## Report to the Colorado General Assembly

# Water Resources Review Committee

*Prepared by*

*The Colorado Legislative Council*
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# Water Resources Review Committee

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***December 2013***

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December 2013

To Members of the Sixty-ninth 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 November 14, 2013, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2014 session was approved.

Sincerely,

/s/ Senator Lucia Guzman
Chairman

## Committee Charge

The Water Resources Review Committee was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state (Section 37-98-102, C.R.S.). The committee is authorized to review and propose legislation in furtherance of its purposes. In conducting its review, the committee is required to consult with experts in the field of water conservation, quality, use, finance, and development. The committee was authorized to meet eight times in 2013, including two times outside of the interim period, and to take two field trips in connection with its mandate.

## Committee Activities

The committee met eight times and took three tours during the 2013 interim. The Executive Committee of the Legislative Council authorized the committee take an additional tour. During the 2013 interim, the committee 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, development of the Colorado Water Plan, and other issues, and recommended a number of proposals.

***Committee tours.*** In July, the committee attended a three-day tour of the Platte River Basin where it visited water storage and distribution facilities, irrigation projects, endangered species habitat, recreational facilities, and other sites, including facilities in Wyoming and Nebraska. This tour was organized by the Colorado Foundation for Water Education. In July, the committee held a meeting at Western State Colorado University in Gunnison and attended the Colorado Water Workshop. In August, the committee attended the Colorado Water Congress summer convention in Steamboat Springs, where it held a public meeting and attended presentations about water and energy development, water infrastructure financing, ongoing water supply studies, and other water management issues.

### Incentives for Small Hydropower

***Opportunities for small hydropower development in Colorado.*** Hydropower provides about 5 percent of Colorado's electricity, with 70 operating hydropower facilities ranging in size from 5 kilowatts (KW) to 300 megawatts (MW). These facilities have a combined installed capacity of approximately 1,200 MW. According to the U.S. Bureau of Reclamation, Colorado currently has over 30 potential hydropower sites at its facilities with the potential to produce over 105,000 MW a year. The U.S. Department of Energy estimates an additional 11 potential sites have the potential to produce over 632,000 MW a year. Colorado's estimated untapped hydropower energy potential is over 737,975 MW year. If Colorado were to utilize this full potential, it could power over 65,000 homes a year utilizing new hydropower.

***State incentives for small hydropower generation.*** The committee heard testimony about incentives in state and federal law to promote the development of small hydropower. Under Colorado's renewable energy standard (RPS), new hydroelectricity facilities up to 10 megawatts (MW), and hydroelectricity facilities up to 30 MW in existence on January 1, 2005, qualify as eligible

energy resources. In 2009, the Water Resources Review Committee recommended legislation that specified that for purposes of property taxation, new small or low-impact hydroelectric energy facilities would be valued using the income approach instead of the traditional cost approach. Two state programs also provide grants and low interest loans for hydropower generations. The Colorado Water Resources and Power Development Authority provides matching grants for the evaluation and development of hydroelectric projects up to 5 MW for 2013. The authority also provides loans of up to $2 million per governmental agency for hydroelectric projects up to 5 MW. The Colorado Water Conservation Board (CWCB) may loan moneys from the CWCB Construction Fund and the Perpetual Base Account for projects that protect the hydroelectric energy resources and supplies of the state of Colorado. Eligible borrowers include governmental entities, as well as private entities such as irrigation companies. The Colorado Water Resources and Power Development Authority and the CWCB may jointly fund small hydropower facilities in Colorado sponsored by governmental agencies.

***2013 federal legislation concerning hydropower development.*** Two federal laws were enacted in 2013 to promote small hydropower development. One measure authorizes the U.S. Secretary of the Interior to contract for the development of small conduit hydropower at U.S. Bureau of Reclamation facilities. Such facilities are limited to 5 MW or less and must be located on a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance. The law directs the bureau to apply its categorical exclusion process under the National Environmental Policy Act of 1969 (NEPA) to small conduit hydropower development, except with respect to siting of associated transmission facilities on federal lands. Such exclusions enable the agency to approve a project without an environmental assessment or an environmental impact statement. The law designates the bureau's Power Resources Office as the lead office for such small conduit hydropower policy and procedure-setting activities, thereby excluding such activities from the jurisdiction of the Federal Energy Regulatory Commission (FERC). In 2013, President Obama also signed into law the Hydropower Regulatory Efficiency Act of 2013, which exempts certain conduit hydropower facilities from the licensing requirements of the Federal Power Act (FPA). Specifically, the law increases the FERC licensing exemption for small hydropower projects from 5 MW to 10 MW and exempts conduit projects up to 5 MW from FERC jurisdiction. The law also increases the size of private small conduit hydroelectric facilities eligible for discretionary exemption from 15 MW to 40 MW.

***Committee recommendation.*** The committee recommends Bill A which provides several incentives to promote the construction and operation of hydroelectric energy facilities in Colorado. Specifically, the bill requires the State Electrical Board to approve the installation of a motor as a generator for a hydroelectric energy facility under certain circumstances and authorizes the Department of Natural Resources to serve as the coordinating state agency for compiling state agency comments in Federal Energy Regulatory Commission license proceedings. It also incorporates community hydroelectric energy facilities into the community solar garden statute.

## Water Supply Issues

***Colorado's growing water demands.*** In 2003, the General Assembly commissioned the Statewide Water Supply Initiative (SWSI) to explore water supply and demand issues in each of the state's major river basins. This study, completed by the Colorado Water Conservation Board in 2004, estimated that Colorado will need an additional 630,000 acre-feet (AF) annually to meet estimated demand in 2030, primarily for municipal and industrial purposes, depending upon the ability of water providers to complete identified projects and processes.

***Alternatives to permanent transfers of agricultural water rights.*** A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, the market value of these rights is steadily increasing as demand for municipal water increases. Large tracts of agricultural lands have been taken out of production to provide water to Colorado's growing municipalities, especially in the lower Arkansas River Basin. Permanently transferring a water right from a farm to a municipality may adversely affect local agricultural economies. Farms that have sold their water rights typically pay less property tax, employ fewer persons, and no longer purchase agricultural supplies from local businesses. Temporary transfers of agricultural water to municipalities during droughts or to address other shortages may impose fewer impacts on the agriculture community than permanent transfers. Since 2002, the General Assembly has appropriated $4 million to identify alternatives to permanent agricultural dry-up, including a study to explore an alternative transfer method called FLEX markets. This study considered voluntary agreements between municipal and industrial water users, agricultural water users, and environmental conservation water users to change the use of a senior irrigation right to include multiple end uses, and to establish a trading platform facilitating uses by all participants. The study identified barriers to FLEX markets including Colorado's anti-speculation doctrine. This doctrine limits the appropriation of water for speculative purposes to help ensure that water is available for beneficial use rather than for the purpose of marketing the rights to others. The law requires an applicant seeking to change the beneficial use of an irrigation water right to designate a specific alternative beneficial use identified at the time of the application.

***Committee recommendation.*** The committee recommends Bill B which provides incentives to implement certain alternatives to permanent dry-up of irrigated lands by creating a more flexible change-in-use system. The bill allows an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands, to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied. It defines "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use and redefines "appropriation" to exclude flex use from the anti-speculation doctrine. The bill also describes the procedures for obtaining a flex use change-in-use decree and a flex use substitute water supply plan.

## Water Conservation and Efficiency

Agricultural water conservation, such as lining canals or switching to more efficient irrigation systems may help address Colorado's growing water demand by making supplies available for use by municipalities or other users. However, the committee heard testimony from agricultural users who are concerned that their water rights may be curtailed if they practice certain conservation measures. Under current law, a long-term reduction in the application of water to a beneficial use may result in a reduction of consumptive use. Consumptive use is the amount of water that is removed from a stream system through plant uptake, evaporation, and other mechanisms. Historic consumptive use determines the amount of water right that may be sold or transferred to another type of user. A water right owner may lose his or her right, in whole or part, if the owner stops diverting water for ten consecutive years through a water court proceeding called abandonment. The committee also heard testimony about other types of irrigation efficiency improvements that may be obtained from the nonconsumptive portion of an adjudicated surface water right. These nonconsumptive savings may result from increased efficiencies in the means of diversion, application, conveyance, storage, or any other use reducing the need to divert a full decreed

amount while retaining consumptive use. A coalition of agricultural water users and conservation organizations testified about guidelines that were developed to encourage projects that facilitate agricultural water conservation while protecting historical consumptive use.

***Land use and water conservation.*** The committee heard testimony about the conversion of agricultural lands into residential developments and how denser residential developments use less water and have lower infrastructure costs. The committee considered, but did not recommend, a bill to provide incentives for cluster developments by allowing for more residential units provided a certain portion of the development remains as open space or in agricultural production.

## Funding for Water Projects

***Water infrastructure needs.*** The committee heard testimony about the long-term drinking water and wastewater project funding needs for municipalities and other local public entities. Each year, the Water Quality Control Division, the Colorado Water Resources and Power Development Authority, and the Division of Local Government in the Department of Local Affairs, prepare a list of projects that are eligible for loans from the Water Pollution Control Revolving Fund and the Drinking Water Revolving Fund. The 2013 project eligibility list for the Water Pollution Control Revolving Fund identifies 392 projects with an estimated cost of $4.9 billion. The 2013 Project Eligibility List for the Drinking Water Revolving Fund identifies 432 projects with an estimated cost of $3.3 billion. The committee heard testimony that many communities are unable to afford the debt to pay for these projects and are struggling to obtain alternate funding sources. The Colorado Department of Public Health and Environment administers a grant program for drinking and domestic wastewater projects in communities with fewer than 5,000 residents.

***Committee recommendation.*** The committee recommends Bill C, which clarifies that severance tax dollars credited to the Small Communities Water and Wastewater Grant Fund may be used for domestic wastewater treatment works. The department is required to issue grants based on needs and problems related to public health. The bill also repeals a statute that substantially duplicates the provisions of Bill C.

## Water Administration

***Duties of the Division of Water Resources.*** The Division of Water Resources is directed by the State Engineer in the Department of Natural Resources. The division administers over 150,000 water rights, issues water well permits, monitors stream flows and water uses, inspects dams for safety, and represents Colorado in interstate water compact proceedings. The division is required by statute to make a number of reports, tabulations, and other written materials available to the public by printing them out and mailing them to interested parties. However, electronic mail and the Internet have reduced the need print these materials and may provide cost saving opportunities for the division.

***Committee recommendation.*** Bill D removes printing requirements for certain written materials prepared by the division.

***Regulation enforcement 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. 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.

