Report to the Colorado General Assembly

Water Resources Review Committee

Prepared by

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December 2012

To Members of the Sixty-eighth General Assembly:

Submitted herewith is the final report of the Water Resources Review Committee. This committee was created pursuant to Article 98 of Title 37, Colorado Revised Statutes. The purpose of this committee is to oversee the conservation, use, development, and financing of Colorado's water resources.

At its meeting on October 15, 2012, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2013 session was approved.

Sincerely,

/s/ Representative Frank McNulty
Chairman

Water Resources Review Committee

Members of the Committee

Representative Jerry Sonnenberg, Chair
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December 2012

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http://www.colorado.gov/lcs/WRRC

Committee Charge

Section 37-98-102, C.R.S., creates the Water Resources Review Committee. The committee is composed of five members from the House of Representatives and five members from the Senate. The committee was authorized to meet six times in 2012, including twice outside of the interim period, and to take two field trips in connection with its mandate.

The committee is charged with contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and reviewing and proposing water resources legislation. The committee is to meet with experts in the field of water conservation, quality, use, finance, and development in furthering its charge.

Committee Activities

The committee met four times and took one tour during the 2012 interim. It met with a broad range of water users and government officials, including local water providers, state water rights administrators, water quality regulators, state water planners, water project developers, and concerned citizens. The committee received briefings on major water issues affecting the state, including planning for future water needs, funding needs for state water agencies and water projects, regulation of ground water use, implementation of new water laws, and other issues, and recommended a number of proposals.

In June, the committee toured for two days in the southern metropolitan area and visited ground water storage and distribution facilities, irrigation projects, wastewater treatment facilities, a proposed subdivision, and other sites. This tour was organized by the Colorado Foundation for Water Education. In August, the committee attended the Colorado Water Congress summer convention in Steamboat Springs, where it held a public meeting to discuss a variety of topics, including: the regulation of South Platte River water diversions; a proposed water diversion project from the Green River in Wyoming to Colorado front range communities; the Division of Water Resources' budget challenges; and alternatives to protect senior water users in the San Luis Valley from ground water well pumping. The committee also attended presentations about water and energy development, water infrastructure financing, ongoing water supply studies, and other water management issues.

Water Quality Issues

Permits for stormwater discharges. The committee considered several issues affecting water quality in the state, including the regulation of water treatment facilities, proposed changes to the arsenic standard, and the regulation of stormwater discharges from construction and mining sites. Water pollution discharges are regulated by the Water Quality Control Division in the Colorado Department of Public Health and Environment (CDPHE).

The committee heard testimony from representatives of the concrete and mining industry about recent revisions to the general permit under which CDPHE regulates and permits stormwater discharges by a broad category of industrial dishcargers. According to this testimony, changes to

the general permit implemented by the CDPHE have increased paperwork and monitoring costs and are not justified by evidence of compliance problems with permit holders. The department's permit revision process cannot be challenged under the current State Administrative Procedure Act, as revisions upon the renewal of a general permit do not constitute rulemaking or action on a current license.

Committee recommendation. The committee recommends Bill F, which provides recourse under the State Administrative Procedure Act for stormwater dischargers subject to new or amended general permit requirements. Under this bill, any new or amended permit requirements are subject to rule-making procedures, including formal hearings, the creation of a record of the basis and purpose for new or amended requirements, and cost-benefit analyses.

Nutrient water quality standards. At its June 12, 2012, rulemaking hearing, the WQCC amended its regulation concerning basic standards and methodologies for surface water to address nutrients. It also adopted a new nutrients management control regulation (Regulation 85) that establishes numerical effluent limitations for domestic wastewater treatment plants and other wastewater dischargers that use active treatment and are likely to have significant levels of nutrients in their discharges. Regulation 85 also describes steps to be taken by other point source dischargers and nonpoint sources to address nutrients. Finally, the regulation establishes monitoring requirements for point source dischargers and a program aimed at monitoring surface waters for nutrients and related parameters. According to the WQCC, nutrient control in Colorado will proceed faster and more expeditiously by focusing the primary control efforts over the next decade on the technology-based approach set forth in Regulation 85 rather than by applying the numerical standards to the state's water bodies. The WQCC submitted the changes to Regulation 31 to the EPA for approval as required by the Federal Clean Water Act. It did not submit Regulation 85 to the EPA for its approval because the rule is a control regulation authorized by Colorado law, not a water-quality standard or regulation required by the Federal Clean Water Act. The committee received an update on the implementation of the nutrient rules from the CDPHE including options to help local communities to pay for these improvements.

Water Use on Federal Lands

Obtaining water for ski areas from federal lands. Most ski areas in Colorado are located in national forests and are subject to special use permits issued by the U.S. Forest Service (USFS). Pursuant to federal law, waters arising on federal lands in the western United States are available for appropriation and use by the public according to the law of the state in which the federal lands are located. Most ski areas in Colorado have appropriated water rights to facilitate ski area operations, including snow making. The source of these water rights includes federal and nonfederal lands.

2012 U.S. Forest Service Directive. The USFS recently changed the terms of its special use permits for ski areas by issuing Interim Directive 2709.11-2012-2 (the 2012 directive) that prohibits ski area operators from transferring certain water rights associated with the ski area to any third parties and requires that, if the special use permits are terminated, the ski area operators must transfer certain water rights associated with the ski area to the United States or succeeding special use permit holders without any further compensation. On January 9, 2012, the National Ski Areas Association filed a lawsuit in federal district court in Colorado against the USFS to challenge the 2012 directive, claiming that it results in an unconstitutional taking of property without compensation. On December 19, 2012, the U.S. District Court ruled that the USFS failed to develop the new water rights clause under formal public processes required under federal

regulations. He also ruled that the U.S. Forest Service violated federal regulations because the agency did not evaluate the economic costs of forcing some smaller ski areas to to assign their water rights to the Forest Service without compensation. The committee heard testimony from members of the ski area industry about the potential impact of the 2012 directive on Colorado ski areas. It also heard from members of the livestock and agriculture industry about similar actions by the U.S. Forest Service in other states where water rights are demanded in exchange for federal permits.

