



Report to the Colorado General Assembly

Water Resources Review Committee

Prepared by

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Water Resources Review Committee

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December 2015

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ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784

E-mail: lcs.ga@state.co.us

303-866-3521 FAX: 303-866-3855 TDD: 303-866-3472

December 2015

To Members of the Seventieth 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 10, 2015, the Legislative Council reviewed the report of this committee. A motion to forward this report and the memorials and resolution therein for consideration in the 2016 session was approved.

Sincerely,

/s/ Senator Bill Cadman
Chairman

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This report is also available on line at:

<https://www.colorado.gov/pacific/cga-legislativecouncil/2015-water-resources-review-committee>

Committee Charge

General charge. The Water Resources Review Committee (WRRC) 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 to further its purpose. 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 2015, including two times outside of the interim period, and to take two field trips.

Senate Bill 14-115 charge concerning statewide hearings on the Colorado Water Plan. Pursuant to Senate Bill 14-115, the WRRC is required to review statewide planning for water resources. The law charged the committee with holding at least one public hearing in each geographic region associated with a basin roundtable during the 2015 interim to collect public feedback on the draft Colorado Water Plan. SB 14-115 also required the committee to provide a summary of the public's feedback, as well as its own feedback to the Colorado Water Conservation Board (CWCB) by November 1, 2015. The committee may recommend the introduction of legislation based on the results of such review. Any hearing held regarding the plan does not count against the committee's meeting or field trip limit. The committee, after holding a public hearing, may recommend the introduction of legislation based on the results of its review of the Colorado Water Plan. Such legislation does not count against the number of bills to which either the committee or the members of the General Assembly are limited by law or joint rule. The committee may repeat the review process for the Colorado Water Plan, including public meetings in each basin, whenever the CWCB submits a significant amendment to the plan. By November 1 of each year following the submission to the committee of a plan or plan amendment, any member of the General Assembly may request that the committee hold one or more hearings to review the plan or plan amendment. No later than November 1, 2017, and every five years thereafter, the committee is also required to prepare a list of specific topics that it deems necessary to be addressed in the plan.

Regular Committee Activities

Regular meetings. During the 2015 interim, the committee held seven regular meetings and took two field trips unrelated to the Colorado Water Plan. 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 groundwater use; implementation of new water laws; development of the Colorado Water Plan; and other issues.

Regular field trips. In June, the committee attended a two-day field trip in the Denver metropolitan area, where it visited water conservation, reuse, and storage facilities, and residential developments that emphasize water conservation. This tour was organized by the Colorado Foundation for Water Education. In August, the committee attended the Colorado Water Congress summer conference in Vail, where it held a public meeting and attended presentations about water infrastructure financing, water planning, ongoing water supply studies, and other water management issues.

Water Quality Impacts from Abandoned Mines

Gold King Mine spill. On August 5, 2015, a project team for the U.S. Environmental Protection Agency (EPA) was working at the Gold King Mine site as part of a removal action under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) and released approximately three million gallons of waste water from the mine into Cement Creek. The contaminated water made its way into the Animas River and over the state border into New Mexico and Utah before dispersing into Lake Powell. The Animas River was temporarily closed for recreation, fishing, irrigation, and drinking water purposes due to the mine discharge. Water samples taken in the days immediately after the mine blowout indicated elevated levels of some metals (copper, lead, and manganese), although concentrations diminished to pre-incident levels within weeks of the spill. The EPA has constructed a temporary water treatment plant at the mine site to handle waste water that continues to drain from the mine through the winter months.

Abandoned mines in Colorado. The Colorado Division of Reclamation, Mining, and Safety (DRMS) in the Colorado Department of Natural Resources (DNR), briefed the committee on the Gold King Mine spill and the threat of similar events from other abandoned mines in Colorado. The division estimated that there are more than 22,000 abandoned hard rock mines in Colorado and that at least 500 of these mines are polluting streams. About 40 percent of these mines have been safeguarded by the DRMS Inactive Mines Reclamation Program over the past 30 years, but inactive mines continue to be a significant source of water pollution affecting more than 1,300 miles of streams and waterways. There are approximately 500 legacy mine sites that have been identified as having a measurable impact on water quality. Of these, 230 are problematic because of actual mine drainage (as opposed to storm water issues from tailings and waste rock). Forty-seven of these sites have active water treatment efforts and another 35 are being evaluated, but 148 are still draining into waterways without any intervention.