***Regulation of ground water pumping in the Rio Grande Basin.*** The committee heard testimony from water users in the Rio Grande Basin concerning the impact of ground water pumping on their water rights and the environment. A law passed in 2004 requires the State Engineer to manage the use of ground water consistent with the prevention of material injury to senior surface water rights in the basin. It also requires the state engineer to maintain a sustainable ground water supply and preserve the state's ability to comply with the Rio Grande compact. The state engineer testified about measures taken by the Division of Water Resources and local water entities to implement the 2004 law. Specifically, the division is developing a ground water model to assess the impact of ground water pumping on senior water rights and to help administer water rights in the Rio Grande Basin. The committee also heard testimony from members of Subdistrict 1 of the Rio Grande Water Conservation District that was formed to reduce ground water depletions in the Rio Grande Basin. The district is authorized to impose fees on ground water users. Revenue from these fees may be used to purchase water to protect senior water rights and a fallowing program to reduce ground water withdrawals. The state engineer discussed enforcement actions that may be taken against ground water users who cause impacts to other water users, including fines and forced shutdowns of wells.

## Private Water Rights on Federal Lands

***Regulation of water use on 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 sources of these water rights include federal lands and nonfederal lands. In 2012, the USFS attempted to change the terms of its special use permits for ski areas by issuing a directive that would have prohibited ski area operators from transferring certain water rights associated with the ski area to any third parties and would have required 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. 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 industries about similar actions by the USFS in other states where water rights are demanded in exchange for federal permits.

The National Ski Area Association (NSAA), on behalf of its ski area members, including 22 ski areas on USFS lands in Colorado, sued the USFS in federal district court in Denver, alleging that the 2012 directive violated both procedural and substantive aspects of federal law. In December 2012, the federal district court entered an injunction that prohibits the USFS from

enforcing the 2012 directive. The injunction was based on federal procedural laws that the USFS violated in adopting the 2012 directive. However, the court made no findings regarding the NSAA's substantive federal law claims. According to the Office of Legislative Legal Services, it is unclear whether the substantive provisions of the 2012 directive are authorized by federal law. The court remanded the issue to the USFS, which could essentially readopt the 2012 directive, but this time in compliance with applicable procedural requirements. The associate deputy chief, National Headquarters, USFS, testified that the agency is developing a water rights directive for ski areas to ensure that the ski areas remain viable on USFS lands and to ensure that sufficient water remains available for permitted uses. The Water Resources Review Committee was unable to review the draft directive because the agency was conducting additional research concerning its potential economic impacts after the end of the 2013 interim.

***Committee recommendation.*** The committee recommends Bill E, which specifies that a water right is obtained for speculative purposes if it is obtained by the United States as a result of a transfer or conveyance required as a condition to a special use permit or right-of-way. Such rights are deemed forfeited by the United States and must revert to the prior owner under the right's original priority.

## Watershed Protection

***Watershed protection and biomass.*** Several million acres of Colorado's forests are dead or dying due to recent insect infestations. For example, 3.4 million acres of forest lands have been infested by the mountain pine beetle, and nearly 1.0 million acres of forest lands have been infested by the spruce beetle. As a result of these outbreaks, large parts of Colorado are at risk of catastrophic wildfire, including watersheds that provide most of Colorado's water supply. Many persons also live in these forests, called the wildland urban interface. The committee heard testimony from communities impacted by recent wildland fires such as the West Fork Fire Complex in the Rio Grande Basin that burned over 110,000 acres and impacted watersheds that are critical to local communities in the basin. The committee also heard testimony from the owner of a biomass facility in Eagle County. When completed, this facility will burn trees obtained from Colorado's insect-damaged forests. The owner explained how biomass facilities help create markets for lower quality wood, thereby reducing the cost of forest management in critical watersheds. The $46 million biomass facility also created 107 construction jobs and will provide 42 long-term jobs. The owner of the biomass facility identified obstacles to increasing biomass in Colorado, including the difficulty of obtaining financing and securing a stable fuel supply.

Another obstacle facing the industry is the federal maximum weight limit on interstate highways for divisible loads. Under federal law, trucks hauling divisible loads may only haul up to 80,000 pounds on interstate highways. Because of the maximum weight limit, companies hauling forest products are required to transport smaller loads than the maximum capacity of their trucks, thus requiring the companies to use more trucks and incur greater fuel costs. According to the owner of the Eagle County facility, increasing the maximum weight limits on interstate highways would save the company between 20 and 30 percent of its current fuel costs.

***Committee recommendation.*** The committee recommends Resolution A, which urges Congress to pass legislation creating a special exemption from the federal maximum weight limit on interstate highways for forest product transporters. It also considered, but did not recommend, a bill to create forest watershed roundtables that would have been tasked with advocating for stewardship of forested land to minimize the risk of wildfires and secure favorable conditions of water flows within their respective water basins.

## Proposed Agricultural Water Standards for Food Safety

On January 4, 2013, President Obama signed the Food Safety Modernization Act that provides the U.S. Food and Drug Administration (FDA) with new enforcement authority to impose higher food safety standards and to respond to food safety problems. The committee heard testimony from an agricultural irrigator who expressed concern about the potential impact of agricultural water standards that were drafted by the FDA in response to the new food safety law. The draft regulations seek to ensure that agricultural water is safe and of adequate sanitary quality for its intended use. This proposal applies to agricultural water that contacts raw agricultural produce or surfaces that are likely to come into contact with produce. Such water includes water used to grow produce, as well as water used for harvesting, packing, washing, cooling, or for preventing the dehydration of produce. The committee heard testimony about the inability of agricultural irrigators to comply with some these regulations, such as treating irrigation water, and the potential unintended consequence of these regulations, such as discouraging the use of more efficient drip irrigation systems.

***Committee letter to FDA.*** The committee drafted a letter to the FDA expressing concern about the draft FDA agricultural water standards. The letter urges the FDA to conduct more scientific research to identify specific risks associated with agricultural practices and states that any regulations that are adopted should apply only to practices associated with human health problems.

## Flood Impacts to Water and Oil and Gas Infrastructure

***Summary of the September 2013 flood.*** Beginning on Monday, September 9, 2013 and intensifying on September 11 and 12, Colorado experienced torrential rainfall that resulted in catastrophic flooding, landslides, and mudslides. Boulder County received over 18 inches of rain during the event. The flood killed eight people, destroyed 1,852 homes, and damaged approximately 16,000 homes. More than 18,000 people were forced to leave their homes as a result of the flood. In addition, the flood damaged or destroyed 485 miles of roadway. The flood damaged 92,000 acres of farmland, including 32,113 acres of cropland. It is estimated that 1,200 farms were affected by the flood. Of the 24 Colorado counties that were affected by the flood, Governor John Hickenlooper declared a disaster emergency in 16 counties: Adams, Araphaoe, Broomfield, Boulder, Clear Creek, Denver, El Paso, Fremont, Jefferson, Larimer, Logan, Morgan, Pueblo, Sedgwick, Washington, and Weld. Individuals in the following 11 counties were eligible for Federal Emergency Management Agency (FEMA) individual assistance, which is for losses sustained as a result of the flooding: Adams, Arapahoe, Boulder, Clear Creek, El Paso, Fremont, Jefferson, Larimer, Logan, Morgan, and Weld. As of November 20, 2013, FEMA had approved $54.4 million in individual assistance, with an average payout of $3,004. As of November 18, 2013, more than $575 million had been spent on flood recovery efforts, with the majority of those dollars going toward repairs of state highways and roads. The web site www.ColoradoUnited.com offers information regarding flood recovery and resources for those affected by the flood.

The committee spent a considerable amount of time discussing the impacts of the September 2013 flood to water diversion structures, stream channel changes, and oil and gas facilities. To better understand the impacts of the flood, the committee heard testimony from representatives of the Department of Natural Resources (DNR), Colorado Oil and Gas Conservation Commission (COGCC), Water Quality Control Division (WQCD), Department of Local Affairs (DOLA), Colorado Water Resources and Power Development Authority (WRPDA), Division of Water Resources (DWR), the Governor's Office, CWCB, and Northern Colorado Water Conservancy District.

***Oil and gas impacts.*** As of December 9, 2013, the COGCC conducted 3,004 inspections and evaluations that were related to the flood. Over 2,600 wells were "shut in" (or stopped from producing) in anticipation of the floods and 572 wells remain shut-in. During the flood, 1,149 barrels (or 48,250 gallons) of oil or condensate were spilled. The COGCC received a total of 45 spill reports from the floods, with 39 of those spill reports occurring in the flood impact zone.

***CWCB funding for flood recovery.*** The CWCB developed an emergency loan program that provided $40 million for loans for damages sustained to river diversion structures in Boulder, Jefferson, Larimer, Loan, Morgan, and Weld Counties. A 1 percent loan administration fee will be assessed to approved loan recipients, but recipients will pay no interest for 36 months. The CWCB, in collaboration with the Northern Colorado Water Conservancy District, also provided a grant program for technical services or "shovel-ready" projects. In addition, the Colorado Watershed Restoration Program released $2 million from the Disaster Emergency Fund for watershed restoration and master stream planning due to damages incurred as a result of the flood.

***Dam inspections and satellite monitoring gages.*** The Water Resources Division conducted 207 emergency dam inspections within 14 days of the flood and classified 13 dams as having safety concerns. Twenty-four satellite monitoring gages, which are used to provide real-time data related to streamflow and water levels, were damaged or destroyed during the flood. It is estimated that approximately $447,000 will be needed to repair or replace these gage units; these costs may be eligible for FEMA reimbursements.

Numerous stream changes, including ditch headgate relocations, occurred as a result of the flood. The committee considered, but did not recommend, a bill that would have allowed a water right owner to relocate a ditch headgate that has become inoperable due to a change to the stream without filing for a change of water right through the water court.

## Water Education for Legislators

During the 2013 interim, the committee discussed the challenges faced by legislators who are asked to make decisions on complex water policy issues and the importance of water education for legislators to increase their water resources knowledge and inform policy decisions. Specifically, the committee discussed difficulties encountered in financing water education opportunities, including water tours, and related constitutional restrictions. To more fully understand this issue, the committee heard testimony from representatives of the Colorado Foundation for Water Education, the Colorado Water Conservation Board, the Colorado Ag Water Alliance, and the Office of Legislative Legal Services.

***Colorado Foundation for Water Education (CFWE).*** In 2002, the legislature authorized the formation of the Colorado Foundation for Water Education (CFWE). 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 foundation provides training for water professionals and the public about Colorado's water laws and programs, distributes citizens' guides on water policy, and provides other documents and educational opportunities. Approximately 20 percent of the CFWE's annual budget comes from the Colorado Water Conservation Board, and the remaining portion comes from membership dues, grants, and donations.