Committee recommendations. The committee recommends Resolution A which encourages the U.S. Forest Service to rescind its 2012 directive concerning the transfer of water rights owned by a ski area to third parties, and other policies in which water rights are demanded in exchange for federal permits. The committee also recommends Bill C which specifies that a landowner cannot demand as a condition of granting a right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right.

Water Use in Designated Basins

Regulation of water use in designated basins. There are few rivers in eastern Colorado, but there are large ground water resources that are important to agriculture and eastern municipalities. This ground water is largely nonrenewable and isolated from surface streams. Wells are the primary source of water used in this area. To administer these wells, the law allows the formation of designated ground water basins that are regulated according to a modified doctrine of prior appropriation. Ground water basins are designated by the 12-member Ground Water Commission. The committee heard testimony from representatives of the towns of Bennett and Strasburg that are located in a designated basin and are unable to obtain final permits for their wells. For most water wells in designated basins, the state engineer issues a conditional permit and then issues a final permit after the water has been put to beneficial use. But under current law, the requirement for a final permit does not apply to wells permitted on or after July 1, 1991, that withdraw designated ground water from the Denver basin aquifers.

Committee recommendation. The committee recommends Bill A that deletes the requirement for a final permit for all wells withdrawing designated ground water from the Denver basin aquifers.

Once a basin has been designated, electors in the basin may create ground water management districts. Each district is empowered to regulate the use, control, and conservation of ground waters within the district. Thirteen ground water management districts have been created within six of Colorado's designated basins. The committee heard testimony from the state engineer and a ground water management district that current law does not allow ground water management districts to enforce their rules and regulations for all types of wells. The committee considered, but did not recommend, a bill that would have authorized a district to enforce permits for all wells located within the district.

Water Rights Records

Location of water diversion structures. A number of water rights in Colorado are affected by erroneous location descriptions for the point of diversion. These erroneous descriptions are the result of clerical errors, changes in landmarks or survey methods, and minor inaccuracies. Under current law, if the owner of a water right uses a point of diversion other than that described in the adjudicated decree, the owner must apply to the water court for a change of water right.

Committee recommendation. The committee recommends Bill D to create an expedited process to modify the decreed location of a point of diversion that is erroneously located. An erroneous point of diversion is established where a diversion has been located in the same location since the original decree, the location does not match the decreed location, and the owner of the water right has been making diversions with the intent of following the decree. Once proven by an applicant, a correction in the decreed point of diversion to reflect existing conditions is subject to a rebuttable presumption that it will not cause injury to other water rights.

Irrigation records. Since 1937, all irrigation water rights in Colorado included in their decree a specific maximum amount of acreage to which the water right could be applied. State law governing water rights requires agricultural users to designate acreage to be irrigated by a given water right, but statute does not currently provide a mechanism for determining the amount of acreage available to pre-1937 water rights that lack a decreed amount. In some cases, the courts have interpreted pre-1937 water rights to provide for less irrigated acreage than the amount historically irrigated by that water right.

Committee recommendation. The committee recommends Bill E which establishes a mechanism to determine the amount of irrigated acreage available to a pre-1937 water right. Under the bill, the maximum amount of acreage irrigated during the first 50 years following the original decree is the amount of acreage available to a water right where such acreage has not already been determined in an adjudication.

Water Conservation and Reuse

Water conservation and ground water pumping. The committee heard testimony about challenges facing irrigators in designated basins who want to reduce ground water withdrawals by shutting off part of their irrigation system, called *end guns.* End guns deliver a higher volume of water which may increase evaporative loss and reduce the efficiency of an irrigation system. An irrigator expressed concern that under current law, shutting off the end guns may impact an owner's ground water right. Specifically, the amount of water that can be changed to a new type or place of use is limited by the amount of water that was historically consumed by the original type and place of use. Consequently, conserving water may risk devaluation of a water right. Current law encourages the conservation of water in some situations by eliminating from the determination of abandonment the period during which water is conserved under a variety of formal programs.

Committee recommendation. The committee recommends Bill B which specifies that once the State Engineer issues a final permit for the withdrawal of designated ground water, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce the maximum annual volume of the appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated.

Water reuse. Most water in Colorado may only be used once. Any water that is not consumed by a beneficial use must be allowed to return to the stream system for use by other water rights. Some Western states, including Arizona, California, Montana, New Mexico, and Utah, allow reuse of certain water for landscape irrigation or in-house purposes. The committee heard testimony from researchers at Colorado State University about potential water efficiencies related to water reuse technologies for residential purposes. These systems collect water from sinks, showers, bathtubs, and laundry that is easily treated for reuse for lower risk uses, such as toilet flushing. Such water, called graywater, would not include water from dishwashers, kitchen sinks, or toilets that pose higher health risks or would require more expensive treatment to make the water suitable for reuse. According to testimony, graywater reuse may help utilities save money through reduced treatment costs and reduce the need for new residential water supplies. The committee considered, but did not recommend, legislation that would have required the Colorado Water Quality Control Commission to adopt a regulation establishing reuse standards for graywater that is collected within a residential, commercial, or industrial building. It also would have specified that if the graywater was applied only to uses that were allowed by the water sources' well permits and water rights, the use of the graywater was deemed to be consistent with the well permits and water rights and deemed to not cause injury to other water users.

