

## **Water Resources Review Committee**

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Representative Ed Vigil, Vice-Chair

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Senator Mary Hodge	Representative Jon Becker
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# Water Resources Review Committee Report

## Committee Charge

**General charge.** The Water Resources Review Committee (WRRRC) 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.

**Review of the Colorado Water Plan.** Pursuant to Senate Bill 14-115, the WRRRC 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.

## 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.

**Meetings and field trips related to the Colorado Water Plan.** According to SB14-115, the General Assembly intended to engage the people of the state in a public dialogue regarding optimal state water policy. Towards this end, the committee 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. 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. These meetings were held in Alamosa, Aurora, Craig, Durango, Granby, Greeley, Montrose, Salida, and Walden. The committee also received public comments through letters, e-mails, and completed questionnaires. On September 30, 2015, the committee delivered its final report to the CWCB concerning the Colorado Water Plan. This report summarized the public feedback provided to the committee by September 15, 2015, and provided the committee's recommendation on the Colorado Water Plan. The committee did not recommend any legislation related to the Colorado Water Plan.

**Abandoned mines in Colorado.** The Colorado Division of Reclamation, Mining, and Safety (DRMS) in the Colorado Department of Natural Resources (DNR), estimates that there are more than 22,000 abandoned hard rock mines in Colorado and that at least 500 of these mines are polluting streams. During the 2015 interim, the committee received an update from DRMS on the Gold King Mine spill that occurred near Silverton on August 5, 2015, and discharged 3 million gallons of acidic water into the Animas River. The river was temporarily closed for recreation, fishing, irrigation, and drinking water purposes due to the mine discharge. 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, called Good Samaritans, are discouraged from remediating abandoned mines because of the threat of liability under the "Clean Water Act" (CWA) and the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (CERCLA) for such third-party reclamation efforts. 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 fighting wildfires.** There are about 24 million acres of forests and woodlands in Colorado, of which more than two-thirds 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, 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 once the amount budgeted for firefighting has been depleted. In 1995, the United States 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 that 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.

**State Engineer dam safety program and fees.** 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.

**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. 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.

**State permitting requirements for water projects.** The committee heard testimony at several SB 14-115 hearings about the challenge of obtaining state and federal permits for water development projects. The committee considered, but did not recommend, a bill that would have transferred to the State Engineer the authority to review certain types of permit applications that are currently reviewed by other state agencies. Another bill was considered, but not recommended, that would have designated the DWR as the state agency responsible for review of certain types of permit applications if these responsibilities are devolved from the federal government to the state government at a later date.

**Rain harvesting.** 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 the collected water may only be used for certain purposes to ensure that other water users are not harmed. 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.

## **Committee Recommendations**

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As a result of committee discussion, the committee recommends two memorials and one resolution for consideration in the 2016 legislative session.

***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 CWA and CERCLA.

***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 A — Timely Access to Federal Lands for Dam Restoration.*** Resolution C urges the United States 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.