Oversight of abandoned mines in Colorado. The Inactive Mines Reclamation Program (IMRP) within the DRMS is responsible for safeguarding hazards and conducting reclamation and remediation projects at legacy and forfeited mine sites in Colorado. In general, the IMRP must obtain landowner permission for any safeguarding or remediation project to proceed. The EPA and the Colorado Department of Public Health and Environment (CDPHE) oversee draining legacy mines that require water treatment under the federal Superfund Program established by CERCLA and the Clean Water Act (CWA). Any party that engages in water treatment must meet CWA water quality standards and assume liability for meeting minimum federal and state standards in the future.

Liability concerns for voluntary mine cleanup. Because abandoned mines do not have an identifiable and financially viable owner or operator, their cleanup falls to the government, or the pollution continues unabated because state and federal resources are limited. Environmental organizations and other private entities with expertise in mine reclamation have expressed an interest in helping to remediate abandoned hard rock mines. However, these parties, commonly known as Good Samaritans, are discouraged from remediating abandoned mines because of the threat of liability under the CWA and CERCLA for such third-party reclamation efforts. Specifically, the CWA prohibits the discharge of pollutants into the nation's waters without a permit. No exceptions exist for discharges from abandoned mines that have been remediated by Good Samaritans. The committee recommends Memorial A that urges Congress to pass legislation establishing a Good Samaritan exemption from liability under the CWA and CERCLA.

Federal Funding for Wildfires

There are about 24 million acres of forests and woodlands in Colorado, two-thirds of which are owned and managed by the federal government. Most of Colorado's water supply comes from rivers and streams that originate on federal lands. Colorado's forests are increasingly susceptible to forest fires due, in part, to the age of the forests and federal forest management policies. Approximately 140,000 acres in Colorado burned per year on average for the period from 2008 through 2014. Under current federal law, once the amount budgeted for firefighting has been depleted, money that was originally budgeted to mitigate fire risk, protect and restore watersheds, increase forest health, promote recreational opportunities, and conduct necessary forest planning is diverted to fight fires. In 1995, the U.S. Forest Service spent 16 percent of its annual budget on fire suppression and response. The agency announced that in 2015, it will spend more than half its budget to fight wildfires, and by 2025 it expects to spend over 60 percent of its budget on this task. The committee recommends Joint Memorial B, which urges Congress to enact laws necessary to protect federal land management agencies' ability to mitigate the risk of catastrophic wildfires and manage the lands within their jurisdiction by funding catastrophic wildfire response in a manner analogous to that used for other natural disasters. The Wildfire Matters Review Committee also recommended this resolution.

Water Storage and Dam Safety

Role of water storage. Statewide average annual precipitation for Colorado is 15 inches, with large areas receiving less than 10 inches. The state also experiences extended droughts. Water storage enables Colorado to capture surplus water, such as during spring runoff, and save the water to meet demands during dry periods. Over 2,000 dams and reservoirs have been constructed throughout the state. Combined, these reservoirs can hold over six million acre-feet of water. One acre-foot of water is the amount of water needed to flood an acre of land to a depth of one foot, or 325,851 gallons.

State Engineer's dam safety program. The State Engineer directs the Division of Water Resources (DWR) in DNR. The division administers over 150,000 water rights, issues water well permits, monitors stream flows and water uses, and represents Colorado in interstate water compact proceedings. It also inspects dams to ensure safe operations and to prevent catastrophic failures. If DWR determines that a dam needs repair or rehabilitation, the owner or operator will be required to restrict the water level behind the dam, thus limiting the reservoir's storage capacity. To access a dam located on federal lands for repairs, an owner or operator of a dam must obtain permission from the federal agency managing the land. A federal agency's failure to respond promptly to requests for permission to access a dam may increase the cost of repairs and prevent the storage of water for use during times of scarcity. The committee recommends Resolution A that urges the U.S. Forest Service and the Bureau of Land Management to respond promptly to requests for permission to access a dam to maintain, repair, or rehabilitate it.