Water Infrastructure

Funding for water projects and state water agencies. Under state law, two accounts maintained by the Department of Natural Resources receive half of the total severance tax revenue in the Severance Tax Trust Fund: the Operational Account and the Perpetual Base Account. Since 2009, the General Assembly has authorized the transfer of almost $422 million into the General Fund from sources that would otherwise have been available for water infrastructure, including $158 million from the Perpetual Base Account, $10 million from the Colorado Water Conservation Board Construction Fund, $15 million from the operational account, $168 million from the Local Government Severance Tax Fund, $19 million from the Local Government Permanent Fund, and $46 million for the Local Government Mineral Impact Fund. Including 2008, the General Assembly has transferred approximately $170 million from the balance of the Perpetual Base Account for budget balancing actions. While the Perpetual Base Account remains solvent, the amount of loan activity for water projects has declined from $20 million to $50 million per budget year prior to 2008 to a total of $51 million in total spending in the past three budget years. Energy impact assistance grants have also been suspended as of 2011. These grants provided $91 million for drinking water and wastewater projects from 2007 to 2010. The committee discussed the need for funding for water storage and infrastructure projects in order to accommodate Colorado's population, which is projected to nearly double by 2050. It also discussed the transfers from accounts in the Severance Tax Trust Fund into the General Fund and the effect of these transfers on Colorado's ability to fund water infrastructure projects.

Committee recommendation. The committee recommends Resolution B which urges the General Assembly to remain cognizant of the important role that water infrastructure plays in Colorado's economic and social well being when prioritizing its expenditures.

Water Education

Colorado Foundation for Water Education. In 2002, the legislature authorized the formation of the Colorado Foundation for Water Education (CFWE). According to this law, the purpose of the foundation ". . . is to promote a better understanding of water issues through educational opportunities and resources so Colorado citizens will understand water as a limited resource and will make informed decisions." The 2002 law included a $250,000 appropriation to start the foundation and authorized the CWCB to allocate $150,000 annually to the foundation. The committee heard testimony from the first vice president of the CFWE and its executive director who discussed the history of the foundation and its efforts to increase membership and reduce the need for state moneys. Approximately 20 percent of the foundation's annual budget comes from the Colorado Water Conservation Board Construction Fund, and the remaining portion comes from membership dues, grants, and donations. The foundation's budget is used to provide training for water professionals and the public about Colorado's water laws and programs, distribute citizens' guides on water policy, and provide other documents and educational opportunities. The foundation is governed by a 20-member board that is required by its bylaws to include the chair of the House Agriculture, Livestock, and Natural Resources Committee, the chair of the Senate Agriculture, Natural Resources, and Energy Committee, two appointees from the Colorado Water Conservation Board, and one appointee from the executive director's office of the Colorado Department of Natural Resources.

Summary of Recommendations

As a result of the committee's activities, the following bills are recommended to the Colorado General Assembly.

Bill A — Final Well Permit Requirements for Denver Basin Designated Basin Wells

Bill A deletes the requirement for a final permit for all wells withdrawing designated ground water from the Denver Basin aquifers.

Bill B — Promote Water Conservation in Designated Basins

Bill B directs the Ground Water Commission to disregard the decrease in use of water from water conservation programs in its determinations of historical consumptive use.

Bill C — Protect Water Rights Ownership Rights

Bill C prohibits a landowner from demanding as a condition of granting a right-of-way or special use permit that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right. Also, a court may not order as a condition of an eminent domain proceeding that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right. The bill states that any such condition is void and unenforceable as against public policy.

Bill D — Erroneously Located Water Diversion Points

Bill D provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion if the point of diversion meets the definition of an "established erroneous point of diversion" as set forth in the bill.

Bill E — Irrigation Water Right Historical Use Acreage

Bill E creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and does not specify the amount of acreage that may be irrigated.

Bill F — Require Rule-making for Changes to General Permits

Bill F requires the Water Quality Control Division to comply with the rule-making procedures set forth in the State Administrative Procedure Act when the division proposes new or amended permit requirements with respect to general permits related to water quality control.

Resolution A — Oppose Forest Service Water Permit Requirements

Resolution A encourages the U.S. Forest Service to rescind its 2012 directive to ski areas concerning the transfer of water rights owned by a ski area to third parties and other policies in which water rights are demanded in exchange for federal permits.

Resolution B — Use Severance Tax Water Infrastructure

Resolution B urges the General Assembly to avoid future diversions of water infrastructure revenues for budget balancing purposes and to remain cognizant of the important role that water infrastructure plays in Colorado's economic and social well being when prioritizing its expenditures.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

http://www.colorado.gov/lcs/WRRC

Meeting Date and Topics Discussed

August 14, 2012

- Regulation of water use in the South Platte River Basin
- Regulation of water use in the Rio Grande Basin
- Division of Water Resources budget issues
- Survey of water diversion structure locations by the Division of Water Resources
- Update on proposed water diversion projects from the Green River and the Flaming Gorge Reservoir
- Colorado River Cooperative Agreement

September 6, 2012

- Implementation of House Bill 12-1278 concerning the South Platte Groundwater Study
- Storm water discharge permit requirements
- Allocation of the Animas-La Plata Project water
- Updates on major water development projects
- U.S. Forest Service order to assign ski area-owned water rights to the U.S. government

September 7, 2012

- Final nutrient water quality standard
- Proposed arsenic water quality standard
- Water, wastewater, and storm water infrastructure funding challenges
- Use of state severance tax funds for wildfire fighting

September 27, 2012

- Impacts of wildfires on water infrastructure
- Agriculture water leasing and long-term fallowing agreements
- Colorado Foundation for Water Education financial report
- Proposed legislation and assignment of bill sponsors

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL A

LLS NO. 13-0103.01 Thomas Morris x4218 **SENATE BILL**

SENATE SPONSORSHIP

Hodge, Brophy, Giron, Roberts, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees **House Committees**

A BILL FOR AN ACT

101 **CONCERNING THE DELETION OF THE REQUIREMENT FOR A FINAL**
102 **PERMIT FOR ALL WELLS WITHDRAWING DESIGNATED GROUND**
103 **WATER FROM THE DENVER BASIN AQUIFERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. For most water wells in designated basins, the state engineer issues a conditional permit and then issues a final permit after the water has been put to beneficial use. But under current law, the requirement for a final permit does not apply to wells permitted on or after July 1, 1991, that withdraw designated ground water from the Denver basin aquifers. The bill deletes the requirement for

a final permit for all wells withdrawing designated ground water from the Denver basin aquifers.