***Amendment 41 or the "gift ban."*** Amendment 41 of the Colorado Constitution (Article XXIX), which was adopted by Colorado voters in 2006, includes a "gift ban" that prohibits Colorado's legislators from accepting gifts with values exceeding $53.00 per year. The Independent Ethics Commission must adjust this limit for inflation every four years. Amendment 41 includes an exception for "reasonable expense" gifts, often related to travel, that are paid for by non-profit organizations that receive less than 5 percent of their funding from for profit organizations or entities. Amendment 41 also created the Independent Ethics Commission (IEC), which is charged with the implementation of Amendment 41.

***May 2010 IEC ruling.*** In May 2010, the IEC ruled that it would be a violation of Amendment 41 to allow legislators serving on the interim Water Resources Review Committee to receive scholarships to participate in a two-day tour of Southwestern Colorado's River Basins, sponsored by the CFWE, since the CFWE receives more than 5 percent of its funding from for-profit organizations or entities.

The committee considered, but did not recommend, a bill that would have created a "legislator water education fund" in the state treasury to finance legislators to engage in educational opportunities related to water resources.

## Colorado Water Plan

In May 2013, Governor Hickenlooper issued an executive order directing the Colorado Water Conservation Board (CWCB) to commence work on the Colorado Water Plan. According to the executive order, the plan must promote a productive economy that supports vibrant and sustainable cities, viable and productive agriculture, and a robust skiing, recreation, and tourism industry. It must also incorporate an efficient and effective water infrastructure promoting smart land use and a strong environment that includes healthy watersheds, rivers and streams, and wildlife. The CWCB is instructed to provide a draft plan for review by the Governor's Office by December 10, 2014, and must complete the final plan by December 10, 2015.

The committee heard testimony throughout the 2013 interim from numerous individuals regarding the Colorado Water Plan, including representatives of the Department of Natural Resources, the CWCB, and the Governor's Office. They testified about the roles of and expected input from various entities, including the Interbasin Compact Committee (IBCC), the basin roundtables, the state engineer, the legislature, and the public; ongoing studies that will inform the plan; the expected time line to draft the plan; technical data gathered from the Statewide Water Supply Initiative (SWSI) and its role in the plan; and various water conservation, watershed protection, and water infrastructure issues that are being considered as the plan is drafted.

## Summary of Recommendations

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

### Bill A — Hydroelectric Generation Incentives

Bill A provides incentives to promote the construction and operation of hydroelectric energy facilities in Colorado. It requires the State Electrical Board to approve the installation of a motor as a generator for a hydroelectric energy facility under certain circumstances and authorizes the Department of Natural Resources to serve as the coordinating state agency for compiling state agency comments in Federal Energy Regulatory Commission license proceedings. It also incorporates community hydroelectric energy facilities into the community solar garden statute.

### Bill B — Flexible Water Markets

Bill B creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.

### Bill C — Wastewater Treatment Small Communities Grants

Bill C clarifies that severance tax dollars credited to the Small Communities Water and Wastewater Grant Fund may be used for domestic wastewater treatment works.

### Bill D — Remove Division of Water Resources Printing Requirements

Bill D removes printing requirements for certain written materials prepared by the Division of Water Resources.

### Bill E — Oppose Federal Special Use Permit Water Right Term

Bill E specifies that a water right obtained by the United States as a result of a transfer or conveyance required as a condition to a special use permit or right-of-way was obtained for speculative purposes. Such rights are deemed forfeited by the United States and must revert to the prior owner under the right's original priority.

### Resolution A — Forest Products Transport Interstate Weight Limit

Resolution A urges Congress to pass legislation creating a special exemption from the federal maximum weight limit on interstate highways for forest product industries.

## 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**

July 18, 2013

- Governor's executive order for a Colorado Water Plan
- Ridgeway Dam and South Canal Hydroelectric Projects
- Proposed geothermal project in Gunnison County
- Watershed protection projects in the Gunnison River Basin
- Update on wildland fires in Colorado
- Agriculture water conservation measures

August 21, 2013

- Update on Colorado Water Plan
- Arkansas River Basin water bank
- House Bill 13-1248 criteria and guidelines for fallowing-leasing pilot projects
- Alternative agricultural water transfer methods and the FLEX market approach
- Enforcement of ground water management district regulations and proposed legislation
- Aquifer storage options
- Watershed protection, forest management, and wildfire season update
- U.S. Forest Service ski area permit administration

September 26, 2013

- Water administration considerations regarding agriculture conservation and efficiency efforts
- Agriculture and water efficiency and conservation opportunities
- Irrigation improvement issues in the Arkansas River Basin
- Legal opinion concerning 2012 U.S. Forest Service water rights directive
- Update on the development of draft U.S. Forest Service water rights directive
- Regulation of ground water use in the San Luis Valley

September 27, 2013

- Update on flood impacts to Colorado water, agriculture, and oil and gas infrastructure
- Update on Colorado Water Plan
- Funding needs and finance mechanisms for public wastewater and drinking water infrastructure impacted by floods
- Best management practices for urban landscapes
- Urban water conservation measures
- General Fund and state severance tax forecast
- Dams under storage restrictions due to safety issues
- Colorado Water Conservation Board funding for water infrastructure and flood mitigation projects

October 9, 2013

- Land use and water efficiency
- Water education opportunities for Colorado legislators
- Deadline to prove reasonable diligence in the development of conditional water rights
- Irrigation season policy in the Rio Grande Basin
- Proposed U.S. Food and Drug Administration food safety rule concerning irrigated agriculture
- Legislative proposals concerning FLEX markets
- Enforcement of ground water management district regulations and proposed legislation
- Wildfires and water quality, watershed, and hydrology issues

October 10, 2013

- Electric generation and water use
- Biomass and watershed protection
- Hydroelectric generation and pumped storage projects
- Environmental permitting for small hydroelectric generation projects
- Colorado Oil and Gas Conservation Commission's green completion and ground water sampling rules
- Senate Bill 13-284 concerning environmental permitting and oil and gas development
- Oil and gas development and water use
- Colorado River Basin water supply and demand study
- Use of the Commercial Property-Assessed Clean Energy (CPACE) Program to fund water conservation and efficiency improvements

October 11, 2013

- Least-cost water strategies
- Urban drainage planning and flood hazard reduction projects in the 2013 flood
- Long-term funding needs and finance mechanisms for public wastewater and drinking water projects
- Requests for draft legislation

October 30, 2013

- Implementation of House Bill 12-1278 concerning the South Platte Ground water study
- Flood impacts to oil and gas facilities
- Use of water banks to protect Colorado's economy from drought impacts
- Update on precipitation collection pilot project
- Water storage projects in the 2014 CWCB Construction Fund bill and Small Projects Loan Report
- Discussion of the need for additional Division of Water Resources water well inspectors
- Proposed legislation and assignment of bill sponsors

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**BILL A**

LLS NO. 14-0249.01 Jennifer Berman **HOUSE BILL**

**HOUSE SPONSORSHIP**

**Coram and Mitsch Bush,** Fischer, Sonnenberg, Vigil

**SENATE SPONSORSHIP**

**Schwartz and Roberts,** Hodge

**House Committees** **Senate Committees**

## A BILL FOR AN ACT

101 **CONCERNING THE ESTABLISHMENT OF INCENTIVES FOR THE**
102 **DEVELOPMENT OF HYDROELECTRIC ENERGY SYSTEMS.**

### 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.** In order to promote the construction and operation of hydroelectric energy facilities in Colorado, the bill provides the following incentives:

- **Section 1** of the bill requires the state electrical board to approve the installation of a motor as a generator for a

hydroelectric energy facility if the installation would be approved but for the fact that the motor is not being used in a manner commensurate with its nameplate;

- **Section 2** authorizes the department of natural resources to serve as the coordinating state agency for obtaining and compiling state agency comments about an application for a license or license exemption from the federal energy regulatory commission; and
- **Section 3** incorporates community hydroelectric energy facilities into the community solar garden statute, so that a group of community members may jointly subscribe to and receive electricity from a small hydroelectric energy facility located in or near the community.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-23-104, **amend**
3 (2) (f) and (2) (g) as follows:

4 **12-23-104. Board powers and duties - rules.** (2) In addition to
5 all other powers and duties conferred or imposed upon the board by this
6 article, the board is authorized to:

7 (f) Inspect and approve or disapprove the installation of electrical
8 wiring, renewable energy systems, apparatus, or equipment for electric
9 light, heat, and power according to the minimum standards in the national
10 electrical code or as prescribed in this article. WITH RESPECT TO A
11 HYDROELECTRIC ENERGY FACILITY, AN INSPECTOR SHALL APPROVE THE
12 INSTALLATION OF A MOTOR AS A GENERATOR IF THE INSTALLATION WOULD
13 BE APPROVED BUT FOR THE FACT THAT THE MOTOR IS NOT BEING USED IN
14 A MANNER COMMENSURATE WITH ITS NAMEPLATE.

15 (g) Review and approve or disapprove requests for exceptions to
16 the national electrical code in unique construction situations where a strict
17 interpretation of the code would result in unreasonable operational
18 conditions or unreasonable economic burdens, as long as public safety is

not compromised. PURSUANT TO PARAGRAPH (f) OF THIS SUBSECTION (2), THE BOARD SHALL APPROVE ANY REQUEST SUBMITTED BEFORE THE EFFECTIVE DATE OF THIS PARAGRAPH (g), AS AMENDED, AND NOT YET ACTED UPON BY THE EFFECTIVE DATE FOR A HYDROELECTRIC ENERGY FACILITY'S USE OF A MOTOR AS A GENERATOR.

**SECTION 2.** In Colorado Revised Statutes, **add** 24-33-117 as follows:

**24-33-117. State agency coordination of review of federal license and license exemption applications for hydroelectric energy projects - legislative declaration - definitions - rules.** (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) HYDROELECTRIC ENERGY IS A RELIABLE, AFFORDABLE, AND SUSTAINABLE ENERGY SOURCE AND IS THE LARGEST SOURCE OF CLEAN ENERGY IN THE UNITED STATES;

(b) AS OF 2005, THERE WERE SIXTY-TWO OPERATING HYDROELECTRIC ENERGY FACILITIES THROUGHOUT COLORADO, WITH A COMBINED CAPACITY OF ONE THOUSAND ONE HUNDRED AND SIXTY-TWO MEGAWATTS;

(c) ACCORDING TO A RECENT BUREAU OF RECLAMATION STUDY, COLORADO CURRENTLY HAS MORE THAN THIRTY SITES ON WHICH NEW HYDROELECTRIC ENERGY FACILITIES COULD BE PLACED AND A FEDERAL DEPARTMENT OF ENERGY REPORT IDENTIFIES ANOTHER ELEVEN POTENTIAL SITES. IF ALL OF THE IDENTIFIED SITES WERE CONSTRUCTED, THEY COULD POWER OVER SIXTY-FIVE THOUSAND HOMES EACH YEAR.