Permitting Requirements for Water Projects

Depending on their location and scope, water projects are subject to a variety of permitting and licensing requirements at the federal, state, and local levels. Permitting agencies consider the projects' potential impacts on water quality, aquatic environment, endangered species, and other interests. Projects must be permitted prior to the commencement of

construction. Because of extensive review processes, substantial backlog, and limited coordination between agencies at all three levels of government, permitting can delay construction of water projects for years. Many of the largest planned projects in the state, including the Northern Integrated Supply Project in Larimer County, remain in the permitting process.

The state government exercises different degrees of authority with respect to different permitting requirements. In some cases, federal agencies refer permit or license applications to the state for review. The Colorado Energy Office reviews applications for a Federal Energy Regulatory Commission license or license exemption for hydroelectric facilities proposed in the state. In other cases, state agencies have the sole authority to approve or deny permit requests. The Water Quality Control Division in the CDPHE may certify or deny applications for water diversion, delivery, or storage facilities under Section 401 of the CWA. Similarly, the Parks and Wildlife Commission and the CWCB are empowered to adopt official state mitigation plans for water diversion, delivery, or storage facilities that affect fish and wildlife resources.

Reassignment of permitting authorities. The committee considered, but did not recommend, two pieces of legislation that would reassign certain federal and state permitting processes to the DWR. One bill would have designated the DWR as the state office responsible for permitting projects discharging dredge or fill material, conducting reviews and approvals under the National Environmental Policy Act, and licensing hydroelectric facilities, if any of these responsibilities were devolved from the federal government to the state at a later date. The other bill would have transferred statutory authority to conduct certain types of permitting for water diversion, delivery, storage, and hydroelectric power facilities to the DWR.

Precipitation Collection

Rain harvesting, also called precipitation collection, occurs when rain or snow melt is collected from an impervious surface, such as a roof or paved area, prior to reaching a stream and applied to a beneficial use, such as lawn watering. Under current law, precipitation collection is limited to certain types of well users, and participants in a pilot project. For well users, the collected water may only be used for certain purposes to ensure that other water users are not harmed. For the pilot project, water users must replace the water collected through a temporary substitute water supply plan and a permanent augmentation plan.

A study conducted by the Urban Water Center at Colorado State University assessed the effects on infiltration, evaporation and surface runoff of 100 gallons of rainwater capture for a typical Denver household. The study compared infiltration, evaporation and surface runoff from undeveloped land and developed land with and without rain barrels. The study found that allowing 100 gallons of rainwater storage per household will not decrease surface runoff by any detectable amount on a typical lot. The study also concluded that development on previously undeveloped (greenfield) land has a significantly greater effect on surface runoff and infiltration than rainwater storage. If legislation is passed to allow the use of rain barrels, based on adoption rates in other states, the study estimated a 5 percent adoption rate of rain barrels in Colorado.

The committee requested, but did not take action on, a bill that would have allowed a water provider to permit residential customers to use up to 2 containers with a maximum storage capacity of 55 gallons each to collect precipitation from the customer's residential rooftop. The water provider would have been required to account for the captured water and provide a means of replacing any water lost to the stream system in order to protect vested water rights.

Enforcement of Priority System

Penalty for illegal water diversions and DWR fees. The State Engineer and DWR staff are authorized to stop diversions that injure senior water rights or are not being used beneficially. Under current law, any person who knowingly and willfully cuts, digs, breaks down, or opens any gate, bank, embankment, or side of any ditch, canal, flume, feeder, or reservoir is guilty of a misdemeanor. The county court has jurisdiction over violations of this law. The committee considered, but did not recommend, a bill that would have specified that a person who takes more than 50 gallons of water from a stream or other source without a water right is guilty of a misdemeanor. It also would have authorized peace officers and the appropriate district attorney to enforce the bill's prohibition. Under current law, certain fees collected by the State Engineer's Office are set in statute. The committee also considered, but did not recommend, a bill that would have allowed the State Engineer to set these fees by rule. It also would have amended several water laws to conform to modern drafting conventions.

Flexible Water Use

Flexible water use. 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. Under current law, an applicant seeking to change the beneficial use of a water right in water court must designate a specific alternative beneficial use at the time of application. The WRRC requested, but did not consider, a bill to create a more flexible change-in-use system that would allow 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 without designating the specific beneficial use to which the water would be applied.

