water right for its kayak course, and, in 1999, the court granted a decree for a kayaking course in Littleton. In 2001, the General Assembly enacted SB01-216 to guide the granting of RICDs. This law limits RICD applicants to local governments and prohibits changing conditional water rights for recreational in-channel purposes. It also defines such diversions as the minimum stream flow necessary for a reasonable recreational experience. SB01-216 requires the CWCB to make recommendations to the water court regarding the approval of an RICD application.

3:32 PM

SB01-216 authorized the CWCB to draft rules to guide its review of RICD applications. Mr. Kowalski explained that the CWCB is currently considering amendments to these rules to reflect the Colorado Supreme Court's decision in *CWCB v. Upper Gunnison River Water Conservancy District*. In part, this decision limited the role of the CWCB in reviewing RICD applications. He also identified pending RICD applications including those filed by Chaffee County, the cities of Pueblo, Steamboat Springs, and Silverthorne, and the Upper Gunnison River Water Conservancy Districts. To date, only the City of Longmont's RICD has been decreed under the SB01-216 process. Mr. Kowalski also identified methods for protecting RICDs while helping to ensure that Colorado is able to maximize the use of its compact entitlement. Such methods include limiting the use of RICDs during dry years or during certain times, such as holiday weekends and during daylight hours.

3:45 PM - Questions and Answers about RICDs

At the invitation of Chairman Isgar, Rod Kuharich, CWCB Director, and Dave Robbins, Attorney for the Town of Silverthorne, were invited to respond to questions from the committee about RICDs. A question was asked about the meaning of "control" that determines the volume of water in a RICD. Specifically, the law defines an RICD as the minimum stream flow "as it is diverted, captured, and *controlled* and placed to a beneficial use between specific points defined by a physical *control* structure..." Mr. Robbins explained that the Town of Silverthorne's RICD control structure extends from bank to bank. It was designed to pass the full RICD volume through the structure. Unlike some RICD structures, the town's RICD structure clearly defines the amount of water that may be called during a water shortage. A water right allows a user to "call" for their water during water shortages. When a call is placed on a river, junior water rights must cease diverting until senior water rights have been satisfied. In contrast to Silverthorne's control structure, Mr. Robbins explained, some RICD structures do not fully control the RICDs volume. RICDs that fail to control the full appropriation may cause confusion about the amount of water that may be called during a water shortage. Committee discussion followed about the need to accurately measure water flows near an RICD. Mr. Robbins and Mr. Kuharich also explained that the law does not limit RICDs to specific times of the day or year. Consequently, an RICD may be in effect at night or other time when there are no users. They also explained that the law does not limit the type of water that may be appropriated for an RICD. Consequently, an RICD may depend on water from another basin that is being diverted for use by a municipality or other entity that is downstream from the RICD. Committee discussion followed about limiting RICDs to water that is not claimed by downstream water rights owners.

4:04 PM

Mr. Kuharich explained that CWCB's RICD manual includes a flow recommendation for RICDs of 50 cubic feet per second (cfs) to 350 cfs. Prior to adopting this recommendation, the CWCB considered flows needed for nationally recognized kayak courses, such as the 425 cfs used by the Atlanta Olympics kayak course. In *CWCB v. Upper Gunnison River Water Conservancy District*, the Colorado Supreme said that the water court, not the CWCB, is not charged with determining appropriate stream flows for an RICD. Consequently, the CWCB will limit its review of RICD applications to determining whether the RICD is the minimum amount necessary for a reasonable recreational experience. Mr. Robbins explained that many local governments are planning to build white water courses. He expressed concern that too many courses may result in unused RICDs. Mr. Kuharich explained that an RICD may preclude the ability to exchange water rights. However, limiting RICDs to certain periods of the day may allow exchanges to occur when an RICD is not in use, such as at night, thereby allowing the maximizing use of Colorado's compact entitlement. Mr. Robbins expressed concern about the potential effect of large RICDs near the state line that may limit Colorado's ability to fully use its compact entitlement. Current law does not limit the location of RICDs.

4:19 PM

Committee discussion followed about the potential problem of local governments acquiring RICDs to prevent upstream water development. Mr. Kuharich closed his remarks by describing provisions of the Silverthorne RICD application that helps ensure that upstream water development may occur.

4:26 PM

The meeting adjourned.