(d) (I) TO CONSTRUCT, OPERATE, OR MAINTAIN A NONFEDERAL HYDROELECTRIC ENERGY FACILITY, A PERSON MUST APPLY TO FERC FOR A LICENSE OR A LICENSE EXEMPTION IF THE FACILITY IS LOCATED ON

1 NAVIGABLE WATERS IN THE UNITED STATES, OCCUPIES LANDS OF THE
2 UNITED STATES, UTILIZES SURPLUS WATER OR WATER POWER FROM A
3 UNITED STATES GOVERNMENT DAM, OR, UNDER SOME CIRCUMSTANCES,
4 IS LOCATED ON A STREAM OVER WHICH THE UNITED STATES CONGRESS
5 HAS COMMERCE CLAUSE JURISDICTION;
6 (II) AS PART OF FERC'S LICENSING PROCESS, AN APPLICANT FOR
7 A HYDROELECTRIC ENERGY FACILITY LICENSE OR LICENSE EXEMPTION
8 MUST MEET SPECIFIC PREFILING CONSULTING REQUIREMENTS, INCLUDING
9 A REQUIREMENT TO CONSULT WITH RELEVANT STATE AGENCIES ABOUT
10 THE PROPOSED PROJECT AND TO PROVIDE THOSE AGENCIES WITH AN
11 OPPORTUNITY TO COMMENT ON THE APPLICATION AND REQUEST ANY
12 STUDIES THAT MAY BE RELEVANT TO THE PROPOSED PROJECT;
13 (III) TO PROMOTE THE CONSTRUCTION AND OPERATION OF NEW
14 HYDROELECTRIC ENERGY FACILITIES, THE UNITED STATES CONGRESS
15 PASSED THE "HYDROPOWER REGULATORY EFFICIENCY ACT OF 2013",
16 FEDERAL PUBLIC LAW 113-23, AS AMENDED, WHICH EXEMPTS CERTAIN
17 HYDROELECTRIC ENERGY FACILITIES THAT HAVE AN INSTALLED CAPACITY
18 OF FEWER THAN TEN THOUSAND KILOWATTS FROM THE LICENSING
19 REQUIREMENTS AND STREAMLINES THE APPROVAL PROCESS FOR
20 HYDROELECTRIC ENERGY FACILITIES GENERALLY; AND
21 (e) TO FURTHER PROMOTE THE CONSTRUCTION AND OPERATION OF
22 NEW HYDROELECTRIC ENERGY FACILITIES IN COLORADO, THE ROLE OF
23 STATE AGENCIES IN CONSULTING ON A HYDROELECTRIC ENERGY FACILITY
24 APPLICATION FOR A FEDERAL LICENSE OR LICENSE EXEMPTION SHOULD BE
25 STREAMLINED. TO THAT END, THE GENERAL ASSEMBLY DESIGNATES THE
26 DEPARTMENT AS THE COORDINATING STATE AGENCY TO FACILITATE A
27 SINGLE STATE AGENCY REVIEW OF A PROPOSED PROJECT.
28 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT

1 OTHERWISE REQUIRES:

2 (a) "APPLICANT" MEANS A PERSON APPLYING FOR A FERC LICENSE
3 OR LICENSE EXEMPTION FOR A HYDROELECTRIC ENERGY FACILITY.

4 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL
5 RESOURCES.

6 (c) "FERC" MEANS THE FEDERAL ENERGY REGULATORY
7 COMMISSION.

8 (d) "HYDROELECTRIC ENERGY" MEANS THE GENERATION AND
9 DELIVERY TO THE INTERCONNECTION METER OF ANY SOURCE OF
10 ELECTRICAL OR MECHANICAL ENERGY BY HARNESSING THE KINETIC
11 ENERGY OF WATER. "HYDROELECTRIC ENERGY" INCLUDES PUMPED
12 HYDROELECTRICITY, AS DEFINED IN SECTION 40-2-123 (3.2) (c) (II), C.R.S.

13 (3) **Coordination of state agency review by the department of**
14 **natural resources.** (a) AN APPLICANT IN COLORADO MUST CONTACT,
15 AND SUBMIT RELEVANT DOCUMENTATION TO, THE DEPARTMENT FOR THE
16 PURPOSE OF OBTAINING STATE AGENCY REVIEW OF HIS OR HER FERC
17 APPLICATION, AS REQUIRED AS PART OF THE CONSULTATION
18 REQUIREMENTS SET FORTH IN 18 C.F.R. 4.38 CONCERNING FERC LICENSE
19 AND LICENSE EXEMPTION PROCEDURES.

20 (b) THE DEPARTMENT SHALL COORDINATE STATE AGENCY REVIEW
21 OF THE APPLICATION BY PROVIDING THE FOLLOWING TO ALL RELEVANT
22 STATE AGENCIES WITH POTENTIAL INTEREST IN THE APPLICANT'S
23 HYDROELECTRIC ENERGY PROJECT:

24 (I) NOTICE VIA EMAIL OF THE APPLICATION;

25 (II) ELECTRONIC COPIES OF ANY DOCUMENTATION RECEIVED FROM
26 THE APPLICANT;

27 (III) A GENERAL DESCRIPTION OF THE FERC REVIEW PROCESS; AND

28 (IV) THE DEADLINE BY WHICH THE OTHER STATE AGENCIES MUST

SUBMIT ANY COMMENTS ABOUT THE APPLICATION TO THE DEPARTMENT. THE DEPARTMENT SHALL SET A DEADLINE THAT IS SUFFICIENTLY IN ADVANCE OF THE EXPIRATION OF THE FORTY-FIVE DAY COMMENT PERIOD PROVIDED FOR BY FERC TO ALLOW THE DEPARTMENT TO COMPILE OTHER AGENCIES' COMMENTS AND ITS OWN COMMENTS FOR TIMELY SUBMISSION TO FERC.

(c) UPON THE EXPIRATION OF THE DEADLINE SET BY THE DEPARTMENT FOR OTHER AGENCIES TO REVIEW AN APPLICATION, THE DEPARTMENT SHALL COMPILE ANY COMMENTS FROM OTHER AGENCIES AND ITS OWN COMMENTS AND SUBMIT THE COMMENTS TO FERC BEFORE THE EXPIRATION OF THE COMMENT PERIOD ESTABLISHED BY FERC. THEREAFTER, THE DEPARTMENT SHALL SERVE AS A LIAISON BETWEEN FERC AND THE OTHER STATE AGENCIES CONCERNING ANY DISCUSSION OF THE COMMENTS SUBMITTED.

(d) THE DEPARTMENT SHALL PROVIDE INFORMATION ON ITS WEB SITE ABOUT THE STREAMLINED REVIEW PROCESS SET FORTH IN THIS SECTION.

(e) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY PROMULGATE NECESSARY AND REASONABLE RULES TO IMPLEMENT THIS SECTION, INCLUDING RULE-MAKING CONCERNING THE PROCESS AND DEADLINES FOR DISSEMINATING INFORMATION TO OTHER STATE AGENCIES AND COLLECTING OTHER STATE AGENCIES' COMMENTS.

**SECTION 3.** In Colorado Revised Statutes, **amend** 40-2-127 as follows:

**40-2-127. Community energy funds - community solar gardens - community hydroelectric energy facilities - definitions - rules - legislative declaration.** (1) **Legislative declaration.** The general assembly hereby finds and declares that:

(a) Local communities can benefit from the further development of renewable energy, energy efficiency, conservation, and environmental improvement projects, and the general assembly hereby encourages electric utilities to establish community energy funds for the development of such projects;

(b) It is in the public interest that broader participation in solar electric AND HYDROELECTRIC ENERGY generation by Colorado residents and commercial entities be encouraged by the development and deployment of distributed solar electric generating facilities, known as community solar gardens, AND DISTRIBUTED HYDROELECTRIC ENERGY FACILITIES, KNOWN AS COMMUNITY HYDROELECTRIC ENERGY FACILITIES, in order to:

(I) Provide Colorado residents and commercial entities with the opportunity to participate in solar generation, in addition to the opportunities available for rooftop solar generation on homes and businesses, AND THE OPPORTUNITY TO PARTICIPATE IN HYDROELECTRIC ENERGY GENERATION;

(II) Allow renters, low-income utility customers, and agricultural producers to own interests in solar AND HYDROELECTRIC ENERGY generation facilities;

(III) Allow interests in solar AND HYDROELECTRIC ENERGY generation facilities to be portable and transferrable; and

(IV) Leverage Colorado's solar AND HYDROELECTRIC ENERGY generating capacity through economies of scale.

(2) **Definitions.** As used in this section, unless the context otherwise requires:

(a) The definitions in section 40-2-124 apply; and

(b) In addition:

(I) (A) "COMMUNITY HYDROELECTRIC ENERGY FACILITY" MEANS A HYDROELECTRIC ENERGY GENERATION FACILITY WITH A CAPACITY OF TEN MEGAWATTS OR LESS THAT IS LOCATED IN OR NEAR A COMMUNITY SERVED BY A QUALIFYING RETAIL UTILITY WHERE THE BENEFICIAL USE OF THE ELECTRICITY GENERATED BY THE FACILITY BELONGS TO THE SUBSCRIBERS TO THE COMMUNITY HYDROELECTRIC ENERGY FACILITY. THE TERM ALSO INCLUDES PUMPED HYDROELECTRICITY, AS DEFINED IN SECTION 40-2-123 (3.2) (c) (II). THE COMMUNITY HYDROELECTRIC ENERGY FACILITY MUST HAVE AT LEAST TWO SUBSCRIBERS. THE OWNER OF THE COMMUNITY HYDROELECTRIC ENERGY FACILITY MAY BE A QUALIFYING RETAIL UTILITY OR ANY OTHER FOR-PROFIT OR NONPROFIT ENTITY OR ORGANIZATION, INCLUDING A SUBSCRIBER ORGANIZATION ORGANIZED UNDER THIS SECTION, THAT CONTRACTS TO SELL THE OUTPUT FROM THE COMMUNITY HYDROELECTRIC ENERGY FACILITY TO THE QUALIFYING RETAIL UTILITY. A COMMUNITY HYDROELECTRIC ENERGY FACILITY IS "LOCATED ON THE SITE OF CUSTOMER FACILITIES" WITHIN THE MEANING OF SECTION 40-2-124.

(B) A COMMUNITY HYDROELECTRIC ENERGY FACILITY CONSTITUTES "RETAIL DISTRIBUTED GENERATION" WITHIN THE MEANING OF SECTION 40-2-124.