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

SECTION 1. In Colorado Revised Statutes, 37-90-108, **amend** (2) (a), (2) (d), and (3) (a) as follows:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (2) (a) If the well or wells described in a conditional permit have been constructed in compliance with subsection (1) of this section, the applicant, within three years after the date of the issuance of said permit, shall furnish by sworn affidavit, in the form prescribed by the commission, evidence that water from such well or wells has been put to beneficial use; except that ~~the requirements of~~ this paragraph (a) ~~shall~~ DOES not apply to a well described in a conditional permit ~~issued on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(d) If the well described in a conditional permit issued ~~on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers has been constructed in compliance with subsection (1) of this section, the applicant shall file a notice with the commission of commencement of beneficial use on a form prescribed by the commission within thirty days after the first beneficial use of any water withdrawn from ~~such~~ THE well.

(3) (a) (I) To the extent that the commission finds that water has been put to a beneficial use and that the other terms of the conditional permit have been complied with and after publication of the information required in the final permit, as provided in section 37-90-112, the

commission shall order the state engineer to issue a final permit to use designated ground water, containing such limitations and conditions as the commission deems necessary to prevent waste and to protect the rights of other appropriators. In determining the extent of beneficial use for the purpose of issuing final permits, the commission may use the same criteria for determining the amount of water used on each acre that has been irrigated that is used in evaluating the amount of water available for appropriation under section 37-90-107. ~~The provisions of~~ This subparagraph (I) ~~shall~~ DOES not apply to a well described in a conditional permit issued ~~on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers.

(II) A final permit is not required to be issued for a well described in a conditional permit ~~issued on or after July 1, 1991,~~ to withdraw designated ground water from the Dawson, Denver, Arapahoe, or Laramie-Fox Hills aquifers. For such a well, a conditional permit, subject to the conditions of issuance of such a permit, shall be considered a final determination of a well's water right if the well is in compliance with all other applicable requirements of this article.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2014 and, in such case, will take effect on the

1 date of the official declaration of the vote thereon by the governor.

2 (2) The provisions of this act apply to permits issued for
3 designated ground water from the Dawson, Denver, Arapahoe, or
4 Laramie-Fox Hills aquifers before, on, or after the applicable effective
5 date of this act.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 13-0112.01 Thomas Morris x4218 **SENATE BILL**

SENATE SPONSORSHIP

Brophy, Giron, Hodge, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees **House Committees**

A BILL FOR AN ACT

101 **CONCERNING SAFEGUARDS TO PREVENT THE MODIFICATION OF A**
102 **FINAL DESIGNATED GROUND WATER PERMIT BASED ON**
103 **REDUCTIONS IN THE USE OF DESIGNATED GROUND WATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. The bill specifies that once the state engineer issues a final permit for the withdrawal of designated ground water, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce the

maximum annual volume of the appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated.

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

SECTION 1. In Colorado Revised Statutes, 37-90-108, **amend** (5) as follows:

37-90-108. Final permit - evidence of well construction and beneficial use - limitations. (5) (a) All final permits ~~shall~~ MUST set forth the following information as a minimum:

~~(a)~~ (I) The priority date;

~~(b)~~ (II) The name of the claimant;

~~(c)~~ (III) The quarter-quarter in which the well is located;

~~(d)~~ (IV) The maximum annual volume of the appropriation in acre-feet per year;

~~(e)~~ (V) The maximum pumping rate in gallons per minute; and

~~(f)~~ (VI) The maximum number of acres ~~which~~ THAT have been irrigated, if used for irrigation.

(b) NOTWITHSTANDING ANY RULE OF LAW TO THE CONTRARY, ONCE THE STATE ENGINEER ISSUES A FINAL PERMIT FOR THE WITHDRAWAL OF DESIGNATED GROUND WATER PURSUANT TO THIS SECTION, A REDUCTION IN THE AMOUNT OF WATER USED PURSUANT TO THE PERMIT DUE TO THE CONSERVATION OF WATER IS NOT GROUNDS TO REDUCE:

(I) THE MAXIMUM ANNUAL VOLUME OF THE APPROPRIATION IN ACRE-FEET PER YEAR;

(II) THE MAXIMUM PUMPING RATE IN GALLONS PER MINUTE; OR

(III) THE MAXIMUM NUMBER OF ACRES THAT HAVE BEEN IRRIGATED, IF USED FOR IRRIGATION.

SECTION 2. Act subject to petition - effective date -

1 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
2 the expiration of the ninety-day period after final adjournment of the
3 general assembly (August 7, 2013, if adjournment sine die is on May 8,
4 2013); except that, if a referendum petition is filed pursuant to section 1
5 (3) of article V of the state constitution against this act or an item, section,
6 or part of this act within such period, then the act, item, section, or part
7 will not take effect unless approved by the people at the general election
8 to be held in November 2014 and, in such case, will take effect on the
9 date of the official declaration of the vote thereon by the governor.
10 (2) The provisions of this act apply to determinations of water
11 volume, water rate, and acreage occurring on or after the applicable
12 effective date of this act.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL C

LLS NO. 13-0111.01 Thomas Morris x4218 **HOUSE BILL**

HOUSE SPONSORSHIP

Sonnenberg and Baumgardner, Swerdfeger, Wilson

SENATE SPONSORSHIP

(None), Brophy, Giron, Hodge, Roberts

House Committees **Senate Committees**

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON A LANDOWNER'S ABILITY TO IMPOSE
102 CONDITIONS ON A WATER RIGHT OWNER AS A CONDITION OF
103 PERMISSION TO USE LAND.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. The bill specifies, in the contexts of rights-of-way for water rights and the basic tenets of Colorado water law, that:

- A landowner cannot demand as a condition of granting a right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right; and
- Any such condition is void and unenforceable as against public policy.