Committee Activities to Implement Senate Bill 14-115

Governor's executive order concerning the Colorado Water Plan. In 2013, Governor Hickenlooper issued an executive order directing the CWCB to commence work on the Colorado Water Plan. According to the Governor's executive order, the Colorado Water 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 was instructed to complete the final plan by December 10, 2015. The final plan was released on November 19, 2015.

Senate Bill 14-115 legislative declaration. SB 14-115 declares that the General Assembly is primarily responsible for guiding the development of state water policy. It also declares that this law is necessary to protect the interests of the public in the state's water resources and that the General Assembly intends to engage the people of the state in a public dialogue regarding optimal state water policy. The law also affirms the legislature's delegation of policy-making authority to the CWCB, and declares that the law seeks to promote the policies, processes, basin roundtable plans, and Interbasin Compact negotiations conducted pursuant to the "Colorado Water for the 21st Century Act," and the Interbasin Compact Charter. The law requires the WRRC to hold at least one public hearing in each geographic region associated with basin roundtables to collect feedback from the public on the scope, fundamental approach, and basic elements of the draft Colorado Water Plan.

Pursuant to SB 14-115, the WRRC is required to review statewide planning for water resources. SB 14-115 charged the committee with holding at least one public hearing in each geographic region associated with a basin roundtable during the 2015 interim to collect public feedback on the draft Colorado Water Plan. SB 14-115 also required the committee to provide a summary of the public's feedback as well as its own feedback to the CWCB by November 1, 2015. The committee may recommend the introduction of legislation based on the results of the review. A similar process, including hearings in each geographic region associated with a basin roundtable, occurred during the 2014 interim.

Overview of Senate Bill 14-115 activities. In addition to seven regular meetings, the committee held nine special meetings during the 2015 interim to collect feedback from the public on the second draft of the Colorado Water Plan. Those meetings were held in Alamosa, Aurora, Craig, Durango, Granby, Greeley, Montrose, Salida, and Walden. Approximately 230 people attended the nine SB 14-115 hearings during the 2015 interim. The committee also received public comments through letters, e-mails, and completed questionnaires. On September 17, 2015, the committee delivered a preliminary report to the CWCB that summarized the public feedback provided to the committee by September 15, 2015, and provided the committee's recommendation on the Colorado Water Plan. Additionally, the WRRC submitted a final report to the CWCB on September 30, 2015. The report supplemented the preliminary report and summarized the WRRC's activities related to the Colorado Water Plan.

Opportunities for the public to provide feedback on the Colorado Water Plan. According to SB 14-115, the General Assembly intended to engage the people of the state in a public dialogue regarding optimum state water policy. Towards this end, the WRRC conducted a public outreach process that encouraged any interested person to provide testimony on state water policy at a public meeting or submit comments directly through the committee's website or by other means. Specifically, the chair of the WRRC drafted a letter to members of the General Assembly inviting them to attend the SB 14-115 hearings and notify their constituents about these hearings. The committee also worked with the Colorado Foundation for Water Education and the public education and public outreach coordinators for each basin roundtable to provide the public with notice of the committee hearings and identify alternative means of submitting feedback to the committee. Notice of the hearings was also provided to local media.

The public was able to provide feedback on the Colorado Water Plan by filling out a questionnaire on the committee's website or by sending an e-mail to the committee. Questionnaires were also distributed at each SB 14-115 hearing. This questionnaire offered interested persons the opportunity to provide information about themselves, including their name, their basin of residence and water constituent group, their experience with the roundtable

process, and whether they wanted to be added to the committee's SB 14-115 interested persons e-mail list. It also offered an opportunity for respondents to provide comments on the plan and any other water issue of interest.

Senate Bill 14-115 hearing format. At each SB 14-115 hearing, the WRRC received a briefing from a CWCB member, CWCB staff, or Department of Natural Resources staff on the second draft of the Colorado Water Plan. Following the briefing, the chair of the local basin roundtable or his or her designee summarized the major provisions of the basin's basin implementation plan (BIP). At each meeting, the committee also received public testimony from any person who wanted to speak about the draft water plan or any other issue of concern. Members of the audience were encouraged to direct their comments toward Chapter 10 of the draft plan that describes the goals and critical actions needed to meet the plan's values. The audience was also encouraged to submit feedback on the full plan directly to CWCB by going to coloradowaterplan.com.