~~(I)~~ (I.5) (A) "Community solar garden" means a solar electric generation facility with a nameplate rating of two megawatts or less that is located in or near a community served by a qualifying retail utility where the beneficial use of the electricity generated by the facility belongs to the subscribers to the community solar garden. ~~There shall be~~ THE COMMUNITY SOLAR GARDEN MUST HAVE at least ten subscribers. The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization, including a

subscriber organization organized under this section, that contracts to sell the output from the community solar garden to the qualifying retail utility. A community solar garden ~~shall be deemed to be~~ IS "located on the site of customer facilities" WITHIN THE MEANING OF SECTION 40-2-124.

(B) A community solar garden ~~shall constitute~~ CONSTITUTES "retail distributed generation" within the meaning of section 40-2-124. ~~as amended by House Bill 10-1001 enacted in 2010.~~

(II) "Subscriber" means a retail customer of a qualifying retail utility who owns a subscription and who has identified one or more physical locations to which the subscription ~~shall be~~ IS attributed. Such physical locations ~~shall~~ MUST be within either the same municipality or the same county as the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY; except that, if the subscriber lives in a county with a population of less than twenty thousand, according to the most recent available census figures, such physical locations may be in another county, also with a population of less than twenty thousand, within the service territory of the same qualifying retail utility, and ~~also~~ adjacent to that of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY. The subscriber may change from time to time the premises to which the ELECTRICITY GENERATION FROM THE community solar garden ~~electricity generation shall be~~ OR COMMUNITY HYDROELECTRIC ENERGY IS attributed, so long as the premises are within the geographical limits allowed for a subscriber.

(III) "Subscription" means a proportional interest in solar electric generation facilities installed at a community solar garden OR IN A COMMUNITY HYDROELECTRIC ENERGY FACILITY, together with the renewable energy credits associated with or attributable to such facilities under section 40-2-124. Each subscription ~~shall~~ MUST be sized to

represent at least one kilowatt of the community solar garden's OR COMMUNITY HYDROELECTRIC ENERGY FACILITY'S generating capacity and to supply no more than one hundred twenty percent of the average annual consumption of electricity by each subscriber at the premises to which the subscription is attributed, with a deduction for the amount of any existing solar facilities at such premises. Subscriptions in a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY may be transferred or assigned to a subscriber organization or to any person or entity who qualifies to be a subscriber under this section.

(3) **Subscriber organization - subscriber qualifications - transferability of subscriptions - rules.** (a) The community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY may be owned by a subscriber organization, whose sole purpose ~~shall be~~ IS TO beneficially ~~owning~~ OWN and ~~operating~~ OPERATE a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY. The subscriber organization may be any for-profit or nonprofit entity permitted by Colorado law. The community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY may also be built, owned, and operated by a third party under contract with the subscriber organization.

(b) On or before October 1, 2010, the commission shall commence a rule-making proceeding to adopt rules as necessary to implement this section, including ~~but not limited to~~ rules to facilitate the financing of subscriber-owned community solar gardens. ~~Such~~ ON OR BEFORE OCTOBER 1, 2014, THE COMMISSION SHALL PROMULGATE RULES AS NECESSARY TO IMPLEMENT THIS SECTION WITH RESPECT TO COMMUNITY HYDROELECTRIC ENERGY FACILITIES, INCLUDING RULES TO FACILITATE THE FINANCING OF SUBSCRIBER-OWNED COMMUNITY HYDROELECTRIC ENERGY FACILITIES. THE rules ~~shall~~ MUST include:

(I) Minimum capitalization;

(II) The share of a community solar garden's OR COMMUNITY HYDROELECTRIC ENERGY FACILITY'S eligible ~~solar~~ electric generation facilities that a subscriber organization may at any time own in its own name; and

(III) Authorizing subscriber organizations to enter into leases, sale-and-leaseback transactions, operating agreements, and other ownership arrangements with third parties.

(c) If a subscriber ceases to be a customer at the premises on which the subscription is based but, within a reasonable period as determined by the commission, becomes a customer at another premises in the service territory of the qualifying retail utility and within the geographic area served by the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY, the subscription ~~shall continue~~ CONTINUES in effect but the bill credit and other features of the subscription ~~shall~~ MUST be adjusted as necessary to reflect any differences between the new and previous premises' customer classification and average annual consumption of electricity.

(4) **Community solar gardens and community hydroelectric energy facilities not subject to regulation.** Neither the owners of nor the subscribers to a community solar garden ~~shall be~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITY ARE considered public utilities subject to regulation by the commission solely as a result of their interest in the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY. Prices paid for subscriptions in community solar gardens ~~shall~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES ARE not ~~be~~ subject to regulation by the commission.

(5) **Purchases of the output from community solar gardens or**

**hydroelectric energy facilities.** (a) (I) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a plan to purchase the electricity and renewable energy credits generated from one or more community solar gardens OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES over the period covered by the plan.

~~(II) For the first three compliance years commencing with the 2011 compliance year, each qualifying retail utility shall issue one or more standard offers to purchase the output from community solar gardens of five hundred kilowatts or less at prices that are comparable to the prices offered by the qualifying retail utility under standard offers issued for on-site solar generation. During these three compliance years, the qualifying retail utility shall acquire, through these standard offers, one-half of the solar garden generation it plans to acquire, to the extent the qualifying retail utility receives responses to its standard offers. Notwithstanding any provision of this subparagraph (II) to the contrary, renewable energy credits generated from solar gardens shall not be used to achieve more than twenty percent of the retail distributed generation standard in years 2011 through 2013.~~

~~(III) For the first three compliance years commencing with the 2011 compliance year, a qualifying retail utility shall not be obligated to purchase the output from more than six megawatts of newly installed community solar garden generation.~~

~~(IV)~~ (II) For each qualifying retail utility's compliance years commencing in 2014 and thereafter, the commission shall determine the minimum and maximum purchases of electrical output from newly installed community solar gardens OR NEWLY CONSTRUCTED COMMUNITY HYDROELECTRIC ENERGY FACILITIES of different output capacity ~~that~~ FOR the qualifying retail utility ~~shall plan~~ to acquire. ~~without regard to the~~

1 ~~six-megawatt ceiling of the first three compliance years.~~ In addition, as
2 necessary, the commission shall formulate and implement policies
3 consistent with this section that simultaneously encourage:
4 (A) The ownership by customers of subscriptions in community
5 solar gardens OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES and of
6 other forms of distributed generation, to the extent the commission finds
7 there to be customer demand for such ownership;
8 (B) Ownership in community solar gardens OR COMMUNITY
9 HYDROELECTRIC ENERGY FACILITIES by residential retail customers and
10 agricultural producers, including low-income customers, to the extent the
11 commission finds there to be demand for such ownership;
12 (C) The development of community solar gardens AND
13 COMMUNITY HYDROELECTRIC ENERGY FACILITIES with attributes that the
14 commission finds result in lower overall total costs for the qualifying
15 retail utility's customers;
16 (D) Successful financing and operation of community solar
17 gardens AND COMMUNITY HYDROELECTRIC ENERGY FACILITIES owned by
18 subscriber organizations; and
19 (E) The achievement of the goals and objectives of section
20 40-2-124.
21 (b) (I) The output from a community solar garden OR COMMUNITY
22 HYDROELECTRIC ENERGY FACILITY shall be sold only to the qualifying
23 retail utility serving the geographic area where the community solar
24 garden AND COMMUNITY HYDROELECTRIC ENERGY FACILITY is located.
25 Once a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY
26 FACILITY is part of a qualifying retail utility's plan for acquisition of
27 renewable resources, as approved by the commission, the qualifying retail
28 utility shall purchase all of the electricity and renewable energy credits

generated by the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY. The amount of electricity and renewable energy credits generated by each community solar garden ~~shall~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITY MUST be determined by a production meter installed by the qualifying retail utility or third-party system owner and paid for by the owner of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY.

(II) The purchase of the output of a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY by a qualifying retail utility ~~shall take~~ MUST BE IN the form of a net metering credit against the qualifying retail utility's electric bill to each community solar garden subscriber OR COMMUNITY HYDROELECTRIC ENERGY FACILITY SUBSCRIBER at the premises set forth in the subscriber's subscription. The net metering credit ~~shall be~~ IS calculated by multiplying the subscriber's share of the electricity production from the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY by the qualifying retail utility's total aggregate retail rate as charged to the subscriber, minus a reasonable charge as determined by the commission to cover the utility's costs of delivering to the subscriber's premises the electricity generated by the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY, integrating the solar OR HYDROELECTRIC ENERGY generation with the utility's system, and administering the community solar garden's OR COMMUNITY HYDROELECTRIC ENERGY FACILITY'S contracts and net metering credits. The commission shall ensure that this charge does not reflect costs that are already recovered by the utility from the subscriber through other charges. If, and to the extent that, a subscriber's net metering credit exceeds the subscriber's electric bill in any billing period, the net metering credit ~~shall~~ MUST be carried forward and applied against

future bills. The qualifying retail utility and the owner of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY shall agree on whether the purchase of the renewable energy credits from subscribers will be accomplished through a credit on each subscriber's electricity bill or by a payment to the owner of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY.

(c) The owner of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY shall provide real-time production data to the qualifying retail utility to facilitate incorporation of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY into the utility's operation of its electric system and to facilitate the provision of net metering credits.

(d) The owner of the community solar garden ~~shall be~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITY IS responsible for providing to the qualifying retail utility, on a monthly basis and within reasonable periods set by the qualifying retail utility, the percentage shares that should be used to determine the net metering credit to each subscriber. If the electricity output of the community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY is not fully subscribed, the qualifying retail utility shall purchase the unsubscribed renewable energy and the renewable energy credits at a rate equal to the qualifying retail utility's average hourly incremental cost of electricity supply over the immediately preceding calendar year.

(e) Each qualifying retail utility shall set forth in its plan for acquisition of renewable resources a proposal for including low-income customers as subscribers to a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY. The utility may give preference to community solar gardens OR COMMUNITY HYDROELECTRIC ENERGY

FACILITIES that have low-income subscribers.

(f) Qualifying retail utilities ~~shall be~~ ARE eligible for the incentives and subject to the ownership limitations set forth in section 40-2-124 (1) (f) for utility investments in community solar gardens OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES and may recover through rates a margin, in an amount determined by the commission, on all energy and renewable energy credits purchased from community solar gardens ~~Such~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES. THE incentive payments ~~shall be~~ ARE excluded from the cost analysis required by section 40-2-124 (1) (g).

(6) Nothing in this section ~~shall be construed to waive~~ WAIVES or ~~supersede~~ SUPERSEDES the retail rate impact limitations in section 40-2-124 (1) (g). Utility expenditures for unsubscribed energy and renewable energy credits generated by community solar gardens ~~shall~~ OR COMMUNITY HYDROELECTRIC ENERGY FACILITIES MUST be included in the calculations of retail rate impact required by that section.