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

SECTION 1. In Colorado Revised Statutes, **amend** 37-86-102 as follows:

37-86-102. Right-of-way through other lands. (1) Any person owning a water right or conditional water right ~~shall be~~ IS entitled to a right-of-way through the lands ~~which~~ THAT lie between the point of diversion and point of use or proposed use for the purpose of transporting water for beneficial use in accordance with ~~said~~ THE water right or conditional water right.

(2) A LANDOWNER SHALL NOT DEMAND AS A CONDITION OF GRANTING A RIGHT-OF-WAY OR SPECIAL USE PERMIT, AND A COURT SHALL NOT ORDER AS A CONDITION OF AN EMINENT DOMAIN PROCEEDING AUTHORIZED PURSUANT TO SECTION 37-86-104 (1), THAT THE OWNER OF A WATER RIGHT OR CONDITIONAL WATER RIGHT ASSIGN TO THE LANDOWNER PARTIAL OR JOINT OWNERSHIP OF THE WATER RIGHT OR LIMIT THE ALIENABILITY OF THE WATER RIGHT. ANY SUCH CONDITION IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.

SECTION 2. In Colorado Revised Statutes, 37-92-102, **add** (7) as follows:

37-92-102. Legislative declaration - basic tenets of Colorado water law. (7) A LANDOWNER SHALL NOT DEMAND AS A CONDITION OF

1 GRANTING A RIGHT-OF-WAY OR SPECIAL USE PERMIT, AND A COURT SHALL
2 NOT ORDER AS A CONDITION OF AN EMINENT DOMAIN PROCEEDING
3 AUTHORIZED PURSUANT TO SECTION 37-86-104 (1), THAT THE OWNER OF
4 A WATER RIGHT OR CONDITIONAL WATER RIGHT ASSIGN TO THE
5 LANDOWNER PARTIAL OR JOINT OWNERSHIP OF THE WATER RIGHT OR LIMIT
6 THE ALIENABILITY OF THE WATER RIGHT. ANY SUCH CONDITION IS VOID
7 AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.
8 **SECTION 3. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
10 the expiration of the ninety-day period after final adjournment of the
11 general assembly (August 7, 2013, if adjournment sine die is on May 8,
12 2013); except that, if a referendum petition is filed pursuant to section 1
13 (3) of article V of the state constitution against this act or an item, section,
14 or part of this act within such period, then the act, item, section, or part
15 will not take effect unless approved by the people at the general election
16 to be held in November 2014 and, in such case, will take effect on the
17 date of the official declaration of the vote thereon by the governor.
18 (2) The provisions of this act apply to acts occurring on or after
19 the applicable effective date of this act.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL D

LLS NO. 13-0104.01 Jennifer Berman x3286 **SENATE BILL**

SENATE SPONSORSHIP

Giron, Brophy, Hodge, Roberts, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees **House Committees**

A BILL FOR AN ACT

101 **CONCERNING POINTS OF DIVERSION THAT ARE NOT LOCATED AT THE**
102 **PHYSICAL LOCATION SPECIFIED IN THE DECREES FOR DIVERTED**
103 **WATER RIGHTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. For a variety of reasons, some points of diversion are erroneously placed at a location that is different from the decreed location established by a water court. The

reasons for these erroneous locations include advances in surveying technology and standards, typographical errors in a water rights decree, references in a decree to landmarks that do not exist any more or have changed, and floods and other natural events affecting the diversion structure. The bill provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion if the point of diversion meets the definition of an "established erroneous point of diversion", as set forth in the bill.

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

SECTION 1. Legislative declaration. It is the purpose of this act to allow the owners and users of water rights to reconcile the actual location of diversion structures with the described locations in the original decrees confirming the water rights when the water rights have continuously diverted at the same location with the intent to divert pursuant to the decreed location. If the erroneous location description in the decrees is due to a clerical error, a difference in locating methods from the time the decrees were established, or a minor inaccuracy, this act will allow the owners and users of the water rights to correct the location description in the decrees without the need to file an application for a change of water right.

SECTION 2. In Colorado Revised Statutes, 37-92-305, **add** (3.6) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (3.6) **Correction to an established erroneous point of diversion - definitions.** (a) AS USED IN THIS SUBSECTION (3.6):

(I) "DIVERTER" MEANS THE OWNER OR USER OF A DECREED WATER RIGHT.

(II) "ESTABLISHED ERRONEOUS POINT OF DIVERSION" MEANS A

POINT OF DIVERSION OF EITHER SURFACE WATER OR GROUNDWATER:

(A) THAT HAS BEEN AT THE SAME PHYSICAL LOCATION SINCE THE APPLICABLE ORIGINAL DECREE OR DECREES CONFIRMED THE WATER RIGHT, UNLESS IT WAS RELOCATED PURSUANT TO SECTION 37-86-111 OR, IN THE CASE OF A WELL, RELOCATED ACCORDING TO A VALID WELL PERMIT;

(B) THAT IS NOT LOCATED AT THE LOCATION SPECIFIED IN THE APPLICABLE DECREE OR DECREES CONFIRMING THE WATER RIGHT; AND

(C) FROM WHICH THE DIVERTER HAS DIVERTED WATER WITH THE INTENT TO DIVERT PURSUANT TO THE DECREE OR DECREES CONFIRMING THE WATER RIGHT.

(b) (I) TO PROCEED WITH A CORRECTION IN POINT OF DIVERSION UNDER THIS SUBSECTION (3.6), A DIVERTER HAS THE BURDEN TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT A POINT OF DIVERSION IS AN ESTABLISHED ERRONEOUS POINT OF DIVERSION.

(II) EXCEPT AS SPECIFICALLY MODIFIED BY THIS SUBSECTION (3.6), AN APPLICATION FOR A CORRECTION IN POINT OF DIVERSION IS SUBJECT TO ALL PROVISIONS OF THIS ARTICLE, INCLUDING SECTIONS 37-92-302 TO 37-92-305.