Report to the CWCB concerning public feedback provided on the Colorado Water Plan. On September 17, 2015, the WRRC submitted a preliminary report, which included a table, to the CWCB Director that summarized public feedback and provided a committee recommendation on the Colorado Water Plan. The report includes summaries of the comments provided by 65 individuals during public testimony, as well as summaries of e-mails and letters submitted to the committee.

Next steps in the Senate Bill 14-115 process. Pursuant to SB 14-115, the WRRC may repeat the review process for the Colorado Water Plan, including public meetings in each basin, whenever the CWCB submits a significant amendment to the plan. By November 1 of each year following the submission to the committee of a plan or plan amendment, any member of the General Assembly may request that the WRRC hold one or more hearings to review the plan or plan amendment. No later than November 1, 2017, and every five years thereafter, the committee is also required to prepare a list of specific topics that it deems necessary to be addressed in the plan. The CWCB must provide its recommendations, including suggestions for potential legislation, for the committee's consideration within eight months after receipt of the list of specific topics.

Summary of Recommendations

As a result of the committee's activities, two memorials and one resolution were recommended to the Legislative Council for consideration in the 2016 session. At its meeting on November 10, 2015, the Legislative Council approved all three of the WRRC's legislative recommendations for introduction.

Memorial A — Good Samaritan Protection for Voluntary Remediation of Abandoned Mines

Joint Memorial A urges Congress to pass legislation establishing a Good Samaritan exemption from liability under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Memorial B — Wildfire Funding

Joint Memorial B urges Congress to enact laws necessary to protect federal land management agencies' ability to mitigate the risk of catastrophic wildfires and manage the lands within their jurisdiction by funding catastrophic wildfire response in a manner analogous to that used for other natural disasters.

Resolution C — Timely Access to Federal Lands for Dam Restoration

Resolution C urges the U.S. Forest Service and the Bureau of Land Management to respond promptly to requests for permission to access a dam to maintain, repair, or rehabilitate it.

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 (303-866-2055). 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:

<https://www.colorado.gov/pacific/cga-legislativecouncil/interim-committees>

Meeting Dates and Topics Discussed

July 20, 2015 - Meeting in Durango, Colorado

- ◆ Overview of the Second Draft of the Colorado Water Plan
- ◆ Potential impacts from instream flow water rights on future water development and compact entitlements
- ◆ Update on U.S. Forest Service and U.S. Bureau of Land Management Joint Land Management Plan and other federal land management issues
- ◆ Opposition to Colorado Water use by government private out-of-state entities in Colorado water court proceedings
- ◆ Alternatives to new transbasin diversions
- ◆ Public testimony

July 21, 2015 – Meeting in Montrose, Colorado

- ◆ Overview of the Colorado River Compact
- ◆ Update on hydropower development projects in the Gunnison River Basin
- ◆ Public testimony

July 21, 2015 – Meeting in Craig, Colorado

- ◆ Update on endangered species recovery programs affecting the Yampa-White Basin
- ◆ Proposed clean-up of Division of Water Resources statutes
- ◆ Colorado River Compact
- ◆ Public testimony

August 10, 2015 – Meeting in Alamosa, Colorado

- ◆ Overview of the Rio Grande Basin Implementation Plan
- ◆ Overview of the Rio Grande Basin's hydrology and division engineer's update
- ◆ Data collection for improved forecasting in the Rio Grande Basin
- ◆ Groundwater management, rules and regulations, and subdistricts of the Rio Grande Water Conservation District
- ◆ Water education in the Rio Grande Basin

- ◆ Watershed health, restoration, and protection
- ◆ West Fork Complex fire recovery and forest plan revision
- ◆ Public testimony

August 19, 2015 – Meeting in Vail, Colorado

- ◆ Update on proposed changes to the definition of water of the United States under the Federal Clean Water Act
- ◆ Agricultural water use efficiency
- ◆ Update on proposed ballot measures affecting Colorado's water law
- ◆ Flexible water markets

September 15, 2015 – Meeting in Denver, Colorado

- ◆ Effect of residential precipitation collection on streamflow
- ◆ Proposed legislation to allow small scale precipitation collection
- ◆ Quantification of landscape water conservation best management practices
- ◆ Update on Gold King Mine spill
- ◆ State programs to address water quality issues related to abandoned mine drainage in Colorado
- ◆ Hydrologic monitoring and prediction capabilities
- ◆ Requests for draft legislation
- ◆ Committee discussion concerning feedback on the second draft of the Colorado Water Plan
- ◆ Public testimony