(7) ~~**Applicability to cooperative electric associations and municipally owned utilities.** This section shall not apply to cooperative electric associations or to municipally owned utilities.~~

**SECTION 4.** In Colorado Revised Statutes, 30-20-602, **amend** (4.3) (b) as follows:

**30-20-602. Definitions.** As used in this part 6, unless the context otherwise requires:

(4.3) "Qualified community location" means:

(b) If the affected local electric utility is an investor-owned utility, a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY, as ~~that term is~~ THOSE TERMS ARE defined in section 40-2-127 (2), C.R.S. ~~If House Bill 10-1342 does not take effect, there shall be no~~

~~qualified community locations in the service territories of investor-owned utilities.~~

**SECTION 5.** In Colorado Revised Statutes, 31-25-501, **amend** (3.5) (b) as follows:

**31-25-501. Definitions.** As used in this part 5, unless the context otherwise requires:

(3.5) "Qualified community location" means:

(b) If the affected local electric utility is an investor-owned utility, a community solar garden OR COMMUNITY HYDROELECTRIC ENERGY FACILITY, as ~~that term is~~ THOSE TERMS ARE defined in section 40-2-127 (2), C.R.S. ~~If House Bill 10-1342 does not take effect, there shall be no qualified community locations in the service territories of investor-owned utilities.~~

**SECTION 6. 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 6, 2014, if adjournment sine die is on May 7, 2014); 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 date of the official declaration of the vote thereon by the governor.

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**BILL B**

LLS NO. 14-0248.01 Jennifer Berman **HOUSE BILL**

**HOUSE SPONSORSHIP**

**Fischer,**

**SENATE SPONSORSHIP**

**Schwartz,**

**House Committees** **Senate Committees**

# A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF FLEXIBLE WATER MARKETS.**

## 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.** Under the anti-speculation doctrine, current water court proceedings governing an application to change the beneficial use of an irrigation water right require the applicant to designate a specific alternative beneficial use identified at the time of the application. The bill creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the

permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.

**Section 1** of the bill defines "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use. It also redefines "appropriation" to exclude flex use from the anti-speculation doctrine.

**Sections 2 and 3** describe the procedures for obtaining a flex use change-in-use decree and a flex use substitute water supply plan.

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

**SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend** (3) (b), (4) (b), and (4) (c); and **add** (4) (d), (7.3), and (7.5) as follows:

**37-92-103. Definitions.** As used in this article, unless the context otherwise requires:

(3) (b) Nothing in this subsection (3) ~~shall affect~~ AFFECTS appropriations by the state of Colorado for minimum streamflows as described in subsection (4) of this section OR APPROVAL OF FLEX USE.

(4) "Beneficial use" means the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made. Without limiting the generality of the previous sentence, "beneficial use" includes:

(b) The diversion of water by a county, municipality, city and county, water district, water and sanitation district, water conservation district, or water conservancy district for recreational in-channel diversion purposes; ~~and~~

(c) For the benefit and enjoyment of present and future generations, the appropriation by the state of Colorado in the manner prescribed by law of ~~such~~ THE minimum flows between specific points or levels for and on natural streams and lakes as are required to preserve the

natural environment to a reasonable degree; AND

(d) A FLEX USE.

(7.3) "FLEX CONSUMPTIVE USE" MEANS THE FULLY CONSUMPTIVE PORTION OF A WATER RIGHT THAT HAS BEEN QUANTIFIED BY EITHER A WATER COURT CHANGE-IN-USE DECREE OR A SUBSTITUTE WATER SUPPLY PLAN APPROVAL, ENTERED OR APPROVED ON OR AFTER JUNE 1, 2014, THAT:

(a) IDENTIFIES THE WATER RIGHT AS A FLEX USE WATER RIGHT;

(b) QUANTIFIES THE HISTORICAL CONSUMPTIVE USE OF THE WATER RIGHT;

(c) PROVIDES TERMS AND CONDITIONS FOR A CHANGE IN TYPE OF USE OF THE WATER RIGHT THAT PREVENT MATERIAL INJURY TO OTHER VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS, INCLUDING THE RETURN FLOW OBLIGATIONS IN TIME, PLACE, AND AMOUNT;

(d) PERMITS DELIVERY AND USE OF ALL OR A PORTION OF THE CONSUMPTIVE USE ASSOCIATED WITH THE WATER RIGHT TO A FLEX USE THROUGH THE IMPLEMENTATION OF FALLOWING, REGULATED DEFICIT IRRIGATION, REDUCED CONSUMPTIVE USE CROPPING, OR OTHER ALTERNATIVE TO PERMANENT CESSATION OF AGRICULTURAL IRRIGATION ON THE PROPERTY THAT IS SERVED BY THE WATER RIGHT; AND

(e) ESTABLISHES A FIXED POINT OR POINTS OF DELIVERY FOR THE FULLY CONSUMPTIVE PORTION OF THE WATER RIGHT.

(7.5) (a) "FLEX USE" MEANS AN APPLICATION OF FLEX CONSUMPTIVE USE TO ANY BENEFICIAL USE.

(b) FOLLOWING DELIVERY OF FLEX CONSUMPTIVE USE AT THE POINT OR POINTS OF DELIVERY IDENTIFIED IN THE APPLICABLE CHANGE-IN-USE DECREE OR SUBSTITUTE WATER SUPPLY PLAN APPROVAL,

THE WATER USER MAY ACCOMPLISH FLEX USE BY DIRECT DELIVERY; STORAGE; RECHARGE; EXCHANGE; WATER BANKING; WHERE APPROPRIATE, NONCONSUMPTIVE USE; OR ANY OTHER LAWFUL MEANS THAT COMPLY WITH APPLICABLE DECREES, STATUTORY AND OTHER LEGAL REQUIREMENTS, AND ADMINISTRATION BY THE STATE ENGINEER AND DIVISION ENGINEERS.

**SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.7) as follows:

**37-92-305. Standards with respect to rulings of the referee and decisions of the water judge.** (3.7) **Flex use.** IF A CHANGE-IN-USE APPLICATION SEEKS APPROVAL OF FLEX USE, THE TERMS AND CONDITIONS OF THE DECREE MUST COMPLY WITH SECTION 37-92-103 (7.3) AND (7.5). THE TERMS AND CONDITIONS OF THE DECREE MUST ALSO REQUIRE THAT THE APPLICANT REPLACE HISTORICAL RETURN FLOWS IN TIME, PLACE, AND AMOUNT TO PREVENT MATERIAL INJURY TO THE OWNERS OF VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS.

**SECTION 3.** In Colorado Revised Statutes, 37-92-308, **add** (12) as follows:

**37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration - repeal.** (12) **Flex use.** IF THE STATE ENGINEER APPROVES A SUBSTITUTE WATER SUPPLY PLAN APPLICATION IN WHICH THE PLAN SOUGHT IS FOR A FLEX USE, THE TERMS AND CONDITIONS OF THE APPROVAL MUST COMPLY WITH SECTION 37-92-103 (7.3) AND (7.5). THE TERMS AND CONDITIONS OF THE APPROVAL MUST ALSO REQUIRE THAT THE APPLICANT REPLACE HISTORICAL RETURN FLOWS IN TIME, PLACE, AND AMOUNT TO PREVENT MATERIAL INJURY TO THE OWNERS OF VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS.

1 **SECTION 4. Effective date.** This act takes effect June 1, 2014.

2 **SECTION 5. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**BILL C**

LLS NO. 14-0259.01 Jennifer Berman **SENATE BILL**

**SENATE SPONSORSHIP**

**Hodge,** Brophy, Jones, Roberts, Schwartz

**HOUSE SPONSORSHIP**

**Fischer,** Coram, Mitsch Bush, Sonnenberg, Vigil

**Senate Committees** **House Committees**

## A BILL FOR AN ACT

101 **CONCERNING GRANTS FOR DOMESTIC WASTEWATER TREATMENT**
102 **WORKS FOR SMALL COMMUNITIES.**

### 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. Sections 1 and 2** of the bill clarify that severance tax dollars credited to the small communities water and wastewater grant fund may be used for domestic wastewater treatment works. **Section 3** repeals a statute that separately governs the funding, through grant-making, of domestic wastewater treatment works

for small municipalities and that substantially duplicates the provisions added and amended by sections 1 and 2.

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

**SECTION 1.** In Colorado Revised Statutes, 25-1.5-208, **amend** (1) (a) and (2); and **add** (1) (a.5) as follows:

**25-1.5-208. Grant program for public water systems and domestic wastewater treatment works - small communities water and wastewater grant fund - rules.** (1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a) To assist suppliers of water ~~in the state~~ THAT SERVE A POPULATION OF NOT MORE THAN FIVE THOUSAND PEOPLE with meeting their responsibilities with respect to protection of public health, the department, in the name of the state and to the extent that state funds are appropriated therefor, may enter into contracts with both governmental AGENCIES and not-for-profit public water systems, as defined in section 25-1.5-201 (1), or with counties representing unincorporated areas that serve a population of not more than five thousand people, to grant moneys for the planning, design, and construction of ~~drinking~~ PUBLIC water ~~or water treatment~~ systems.

(a.5) TO ASSIST DOMESTIC WASTEWATER TREATMENT WORKS, AS DEFINED IN SECTION 25-8-103 (5), THAT SERVE A POPULATION OF NOT MORE THAN FIVE THOUSAND PEOPLE WITH MEETING THEIR RESPONSIBILITIES WITH RESPECT TO THE PROTECTION OF PUBLIC HEALTH AND WATER QUALITY, THE DEPARTMENT, IN THE NAME OF THE STATE AND TO THE EXTENT THAT STATE FUNDS ARE APPROPRIATED THEREFOR, MAY ENTER INTO CONTRACTS WITH GOVERNMENTAL AGENCIES, OR WITH

COUNTIES REPRESENTING UNINCORPORATED AREAS THAT SERVE A POPULATION OF NOT MORE THAN FIVE THOUSAND PEOPLE, TO GRANT MONEYS FOR ELIGIBLE PROJECTS AS DEFINED IN SECTION 25-8-701 (2).

(2) The water quality control commission shall promulgate rules for the administration of any appropriated grant moneys pursuant to this section and for prioritizing proposed ~~drinking~~ PUBLIC water SYSTEMS and ~~water~~ DOMESTIC WASTEWATER treatment ~~system projects~~ WORKS based upon public health ~~impact~~ IMPACTS AND WATER QUALITY PROTECTION. THE DEPARTMENT SHALL AUTHORIZE DOMESTIC WASTEWATER TREATMENT GRANTS BASED ON WATER QUALITY NEEDS AND PUBLIC HEALTH-RELATED PROBLEMS. THE COMMISSION SHALL PROMULGATE A PROJECT CATEGORIZATION SYSTEM FOR USE IN DETERMINING THE RELATIVE PRIORITY OF PROPOSED DOMESTIC WASTEWATER PROJECTS. THE DEPARTMENT SHALL REVIEW APPLICATIONS FOR STATE FUNDS AND MAY APPROVE ONLY THOSE APPLICATIONS THAT ARE CONSISTENT WITH THE PROJECT CATEGORIZATION SYSTEM.