(III) THE PROCEDURES IN THIS SUBSECTION (3.6) APPLY ONLY TO A CORRECTION IN POINT OF DIVERSION AND DO NOT ALTER THE PROCEDURES OR LEGAL STANDARDS APPLICABLE TO A CHANGE OF WATER RIGHT.

(IV) A DIVERTER MAY APPLY FOR A CORRECTION IN POINT OF DIVERSION ONLY:

(A) FOR A POINT OF DIVERSION THAT IS ALREADY IN PLACE; AND

(B) IF ONE OR MORE WATER RIGHTS ARE DIVERTED AT THE CORRECTED POINT OF DIVERSION.

(V) THE APPLICATION MUST NOT INCLUDE OR BE CONSOLIDATED

OR JOINED WITH AN ACTION BY THE APPLICANT SEEKING ANY TYPE OF CHANGE OF WATER RIGHT OR DILIGENCE PROCEEDING OR APPLICATION TO MAKE ABSOLUTE WITH RESPECT TO THE WATER RIGHT OR RIGHTS INCLUDED IN THE APPLICATION.

(c) IF AN APPLICANT PROVES THE MATTERS IN PARAGRAPH (a) OF THIS SUBSECTION (3.6) BY A PREPONDERANCE OF THE EVIDENCE, THEN THERE IS A REBUTTABLE PRESUMPTION THAT A CORRECTION IN POINT OF DIVERSION:

(I) WILL NOT CAUSE AN ENLARGEMENT OF THE HISTORICAL USE ASSOCIATED WITH A WATER RIGHT DIVERTED AT THE POINT OF DIVERSION; AND

(II) DOES NOT INJURIOUSLY AFFECT THE OWNER OF OR PERSONS ENTITLED TO USE WATER UNDER A VESTED WATER RIGHT OR A DECREED CONDITIONAL WATER RIGHT.

(d) IF THE APPLICANT DOES NOT PROVE THE MATTERS IN PARAGRAPH (a) OF THIS SUBSECTION (3.6) OR IF THE PRESUMPTIONS IN PARAGRAPH (c) OF THIS SUBSECTION (3.6) ARE SUCCESSFULLY REBUTTED, THE REFEREE OR WATER JUDGE SHALL DISMISS THE APPLICATION WITHOUT PREJUDICE TO THE APPLICANT'S FILING AN APPLICATION FOR A CHANGE OF WATER RIGHT.

(e) THE FOLLOWING STANDARDS APPLY TO A CORRECTION IN POINT OF DIVERSION:

(I) THE DECREE MUST NOT REQUANTIFY THE WATER RIGHTS FOR WHICH THE POINT OF DIVERSION IS BEING CORRECTED; AND

(II) THE APPLICANT, IN PROSECUTING THE CORRECTION IN POINT OF DIVERSION, IS NOT REQUIRED TO:

(A) PROVE THAT THE WATER DIVERTED AT THE CORRECTED POINT OF DIVERSION CAN AND WILL BE DIVERTED AND PUT TO USE WITHIN A

1 REASONABLE PERIOD OF TIME;

2 (B) PROVE COMPLIANCE WITH THE ANTI-SPECULATION DOCTRINE;

3 OR

4 (C) PROVIDE OR MAKE A SHOWING OF FUTURE NEED IMPOSED BY

5 THE CASES OF *PAGOSA AREA WATER AND SANITATION DISTRICT V. TROUT*

6 *UNLIMITED*, 219 P.3d 774 (COLO. 2009) OR *CITY OF THORNTON V. BIJOU*

7 *IRRIGATION CO.*, 926 P.2d 1 (COLO. 1996).

8 **SECTION 3. Act subject to petition - effective date.** This act

9 takes effect at 12:01 a.m. on the day following the expiration of the

10 ninety-day period after final adjournment of the general assembly (August

11 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a

12 referendum petition is filed pursuant to section 1 (3) of article V of the

13 state constitution against this act or an item, section, or part of this act

14 within such period, then the act, item, section, or part will not take effect

15 unless approved by the people at the general election to be held in

16 November 2014 and, in such case, will take effect on the date of the

17 official declaration of the vote thereon by the governor.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL E

LLS NO. 13-0109.01 Jennifer Berman x3286 **SENATE BILL**

SENATE SPONSORSHIP

Hodge, Brophy, Giron, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees **House Committees**

A BILL FOR AN ACT

101 **CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT**
102 **DECREES REGARDING THE PLACE OF USE OF IRRIGATION WATER.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. Current law requires irrigation water right decrees to specify the acreage on which the water may be used, but some older decrees do not include an acreage limitation. For such decrees, water courts look to the original appropriator's intent in

determining the lawful historical consumptive use of a decreed irrigation water right; however, it is often very difficult to determine the original appropriator's intent, which has resulted in cases that substantially decrease the acreage that has historically been irrigated by a water right.

The bill creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and is unclear about the amount of acreage that may be irrigated under the water right.

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

SECTION 1. In Colorado Revised Statutes, 37-92-305, **amend** (4) (a) (I) as follows:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (4) (a) Terms and conditions to prevent injury as specified in subsection (3) of this section may include:

(I) (A) A limitation on the use of the water that is subject to the change, taking into consideration the historical use and the flexibility required by annual climatic differences.

