Colorado Legislative Council Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 • FAX: 866-3855 • TDD: 866-3472
www.colorado.gov/lcs
E-mail: lcs.ga@state.co.us

M E M O R A N D U M

September 23, 2014

TO: Members of the Water Resources Review Committee

FROM: David Beaujon, Senior Research Analyst, (303) 866-4781

SUBJECT: Issues for the Water Resources Review Committee to Consider Regarding its Report to the CWCB on the Colorado Water Plan

Summary

Pursuant to Senate Bill 14-115, the Water Resources Review Committee is required to collect feedback from the public and provide a summary of the public's feedback as well as its own feedback on the draft Colorado Water Plan to the Colorado Water Conservation Board by November 1, 2014. The law is silent on the content and manner of this report. This memorandum identifies issues the Water Resources Review Committee may want to consider when deciding what to include in the Senate Bill 14-115 report and the process for making these recommendations. The Water Resources Review Committee will discuss the Senate Bill 14-115 report at the end of its September 30, 2014, meeting at the State Capitol.

Overview. Pursuant to Senate Bill 14-115, the Colorado Water Conservation Board (CWCB) is required to present the scope, fundamental approach, and basic elements of the Colorado Water Plan to the Water Resources Review Committee (WRRC) by August 1, 2014. These materials were provided to the committee prior to its first Senate Bill 14-115 hearing in Gunnison on June 18, 2014. The WRRC is required to collect feedback from the public and provide a summary of the public's feedback as well as its own feedback on the draft plan to the CWCB by November 1, 2014. The committee has received public feedback at the eight meetings held to date from small group discussion reports and public testimony. The audio recording for these meetings and meeting summaries are available on the committee's website at www.colorado.gov/lcs/WRRC. The committee has also received public comments in the form of letters and e-mails, handwritten questionnaires, and questionnaires that were completed on the committee's website. Following are questions to help the committee decide how to develop and submit public and committee feedback on the Colorado Water Plan.

Public Feedback on the Draft Colorado Water Plan

Format of public comments submitted to CWCB. In what form should the public's feedback be provided? Should the committee provide completed questionnaires, e-mails, letters, and audio recordings of public comments to the CWCB or should it only provide a summary of these comments? Should the committee provide the CWCB all public comments received by the committee or only those comments that are supported by the committee?

Comments not directly related to the CWP. Some public feedback was not directly related to the Colorado Water Plan. For example, a representative of Pitkin County testified at the August 20 meeting that county 1041 powers for reviewing transbasin diversions should be maintained. County 1041 powers are specified in statute (Section 24-65.1-101 *et seq.* C.R.S.) and would not be affected by the Colorado Water Plan. How should public comments unrelated to specific elements of the draft plan be addressed by the committee?

Small group discussion reports. Each Senate Bill 14-115 hearing included small group discussions on the Colorado Water Plan and verbal reports from each group by a designated representative. Staff summarized the small group discussion reports in the summary for each meeting. While preparing these summaries, staff observed that the small group discussion reports were inconsistent in their quality and content. Some reports included issues that appeared to have the consensus of the table. Other reports identified issues discussed at the table and did not indicate if the issue had any support from the table. Some reporters also appeared to report only issues with which they agreed. Others did not appear to understand fully their table's discussion. Should the small group discussion reports be considered for possible recommendations by the committee or shared with the CWCB?

Written comments vs. summaries of comments. Letters, e-mails, completed questionnaires, and audio recordings of public testimony are the most accurate record of public testimony. Meeting summaries of public testimony are staff's interpretation of what is the most important and salient elements of testimony. Such interpretations are vulnerable to inadvertent misrepresentation. Should the committee only use completed questionnaires, audio recordings, letters, and e-mails when deciding which public feedback it wants to provide to the CWCB?

Anonymous comments. Several questionnaires have been submitted anonymously. Should these comments be considered by the committee or conveyed to the CWCB?

Multiple submissions. Some individuals provided written comments and testified at one or more meetings. Should such testimony be weighed differently by the committee? Also, multiple persons representing an entity, such as a county, submitted similar comments. For example, at the August 21 meeting, Pitkin County staff provided testimony that was essentially the same as the letter submitted by the Chair of the Pitkin County Board of County Commissioners and another board member. Should only one of these comments be considered by the committee and referred to the CWCB?

Committee Feedback on the Draft Colorado Water Plan

Voting requirements for recommendations. How will the committee determine what feedback to provide on the draft Colorado Water Plan? Senate Bill 14-115 is silent on the number of affirmative votes needed to make a recommendation to the CWCB. Pursuant to Section 37-98-103, C.R.S., no bill may be reported to the Legislative Council unless a two-thirds majority of the appointed members of the committee vote to report such bill to the Legislative Council. Should committee feedback provided to the CWCB be required to have the support of the

two-thirds of the committee members (at least 7 affirmative votes) or should it be a lower threshold of support, such as a majority of the members, or a majority of a quorum?

Minority reports. Should minority reports be prepared for feedback that does not have the requisite level of support from the committee? If so, how many committee members must vote to support a minority report?

Scope of feedback. On what aspect of the draft Colorado Water Plan will the committee submit feedback? For example, should the committee make recommendations concerning specific elements of the plan, including the basin implementation plans? Or should the committee's feedback be limited to the scope, fundamental approach, and basic elements of the draft plan? To date, the CWCB has prepared numerous draft chapters amounting to hundreds of pages. In the August 5, 2014 memorandum, Legislative Council Staff and Legislative Legal Services reviewed 11 other state water plans and determined that these plans vary significantly in length and technical complexity. For example, New Mexico's State Water Plan is 85 pages in length and Arizona's State Water Plan is over 2,500 pages. Should the committee provide feedback on the appropriate length and technical complexity of the draft Colorado Water Plan?

Should the committee submit amendments to the draft plan by page and sentence, similar to amendments to bills, or should it provide more general feedback and let the CWCB determine how best to incorporate the committee's recommendations?

Type of report. How should the committee submit comments on the draft Colorado Water Plan to the CWCB? Should it submit a letter to the Director of the CWCB, or issue a final report to the director such as submitted by interim committees to Legislative Council?