**SECTION 2.** In Colorado Revised Statutes, 25-8-701, **amend** (2); and **repeal** (3) as follows:

**25-8-701. Definitions.** As used in this part 7, unless the context otherwise requires:

(2) "Eligible project" means a project for the planning, design, or construction of domestic wastewater treatment works or of facilities for the discharge of wastewater or backwash water from public water treatment plants ~~which~~ THAT is, in the judgment of the division, necessary for the accomplishment of the state water quality control program ~~which~~ AND THAT conforms with applicable rules ~~and regulations~~ of the commission. ~~and which is eligible for federal assistance under provisions of the federal act.~~

(3) ~~"Federal assistance" means funds available to a municipality, either directly or through allocation by the state, from the federal government as grants for planning, design, or construction of domestic wastewater treatment works, or funds which are used for such planning, design, or construction, under provisions of the federal act.~~

**SECTION 3.** In Colorado Revised Statutes, **repeal** 25-8-703 as follows:

**25-8-703. State contracts for construction of domestic wastewater treatment works.** ~~(1) (a) To meet the responsibility of the state with respect to the protection of public health and to assist municipalities and counties, the division, in the name of the state and to the extent of state funds appropriated therefor, may enter into contracts with municipalities with populations of not more than five thousand persons concerning the planning, design, or construction of domestic wastewater treatment works.~~

~~(b) Repealed.~~

~~(2) The division shall be the state agency for the administration of funds appropriated for such project grants and shall contract for grant projects only to the extent state general funds have been appropriated. The division may use not more than five percent of the funds appropriated for such project grants for the administration and management thereof.~~

~~(3) Domestic wastewater treatment grants shall be authorized based upon water quality needs and public health related problems. The commission shall promulgate a project categorization system for use in determining the relative priority of proposed domestic wastewater projects. The division shall review applications for state funds and may approve only those applications that are consistent with the project categorization system.~~

~~(4) During the review process the division shall seek from the division of local government in the department of local affairs a fiscal analysis of the applicant to determine financial need. Based upon its fiscal analysis, the division of local government shall issue or deny a certificate of financial need. If a certificate of financial need is issued, the division may authorize a state grant percentage contribution to the project in accordance with the recommendation of the division of local government and with the project categorization adopted by the commission.~~

~~(5) Any contract entered into pursuant to this section shall include an estimate of the reasonable cost of the project as determined by the division and shall also include, but not be limited to, provisions which set forth that the municipality shall:~~

~~(a) Proceed expeditiously and complete the project in accordance with design documents reviewed by the division;~~

~~(b) Provide a plan of operation to the division for approval and shall commence operation of the domestic wastewater treatment works on completion of the project;~~

~~(c) Not discontinue operation of the domestic wastewater treatment works without prior approval of the division;~~

~~(d) Operate and maintain the domestic wastewater treatment works in accordance with the plan of operation;~~

~~(e) Provide for the payment of its share of the project.~~

~~(6) In connection with each contract concerning an eligible project, the division shall keep accurate records on the project, including, but not limited to, records of the amount of payment by the state and the amount of federal assistance received by the applicant. Such records may establish the basis for application for federal reimbursement of such payments made by the state, and the division is authorized to make such~~

1 ~~application in appropriate cases.~~

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

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**BILL D**

LLS NO. 14-0247.01 Jennifer Berman **SENATE BILL**

**SENATE SPONSORSHIP**

**Hodge,** Brophy, Jones, Roberts, Schwartz

**HOUSE SPONSORSHIP**

**Vigil,** Coram, Fischer, Mitsch Bush, Sonnenberg

**Senate Committees** **House Committees**

## A BILL FOR AN ACT

**CONCERNING THE REMOVAL OF CERTAIN STATUTORY PRINTING REQUIREMENTS FOR INFORMATION PROVIDED BY THE DIVISION OF WATER RESOURCES.**

### 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 state engineer and the division engineers throughout the state are required to make a number of reports, tabulations, and other written materials available to the public by printing them out and mailing them to interested parties. With electronic

mail and the internet, these written materials can be disseminated without printing copies. The bill updates statutes to remove printing requirements for the following written materials:

- The state engineer's annual report to the general assembly, as reflected in **section 1**;
- Division engineers' tabulations of decreed and conditional water rights, as reflected in **section 2**; and
- Decisions concerning substitute water supply plans, as reflected in **section 3** of the bill.

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

**SECTION 1.** In Colorado Revised Statutes, **amend** 37-87-114.4 as follows:

**37-87-114.4. Annual report.** The state engineer shall submit an annual report to the general assembly by November 1 of each year concerning the activities of the state engineer and the division of water resources relating to sections 37-87-105 to 37-87-114 for the preceding fiscal year. ~~In addition to the copies required to be filed as provided in section 24-1-136 (9), C.R.S., a copy of such report shall be provided to each of the following: The governor and the chairmen of the committees of reference of the senate and the house of representatives dealing with agriculture and natural resources. Such~~ THE report ~~shall~~ MUST include ~~but not be limited to~~ information on the following: Approvals of plans and specifications for construction of dams and reservoirs and for alterations, modifications, repairs, and enlargements; number of safety inspections made and the results thereof; use of appropriated funds; receipts generated for inspections of dams and reservoirs; rules and regulations adopted or amended; enforcement orders and proceedings; dam failures and reasons therefor; and other available data regarding the effectiveness of the state's dam and reservoir safety program.

**SECTION 2.** In Colorado Revised Statutes, 37-92-401, **amend**

(1) (a), (1) (a.5), (2) (a), (3), and (4) (c) as follows:

**37-92-401. Tabulations of priorities and decennial abandonment lists.** (1) (a) ~~No later than July 1, 1988, and each fourth anniversary thereafter,~~ The division engineer of each division with the approval of the state engineer shall ~~prepare~~ MAINTAIN a ~~quadrennial~~ tabulation in order of seniority of all decreed water rights and conditional water rights in his OR HER division. ~~except that a tabulation shall be prepared no later than July 1, 1994, and July 1 of every second year thereafter. Such biennial~~ THE tabulations ~~shall~~ MUST describe each water right and conditional water right by some appropriate means and ~~shall~~ MUST set forth the priority and amount thereof as established by court decrees. In making ~~such biennial~~ THE tabulations, the division engineer may use such system of numbering and listing water rights and conditional water rights in order of seniority as is suited to the administrative needs of the particular division or portion thereof. ~~He shall prepare separate priority lists so that only those water rights and conditional water rights which take or will take water from the same source and are in a position to affect one another will be on the same priority list.~~ He OR SHE shall also prepare decennially, no later than July 1, 1990, and each tenth anniversary thereafter, a separate abandonment list comprising all absolute water rights ~~which~~ THAT he OR SHE has determined to have been abandoned in whole or in part and ~~which~~ THAT previously have not been adjudged to have been abandoned.

(a.5) ~~The biennial~~ IN PREPARING THE tabulations required by this section, ~~shall reflect~~ THE DIVISION ENGINEER SHALL INCLUDE judgments and decrees determining, changing, or otherwise affecting water rights and conditional water rights, which judgments and decrees have been entered ~~subsequent to those reflected in the immediately preceding~~

~~tabulation authorized, as the case may be, by this section or by section 37-92-402~~ MORE THAN SIX MONTHS BEFORE THE DATE OF REVIEW. The ~~biennial~~ DIVISION ENGINEER MUST ALSO INCLUDE IN THE tabulations, ~~shall also reflect,~~ as appropriate, any changes in earlier abandonment lists ~~as have been ordered by~~ THAT the water judge or ~~by~~ the supreme court ~~Except as specified in this paragraph (a.5), the biennial tabulations shall make no changes in the listings from those reflected in the respective immediately preceding tabulation authorized, as the case may be, by this section or by section 37-92-402, other than changes to correct clerical errors~~ HAVE ORDERED.

(2) (a) ~~No later than August 31, 1988, and every second anniversary thereafter, the water clerk, in cooperation with the division engineer, shall cause notice of the availability of the biennial tabulation to be included in the resume described in section 37-92-302 (3) of cases filed in the respective water divisions during the month of July. In addition, the water clerk shall cause such publication of the notice as is necessary to obtain general circulation once in each county or portion thereof in the division. A~~ THE STATE ENGINEER AND THE RESPECTIVE DIVISION ENGINEER SHALL MAKE A copy of ~~such biennial~~ THE tabulation ~~shall be~~ available for inspection in ~~the~~ THEIR offices ~~of the state and respective division engineers and the respective water commissioners and water clerks~~ at any time during regular office hours, AS WELL AS ON THE STATE ENGINEER'S WEB SITE, and shall ~~be~~ MAKE THE TABULATION available for purchase ~~from the office of the state engineer and respective division engineer by any person specifically requesting same upon the payment of~~ FOR a fee of ten dollars.

(3) ~~Not later than July 1, 1989, and every second anniversary thereafter,~~ Any person wishing to object to the manner in which a water

right or conditional water right is listed in the ~~biennial~~ tabulation or to the omission of a water right or conditional water right from ~~such biennial~~ THE tabulation, and not later than July 1, 1991, and every tenth anniversary thereafter, any person wishing to object to the inclusion of any absolute water right or portion thereof in the decennial abandonment list ~~shall~~ MUST file a statement of objection in writing with the division engineer. ~~A fee of ten dollars shall be paid with such filing; except that no fee shall be required for any such filing to correct any clerical error.~~

(4) (c) The DIVISION ENGINEER SHALL FILE THE decennial abandonment list, together with any revisions, signed by the division engineer and the state engineer or his OR HER duly authorized deputy, ~~shall be filed~~ with the water clerk as promptly as possible, but not later than December 31, 1991, and every tenth anniversary thereafter. EACH RESPECTIVE DIVISION ENGINEER, WATER CLERK, AND THE STATE ENGINEER SHALL MAKE a copy of ~~such~~ THE decennial abandonment list, together with any revisions, ~~shall be available in the office of each respective division engineer and the offices of each water commissioner, the state engineer, and the respective water clerk~~ AVAILABLE for inspection IN THEIR OFFICES at any time during regular office hours, AS WELL AS ON THE STATE ENGINEER'S WEB SITE, and the division engineer shall furnish or mail a copy to anyone requesting ~~same~~ A COPY upon payment of a fee ~~of ten dollars~~ IN AN AMOUNT SET IN SECTION 37-80-110 (1) (h).