October 29, 2015 – Meeting in Denver, Colorado

- ◆ Introduction of new Colorado State University Dean of Agriculture
- ◆ Long-term funding needs and finance mechanisms for public wastewater and drinking water projects
- ◆ Public/private partnerships for water infrastructure projects
- ◆ History of the proposed Narrows Project and the need for new water storage projects in the South Platte Basin
- ◆ Direct potable water reuse
- ◆ Update on the Colorado Water Plan
- ◆ Participation by out-of-state entities in Colorado water court proceedings
- ◆ Mine reclamation and water protection
- ◆ Update on Denver County South Platte River Restoration and Flood Control Feasibility Study
- ◆ Market-based approach to temporary water transfers
- ◆ Final action on recommendations to Legislative Council
- ◆ Public testimony

Senate Bill 14-115 Meeting Dates and Topics Discussed

July 20, 2015 - Southwest Basin Meeting in Durango, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Southwest Basin Implementation Plan
- ◆ Public testimony

July 21, 2015 - Gunnison Basin Meeting in Montrose, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Gunnison Basin Implementation Plan
- ◆ Public testimony

July 22, 2015 - Yampa-White Basin Meeting in Craig, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Yampa-White Basin Implementation Plan
- ◆ Public testimony

August 10, 2015 - Rio Grande Basin Meeting in Alamosa, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Rio Grande Basin Implementation Plan
- ◆ Public testimony

August 11, 2015 - Arkansas Basin Meeting in Salida, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Arkansas Basin Implementation Plan
- ◆ Public testimony

August 12, 2015 - Colorado Basin Meeting in Granby, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Colorado Basin Implementation Plan
- ◆ Public testimony

September 14, 2015 - North Platte Basin Meeting in Walden, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ North Platte Basin Implementation Plan
- ◆ Public testimony

September 14, 2015 - South Platte Basin Meeting in Greeley, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ Colorado Basin Implementation Plan
- ◆ Public testimony

September 15, 2015 - Metro Basin Meeting in Aurora, Colorado

- ◆ Overview of the Colorado Water Plan
- ◆ South Platte Basin Implementation Plan
- ◆ Public testimony

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

MEMORIAL A

LLS NO. R16-0199 Jennifer Berman x3286

SENATE JOINT MEMORIAL

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

Coram and Mitsch Bush,

BILL TOPIC: "Good Samaritan Remediation Abandoned Mines"

SENATE JOINT MEMORIAL

101 **CONCERNING PROTECTION FROM LIABILITY FOR VOLUNTARY**
102 **RECLAMATION OF ABANDONED HARD ROCK MINES.**

1 WHEREAS, Mining began in Colorado in the mid-1800s; and

2 WHEREAS, Mining was the most significant industry in Colorado
3 in the nineteenth and early twentieth centuries and it remains an important
4 industry today, currently accounting for more than 57,000 jobs in
5 Colorado and nearly \$7 billion of Colorado's annual gross domestic
6 product; and

7 WHEREAS, Until the 1977 enactment of the "Colorado Mined
8 Land Reclamation Act", article 32 of title 34 of the Colorado Revised
9 Statutes, neither comprehensive environmental standards for mining nor
10 reclamation of previously mined lands were required by state law; and

11 WHEREAS, Modern mines in Colorado have won state and
12 national acclaim for outstanding reclamation and safety practices; and

13 WHEREAS, Despite the stringent environmental regulations now
14 in place for modern mines, abandoned hard rock mines that were closed
15 before the regulations took effect and without the benefit of reclamation
16 (abandoned hard rock mines) continue to threaten the public health,
17 safety, and environment of Colorado; and

1 WHEREAS, Acid-mine drainage from the abandoned hard rock
2 mines threatens to pollute nearby streams with heavy metals such as
3 cadmium, manganese, aluminum, and zinc; and

4 WHEREAS, According to the U.S. Environmental Protection
5 Agency, it would cost \$35 billion or more to remediate the half-million
6 abandoned hard rock mines in the United States; and

7 WHEREAS, The Colorado Division of Reclamation, Mining and
8 Safety (DRMS) estimates that there are more than 22,000 abandoned hard
9 rock mines across Colorado and that at least 500 of them are polluting
10 streams; and