(B) FOR PURPOSES OF ADMINISTRATION AND DETERMINING LAWFUL HISTORICAL CONSUMPTIVE USE, IF A DECREE ENTERED BEFORE JANUARY 1, 1937, ESTABLISHES AN IRRIGATION WATER RIGHT AND DOES NOT EXPRESSLY LIMIT THE NUMBER OF ACRES THAT THE APPROPRIATOR MAY IRRIGATE UNDER THE WATER RIGHT, THE LAWFUL MAXIMUM AMOUNT OF IRRIGATED ACREAGE EQUALS THE MAXIMUM AMOUNT OF ACREAGE IRRIGATED DURING THE FIRST FIFTY YEARS AFTER ENTRY OF THE ORIGINAL DECREE, UNLESS A COURT OF COMPETENT JURISDICTION HAS ENTERED AN ORDER TO THE CONTRARY.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August

1 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2014 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL F

LLS NO. 13-0108.01 Jennifer Berman x3286 **SENATE BILL**

SENATE SPONSORSHIP

Brophy, Roberts

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Swerdfeger

Senate Committees **House Committees**

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT THE DIVISION OF**
102 **ADMINISTRATION OF THE DEPARTMENT OF PUBLIC HEALTH AND**
103 **ENVIRONMENT FOLLOW RULE-MAKING PROCEDURES WHEN**
104 **PROPOSING CHANGES TO GENERAL PERMITS RELATED TO WATER**
105 **QUALITY CONTROL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://www.leg.state.co.us/billsummaries.)

Water Resources Review Committee. Currently, the division of

administration (division) of the department of public health and environment may adopt new and amended permit requirements for general permits related to water quality control without providing any of the following information to existing and potential permit holders:

- A statement of basis and purpose for the changes;
- Evidence and data in support of the changes; and
- A cost-benefit analysis of the effect the changes will have on permit holders.

The bill requires the division to comply with the rule-making procedures set forth in the "State Administrative Procedure Act" when the division proposes new or amended permit requirements with respect to general permits related to water quality control.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 25-8-503.5 as
3 follows:

4 **25-8-503.5. General permits - process for changing permit**
5 **requirements.** WITH RESPECT TO A GENERAL PERMIT LISTED IN SECTION
6 25-8-502 (1) (b) (I) (G), WHEN PROPOSING NEW OR AMENDED PERMIT
7 REQUIREMENTS FOR DISCHARGERS TO MEET TO OBTAIN OR MAINTAIN
8 AUTHORIZATION FOR DISCHARGES UNDER THE PERMIT, THE DIVISION
9 SHALL COMPLY WITH THE RULE-MAKING PROCEDURES SET FORTH IN
10 SECTION 24-4-103, C.R.S.

11 **SECTION 2. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in

1 November 2014 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

RESOLUTION A

LLS NO. R13-0110.01 Thomas Morris x4218 **HOUSE Joint Resolution**

HOUSE SPONSORSHIP

Sonnenberg and Baumgardner, Swerdfeger, Wilson

SENATE SPONSORSHIP

(None), Brophy, Giron, Hodge, Roberts

House Committees **Senate Committees**

HOUSE JOINT RESOLUTION

101 **CONCERNING OPPOSITION TO NEW SPECIAL USE PERMIT WATER**
102 **REQUIREMENTS.**

1 WHEREAS, Most ski areas in Colorado are located in national
2 forests, and consequently are subject to special use permits issued by the
3 United States Forest Service; and

4 WHEREAS, Pursuant to federal law, waters arising on federal
5 lands in the western United States are available for appropriation and use
6 by the public according to the law of the state in which the federal lands
7 are located; and

8 WHEREAS, Most ski areas in Colorado have appropriated water
9 rights to facilitate ski area operations, and while some of this water arises
10 on federal lands, including national forest lands that may or may not be
11 subject to the ski area special use permit, some of the water arises on
12 nonfederal lands; and

WHEREAS, The Forest Service has recently changed the terms of its special use permits for ski areas by issuing Interim Directive 2709.11-2012-2 (the 2012 Directive); and

WHEREAS, The 2012 Directive prohibits ski area operators from transferring certain water rights associated with the ski area to any third parties and requires that, if the special use permits are terminated, the ski area operators must transfer certain water rights associated with the ski area to the United States or succeeding special use permit holders without any further compensation; and

WHEREAS, Pursuant to federal law, the United States can acquire water rights, other than by purchase or a similar transaction, in one of only two ways: By impliedly reserving rights to supply water for the primary purposes of a withdrawal of federal lands from the public domain, or by complying with applicable state law to supply water for any other federal purpose; and

WHEREAS, Colorado's constitution provides that water rights are acquired according to the doctrine of prior appropriation, pursuant to which the first person to put water to a beneficial use acquires the right to continue to use the water; and

WHEREAS, To effectuate the appropriation of federal water rights pursuant to state law, the McCarran amendment, 43 U.S.C. § 666, waives the United States' sovereign immunity for the purpose of adjudicating and administering water rights pursuant to the applicable state's water laws; and

WHEREAS, A Federal Water Rights Task Force was created by federal law in response to a controversy in Colorado regarding the Forest Service's attempt to use its permitting authority to require water users to relinquish a part of their water supply or to provide water for the secondary purposes of the national forests; and

WHEREAS, In the task force's final report, the task force concluded that "Congress has not delegated to the Forest Service the authority necessary to allow it to require that water users relinquish a part of their existing water supply or transfer their water rights to the United States as a condition of the grant or renewal of federal permits"; and

WHEREAS, No federal law explicitly gives the Forest Service the authority to prohibit the transfer of water rights owned by the holders of special use permits or to require the holders of special use permits to transfer to the United States water rights used on federal lands but arising off the federal lands; and

WHEREAS, The National Ski Areas Association, on behalf of its ski area members, including 22 ski areas on National Forest Service lands in Colorado, has sued the Forest Service in federal district court, alleging that the 2012 Directive amounts to a taking of private property without due compensation and asking for a declaration that the Forest Service cannot "condition the issuance of a ski area special use permit on the assignment of, or restriction of alienability or severance of, water rights"; and

WHEREAS, Roughly 40% of the nation's cow herd and 50% of the sheep herd spend some time on federal lands, and there has been an increasing number of examples, not only with the ski industry, but also with water districts, and, recently, with permitted ranching activities, in which the Forest Service has tried to acquire ownership of water rights in return for the continuance of permitted activities on National Forest System lands; and