**SECTION 3.** In Colorado Revised Statutes, 37-92-308, **amend** (4) (c), (5) (c), (6), and (10) (d) as follows:

**37-92-308. Substitute water supply plans - special procedures for review - water adjudication cash fund - legislative declaration - repeal.** (4) (c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on

all parties to the pending water court application BY ELECTRONIC MAIL, OR, IF A PARTY HAS ELECTED, by first-class mail. Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in the pending water court case or any other legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (4) shall be to the water judge of the applicable water division within thirty days and shall be consolidated with the application for approval of the plan for augmentation.

(5) (c) When the state engineer approves or denies a substitute water supply plan, the state engineer shall serve a copy of the decision on all parties to the application BY ELECTRONIC MAIL, OR IF A PARTY HAS ELECTED, by first-class mail. ~~or, if such parties have so elected, by electronic mail.~~ Neither the approval nor the denial by the state engineer shall create any presumptions, shift the burden of proof, or serve as a defense in any legal action that may be initiated concerning the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan pursuant to this subsection (5) shall be made to the water judge in the applicable water division within thirty days, who shall hear such appeal on an expedited basis.

(6) The state engineer shall establish a substitute water supply plan notification list for each water division for the purposes of notifying interested parties pursuant to subparagraph (II) of paragraph (b) of subsection (3) of this section and subparagraph (II) of paragraph (a) of subsection (5) of this section. Beginning in July 2002, and in January of each year thereafter, in order to establish ~~such~~ THE notification list, the water clerks in each division shall include in the water court resume an

invitation to be included on ~~such~~ THE notification list for the applicable water division. Persons on the substitute water supply plan notification list shall receive notice of all substitute water supply plans filed in that water division pursuant to subsections (3) and (5) of this section by ~~either~~ ELECTRONIC MAIL OR, IF A PERSON HAS ELECTED, BY first-class mail. ~~or, if a person so requests, by electronic mail.~~ Persons may be required to pay a fee, not to exceed twelve dollars per year, to be placed on the notification list.

(10) (d) When the state engineer approves or denies a substitute water supply plan pursuant to this subsection (10), the state engineer shall serve a copy of the decision on all parties who have subscribed to the substitute water supply plan notification list for water division 1 and all parties to the water court case in which the plan for augmentation was decreed by ELECTRONIC MAIL OR, IF A PARTY HAS ELECTED, BY first-class mail. ~~or, if such parties have so elected, by electronic mail.~~ Neither the approval nor the denial by the state engineer ~~shall create~~ CREATES any presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a defense in any legal action involving the substitute water supply plan. Any appeal of a decision made by the state engineer concerning a substitute water supply plan approved or denied pursuant to this subsection (10) ~~shall~~ MUST be made within thirty-five days after the date of service of the decision. Any ~~such~~ appeal shall be filed under the same case number as the decreed plan for augmentation and ~~shall~~ MUST be heard under the retained jurisdiction of the water judge, using the procedures and standards set forth in sections 37-92-304 and 37-92-305, for determination of matters rereferred to the water judge by the referee. The water judge shall hear and determine any ~~such~~ appeal on an expedited basis. The applicant for the substitute water supply plan shall

not use the proposed substitute water supply in the decreed plan for augmentation until any appeal under this paragraph (d) is decided by the water court. Following the determination on appeal by the water court, the applicant's use of water under the substitute water supply plan shall be governed by ~~such~~ THE water court determination, unless the terms of the augmentation plan decree provide otherwise.

**SECTION 4.** In Colorado Revised Statutes, 37-92-309, **amend** (4) (a) as follows:

**37-92-309. Interruptible water supply agreements - special review procedures - rules - water adjudication cash fund - legislative declaration - definitions.** (4) (a) When the state engineer approves or denies an interruptible water supply agreement, the state engineer shall serve a copy of the decision upon all parties to the application by ELECTRONIC MAIL OR, IF A PARTY HAS ELECTED, BY first-class mail. ~~or, if such parties have so elected, by electronic mail.~~ Neither the approval nor the denial of the agreement by the state engineer ~~shall create~~ CREATES any presumptions, ~~shift~~ SHIFTS the burden of proof, or ~~serve~~ SERVES as a defense in any legal action that may be initiated concerning the interruptible water supply agreement. Any appeal of a decision made by the state engineer concerning the operation of an interruptible water supply agreement pursuant to this section ~~shall~~ MUST be expedited, ~~shall be~~ limited to the issue of injury, and ~~shall be~~ made within thirty-five days after mailing of the decision to the water judge in the applicable water division. All parties to the appeal shall pay to the water clerk a fee to cover the direct costs associated with the expedited appeal. The water judge shall hear and determine ~~such~~ THE appeal using the procedures and standards set forth in sections 37-92-304 and 37-92-305 for determination of matters rereferred to the water judge by the referee; except that the

water judge shall not deem any failure to appeal all or any part of the decision of the state engineer or failure to state any grounds for appeal to preclude any party from raising any claims of injury in a future proceeding before the water judge. The proponent of the interruptible water supply agreement ~~shall be~~ IS deemed to be the applicant for purposes of application of such procedures and standards. Moneys from ~~such~~ THE fee shall be transmitted to the state treasurer and deposited in the water adjudication cash fund, which fund is hereby created in the state treasury. The general assembly shall appropriate moneys in the fund for the judicial department's expedited adjudications pursuant to this section.

**SECTION 5. 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 6, 2014, if adjournment sine die is on May 7, 2014); 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 date of the official declaration of the vote thereon by the governor.

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

**BILL E**

LLS NO. 14-0244.01 Thomas Morris x4218 **HOUSE BILL**

**HOUSE SPONSORSHIP**

**Sonnenberg,** Coram, Mitsch Bush

**SENATE SPONSORSHIP**

**Roberts,** Brophy

**House Committees** **Senate Committees**

## A BILL FOR AN ACT

101 **CONCERNING A LIMITATION ON THE UNITED STATES' ABILITY TO**
102 **IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE**
103 **FOR 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 that if the United States obtains a water right as a result of a transfer or conveyance required as a condition to a special use permit or other authorization to enter upon or use federally owned land, the water right

was originally appropriated by a person other than the United States, and the water right is not a federal reserved water right, the water right is presumed to be held by the United States for speculative purposes. Such a water right is not automatically abandoned but is forfeited by the United States and reverts to the prior owner for continued use under its original priority.

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

**SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend** (3) (a) (II) as follows:

**37-92-103. Definitions.** As used in this article, unless the context otherwise requires:

(3) (a) "Appropriation" means the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative rights to persons not parties to the proposed appropriation, as evidenced by either of the following:

(II) (A) The purported appropriator of record does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses.

(B) THE WATER RIGHT WAS OBTAINED BY THE UNITED STATES AS A RESULT OF A TRANSFER OR CONVEYANCE REQUIRED AS A CONDITION TO A SPECIAL USE PERMIT OR OTHER AUTHORIZATION TO ENTER UPON OR USE FEDERALLY OWNED LAND, WAS ORIGINALLY APPROPRIATED BY A PERSON OTHER THAN THE UNITED STATES, AND IS NOT PART OF THE RESERVED WATER RIGHTS OBTAINED BY THE UNITED STATES. SUCH A WATER RIGHT IS PRESUMED TO BE HELD BY THE UNITED STATES FOR SPECULATIVE

1 PURPOSES. A WATER RIGHT HELD BY THE UNITED STATES FOR
2 SPECULATIVE PURPOSES PURSUANT TO THIS SUB-SUBPARAGRAPH (B) IS
3 NOT AUTOMATICALLY ABANDONED BUT IS FORFEITED BY THE UNITED
4 STATES AND REVERTS TO THE PRIOR OWNER, OR THE PRIOR OWNER'S
5 SUCCESSORS AND ASSIGNS, FOR CONTINUED USE UNDER ITS ORIGINAL
6 PRIORITY.
7 **SECTION 2. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 6, 2014, if adjournment sine die is on May 7,
11 2014); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2014 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.
17 (2) This act applies to acts occurring on or after the applicable
18 effective date of this act.

**Second Regular Session**
**Sixty-ninth General Assembly**
**STATE OF COLORADO**

# RESOLUTION A

LLS NO. 14-0250.01 Jennifer Berman **INTERIM COMMITTEE RESOLUTION**

**HOUSE SPONSORSHIP**

**Coram,** Mitsch Bush, Sonnenberg

**SENATE SPONSORSHIP**

**Schwartz,** Brophy, Roberts

**House Committees** **Senate Committees**

## INTERIM COMMITTEE RESOLUTION

101 **CONCERNING A SPECIAL EXEMPTION FROM INTERSTATE HIGHWAY**
102 **WEIGHT LIMITS FOR DIVISIBLE TRUCK LOADS CARRYING FOREST**
103 **PRODUCTS.**

1 WHEREAS, In Colorado, improving the health of our forests plays
2 an important role in mitigating catastrophic wildfires, promoting healthy
3 watersheds, and providing for our citizens biomass energy, a reliable,
4 inexpensive renewable energy; and

5 WHEREAS, In the wake of devastating wildfires in the summers
6 of 2012 and 2013, a catastrophic flood in September of 2013, and years
7 of pine beetle infestations, Colorado's forests are filled with dead and
8 dying wood that needs to be removed to restore the health of our forests;
9 and

WHEREAS, Our forest products industries, including timber and biomass energy, provide market-driven economic solutions for improving Colorado's forest health by thinning the overcrowded forests and removing dead and dying wood; and

WHEREAS, Removing economic roadblocks for our forest products industries can thus help Colorado recover from the catastrophic wildfires, floods, and pine beetle infestations that have plagued our state in recent years; and

WHEREAS, One of the economic roadblocks faced by our forest products industries is the federal maximum weight limit imposed on interstate highways for divisible loads; and

WHEREAS, Under federal law, trucks hauling divisible loads may only haul up to 80,000 pounds on Colorado's interstate highways as a result of the freeze imposed by the federal "Intermodal Surface Transportation Efficiency Act of 1991", Pub.L. 102-240, as amended; and

WHEREAS, Because of the maximum weight limit imposed on interstate highways, companies hauling forest products are required to transport smaller loads than the maximum capacity of their trucks, thus requiring the companies to use more trucks and incur greater fuel costs; and

WHEREAS, A company providing biomass energy in Colorado, estimates that increasing the maximum weight limits on interstate highways would save the company between 20 and 30 percent of its current fuel costs; 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:*

That we, the members of the Colorado General Assembly, urge Congress to pass legislation creating a special exemption from the federal maximum weight limit on interstate highways for forest product industries.

*Be It Further Resolved,* That copies of this Joint Resolution be sent to members of Colorado's, Arizona's, New Mexico's, Oregon's, Utah's, and Wyoming's congressional delegations.