11 WHEREAS, The Gold King Mine spill on August 5, 2015,
12 discharged 3 million gallons of acidic mine drainage from the abandoned
13 Gold King Mine near Silverton, Colorado, into the Animas River. The
14 contaminants turned the river a mustard yellow color and required the
15 river to be temporarily closed for recreation, fishing, irrigation, and
16 drinking water purposes; and

17 WHEREAS, As of August 11, 2015, the Gold King Mine
18 continued to spill 500 to 770 gallons of waste water per minute; and

19 WHEREAS, While the DRMS has already made more than 6,000
20 abandoned hard rock mines safe in Colorado according to its web site, the
21 Gold King Mine spill is sobering evidence that much more work needs to
22 be done to remediate abandoned hard rock mines; and

23 WHEREAS, Various nonprofit organizations, corporate entities,
24 and communities with expertise in mine reclamation have expressed
25 interest in helping to remediate abandoned hard rock mines; and

26 WHEREAS, These Good Samaritan groups are discouraged from
27 remediating abandoned hard rock mines because of the threat of liability
28 under the "Clean Water Act" (CWA) and the "Comprehensive
29 Environmental Response, Compensation, and Liability Act of 1980"
30 (CERCLA) for such third-party reclamation efforts; and

31 WHEREAS, Previous Congresses have introduced legislation to
32 provide Good Samaritan liability exemptions under the CWA and
33 CERCLA, but such legislation has not been signed into law; now,
34 therefore,

35 *Be It Resolved by the Senate of the Seventieth General Assembly*
36 *of the State of Colorado, the House concurring herein:*

37 That we, the members of the Colorado General Assembly, urge
38 Congress to pass legislation establishing a Good Samaritan exemption
39 from liability under the CWA and CERCLA as an important step toward
40 preventing another disaster like the Gold King Mine spill and remediating
41 all other draining abandoned hard rock mines in Colorado.

42 *Be It Further Resolved*, That copies of this Joint Memorial be sent
43 to the members of Colorado's congressional delegation.

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

MEMORIAL B

LLS NO. R16-0173.01 Thomas Morris x4218

SENATE JOINT MEMORIAL

SENATE SPONSORSHIP

Jones and Roberts, Baumgardner, Cooke, Hodge, Merrifield,

HOUSE SPONSORSHIP

Coram and Vigil, Arndt, Becker K., Buck, Hamner, Mitsch Bush, Singer, Thurlow

SENATE JOINT MEMORIAL

101 **CONCERNING THE NEED FOR CONGRESS TO FUND CATASTROPHIC**
102 **WILDFIRE RESPONSE COSTS OUTSIDE OF FEDERAL FOREST**
103 **MANAGEMENT AGENCIES' NORMAL BUDGETS.**

1 WHEREAS, There are about 24 million acres of forests and
2 woodlands in Colorado, of which more than two-thirds are managed by
3 the federal government; and

4 WHEREAS, Colorado's forests are increasingly susceptible to
5 forest fires, with an average of about 40,000 acres burned per year from
6 2004 through 2007 but an average of more than 140,000 acres burned per
7 year from 2008 through 2014; and

8 WHEREAS, According to the Insurance Information Institute,
9 Colorado has the second highest percentage of households that are at high
10 or extreme risk from wildfires of any state in the nation; and

11 WHEREAS, Under current federal law, money that was originally
12 budgeted to mitigate fire risk, protect and restore watersheds, increase
13 forest health, promote recreational opportunities, and conduct necessary
14 forest planning is diverted to fight fires once the amount budgeted for fire
15 fighting has been depleted; and

16 WHEREAS, The United States Forest Service spent only 16% of
17 its annual budget on fire suppression and response in 1995, but recently
18 announced that in 2015, for the first time, it will spend more than half its

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 budget to fight wildfires, and by 2025 it expects to spend 67% of its
2 budget on that task; and

3 WHEREAS, A 2013 study by Headwaters Economics showed that
4 in the 1990s, average federal spending to suppress wildfires was less than
5 \$1 billion annually, but since 2002, federal spending has risen to over \$3
6 billion annually and costs are still rising; and

7 WHEREAS, Paying for catastrophic wildfire response should not
8 come at the expense of programs that reduce the risk of wildfires, because
9 doing so plainly creates a feedback loop that increases the frequency and
10 severity of catastrophic wildfires; and