WHEREAS, While the Forest Service has not formally rejected use permits in Colorado, it has delayed issuing those permits in order to pursue its policy of obtaining stockwater rights in other states, which has prevented the full use of the range by wildlife as well as livestock; and

WHEREAS, The Forest Service's policy of withholding water improvement permits in exchange for stockwater rights flies in the face of the prior appropriation doctrine for water rights that exists in much of the West, including Colorado, is a threat to federal lands grazing throughout the West, and must be addressed; and

WHEREAS, The Water Resources Review Committee has reviewed the issues raised by this joint resolution and strongly urges the General Assembly to adopt it; now, therefore,

Be It Resolved by the House of Representatives of the Sixty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

(1) That the General Assembly encourages the Forest Service to immediately rescind the 2012 Directive and settle the pending litigation over the 2012 Directive;

(2) That, for the benefit of the range resource and our economy, the General Assembly urges the Forest Service to immediately reevaluate and discard its policy and actions whereby water rights are demanded in exchange for permitted uses; and

(3) That the General Assembly urges the Forest Service to utilize state laws and procedures to appropriate water rights if it wishes to ensure that water is available for fish and aquatic habitat protection purposes on the national forests rather than impose exactions in special use permits.

Be It Further Resolved, That a copy of this Joint Resolution be provided to Harris Sherman, Under Secretary for Natural Resources and Environment of the United States Department of Agriculture; the members of Colorado's congressional delegation; Glenn E. Porzak; Geraldine Link, Director of Public Policy for the National Ski Areas Association; Terry R. Fankhauser, Executive Vice President of the Colorado Cattlemen's Association; and Melanie Mills, CEO of Colorado Ski Country USA.

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

RESOLUTION B

LLS NO. R13-0107.01 Jennifer Berman x3286 **SENATE Joint Resolution**

SENATE SPONSORSHIP

Roberts and Hodge, Giron, Schwartz

HOUSE SPONSORSHIP

Sonnenberg, Baumgardner, Fischer, Swerdfeger, Wilson

Senate Committees **House Committees**

SENATE JOINT RESOLUTION

101 **CONCERNING THE ADVERSE EFFECTS THAT THE DIVERSION OF**
102 **REVENUES HAS HAD ON WATER INFRASTRUCTURE IN COLORADO.**

1 WHEREAS, Colorado is a semi-arid state, and much of our water
2 supply is located far from where it can be beneficially used; and

3 WHEREAS, Colorado is therefore heavily dependent upon water
4 infrastructure to move water to where it can serve the needs of our
5 agricultural, municipal, and industrial water users; and

6 WHEREAS, Our constitutional prior appropriation doctrine has
7 always promoted and protected the initiative and economic investments
8 of water users in building the water diversion, storage, and conveyance
9 infrastructure needed to put water to beneficial use; and

10 WHEREAS, Federal and state mandates have required the ongoing
11 construction, improvement, and replacement of treatment facilities for

drinking water and wastewater; and

WHEREAS, The approval process for these different types of water facilities and infrastructure has become increasingly expensive, time-consuming, and uncertain; and

WHEREAS, Colorado has long supported the private sector's and local governments' initiative in building water infrastructure with state financial incentives, primarily in the form of loans from revolving funds but also with grants to local governments; and

WHEREAS, Due to recent difficult economic conditions and consequent state budget shortfalls, the General Assembly has had to make difficult choices in prioritizing its expenditures; and

WHEREAS, Since 2009, the General Assembly has authorized the transfer of almost $449.05 million into the general fund from sources that would otherwise have been available for water infrastructure, including: $181.1 million from the perpetual base account of the severance tax trust fund and $10.25 million from the Colorado water conservation board construction fund, all of which would otherwise have been available for raw water infrastructure loans; and $18.9 million from the operational account of the severance tax trust fund, $168.8 million from the local government severance tax fund, $19.1 million from the local government permanent fund, and $46 million from the local government mineral impact fund, significant portions of which would otherwise have been available for water infrastructure loans and grants; and

WHEREAS, In 2011, energy impact assistance grants were suspended; and

WHEREAS, The diversion of such significant sums from their originally intended purposes has had a devastating effect on the maintenance and development of water infrastructure in Colorado; and

WHEREAS, To the extent that the diversion of sums intended for use on water infrastructure projects has caused existing projects to be delayed, that delay has been costly to Colorado. For example, the Northern Integrated Supply Project has faced a five-year delay. It is estimated that the delay has cost the Northern Colorado Water Conservancy District between $70 million and $90 million, based on an estimated 3.5% increase in the annual rate of construction costs, as determined in accordance with the construction cost index published by the *Engineering News-Record*; and

WHEREAS, The president and president-elect of the National Conference of State Legislatures sent a letter to congressional leadership that listed infrastructure as the third-highest priority that should be protected during deficit reduction efforts, behind only imposing no new unfunded federal mandates and improving the Medicaid program; and

WHEREAS, The Western States Water Council (WSWC), an organization created by resolution of the Western Governors' Association, noted that a recent American Society of Civil Engineers Report Card gives the nation's drinking and wastewater infrastructure a "D-" grade, its

dams a "D," and its levees and inland waterways a "D-." The WSWC concludes: "The current deplorable grade for our infrastructure impacts our lives and the economy, raising public health and safety issues, as well as the looming specter of future repair, rehabilitation and replacement costs."; and

WHEREAS, Further diversions of revenues to the general fund from water infrastructure will have serious, long-term, adverse effects on Colorado's economic and social well-being; and

WHEREAS, The Water Resources Review Committee has reviewed the issues raised by this Joint Resolution and strongly urges the General Assembly to adopt it; now, therefore,

Be It Resolved by the Senate of the Sixty-ninth General Assembly of the State of Colorado, the House of Representatives concurring herein:

That the General Assembly should remain cognizant of the important role our water infrastructure plays in Colorado's economic and social well-being when prioritizing its expenditures.