11 WHEREAS, Congress is currently considering several measures
12 that would create alternative ways to pay for catastrophic wildfire
13 response costs; and

14 WHEREAS, The General Assembly's Water Resources Review
15 Committee and Wildfire Matters Review Committee have approved this
16 Joint Resolution [Memorial]; now, therefore,

17 *Be It Resolved by the Senate of the Seventieth General Assembly*
18 *of the State of Colorado, the House concurring herein:*

19 That Congress should enact laws necessary to protect federal land
20 management agencies' ability to mitigate the risk of catastrophic wildfires
21 and manage the lands within their jurisdiction by funding catastrophic
22 wildfire response in a manner analogous to that used for natural disasters.

23 *Be It Further Resolved*, That a copy of this Joint Memorial be
24 provided to Colorado's congressional delegation, Governor John
25 Hickenlooper, the Western Governors' Association, Secretary of
26 Agriculture Tom Vilsack, and Secretary of the Interior Sally Jewell.

Second Regular Session
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RESOLUTION A

LLS NO. R16-0139 Jennifer Berman x3286

HOUSE JOINT RESOLUTION

HOUSE SPONSORSHIP

Coram and Mitsch Bush

SENATE SPONSORSHIP

Baumgardner, Roberts

HOUSE JOINT RESOLUTION

101 CONCERNING TIMELY ACCESS TO FEDERAL LANDS FOR DAM
102 RESTORATION PROJECTS.

1 WHEREAS, Colorado faces an increasing gap between water
2 supply and demand that could reach a statewide shortfall totaling 500,000
3 acre-feet or more by 2050; and

4 WHEREAS, Water storage is paramount as a means to address this
5 increasing gap in Colorado; and

6 WHEREAS, Reservoirs used for water storage and the dams used
7 to retain water within them should be operated and maintained in a
8 manner to maximize their water storage capacity; and

9 WHEREAS, The General Assembly has authorized the State
10 Engineer to inspect dams routinely to determine the safe storage level of
11 reservoirs; and

12 WHEREAS, When, upon inspection, the State Engineer
13 determines that the condition of a dam is unsatisfactory and the dam is in
14 need of repair or rehabilitation, the State Engineer will restrict the water
15 level behind the dam for safety purposes, thus limiting the reservoir's
16 storage capacity; and

17 WHEREAS, It is imperative for the purpose of maximizing our
18 state's water storage capacity that any dam put under restriction be

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Dashes through the words indicate deletions from existing statute.

1 restored to a satisfactory condition as soon as practicable to remove the
2 storage restriction; and

3 WHEREAS, In order to access a dam for maintenance, repairs, or
4 rehabilitation, an owner or operator of a dam located on federal land must
5 seek permission, sometimes in the form of a special use permit, from the
6 federal agency managing the land; and

7 WHEREAS, Federal agencies have not responded promptly to
8 requests for approval to access the federal land on which a dam is located,
9 even when the purpose of seeking access to the dam is to maintain, repair,
10 or rehabilitate the dam; and

11 WHEREAS, A federal agency's failure to respond promptly to
12 requests for permission to access a dam located on federal land extends
13 the period of time during which the dam is under a storage restriction,
14 thus counteracting efforts to maximize our state's water storage capacity;
15 and

16 WHEREAS, A federal agency's failure to respond promptly to
17 requests for permission to access a dam in need of maintenance, repairs,
18 or rehabilitation could further exacerbate the deteriorating condition of
19 the dam, potentially increasing both the cost to restore the dam to a
20 satisfactory condition and the risk the deteriorating dam poses to the
21 safety of the citizens of Colorado; now, therefore,

22 *Be It Resolved by the House of the Seventieth General Assembly*
23 *of the State of Colorado, the Senate concurring herein:*

24 That we, the members of the Colorado General Assembly, urge
25 federal agencies, specifically the United States Forest Service and the
26 Bureau of Land Management, to respond promptly to requests for
27 permission to access a dam located on federal land when the purpose of
28 accessing the dam is to maintain, repair, or rehabilitate the dam.

29 *Be It Further Resolved,* That copies of this Resolution be sent to
30 members of Colorado's congressional delegation, the Chief of the United
31 States Forest Service, and the Director of the Bureau of Land
32 Management.