RECOMMENDATIONS FOR 2002

Water Resources Legislation Review Committee

Report to the Colorado General Assembly

Research Publication No. 490 December 2001

COLORADO GENERAL ASSEMBLY

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December 2001

To Members of the Sixty-third General Assembly:

Submitted herewith is the final report of the Water Resources Legislation Review Committee. The committee was created pursuant to House Bill 01-1240. The purpose of the committee is to review the administration of the state's water resources; review and propose water resource legislation; and monitor the use and conservation of the state's water resources.

At its meeting on October 15, 2001, the Legislative Council reviewed the draft bills of this committee. A motion to forward the bills therein for consideration in the 2002 session was approved.

Respectfully submitted,

/s/ Senator Stan Matsunaka Chairman Legislative Council

SM/AP/mm

Rep. Jennifer Veiga

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RECOMMENDED BILLS AND FISCAL NOTES

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Water Resources Legislation Review Committee

Members of the Committee

Representative Diane Hoppe
Chairman
Chairman
Representative Mary Hodge
Representative Gregg Rippy
Representative Abel Tapia
Representative Al White
Senator Jim Isgar
Vice-Chairman
Senator Lewis Entz
Senator Deanna Hanna
Senator Terry Phillips
Representative Al White

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EXECUTIVE SUMMARY

Committee Charge

The Water Resources Legislation Review Committee was created pursuant to House Bill 01-1240 and charged with reviewing water resource legislation. The committee was also charged with reviewing the administration and monitoring of the state's water resources; continuing Special Water Committee studies; reviewing water resource legislation pertaining to present and future water needs of the state, protection of water quality and quantity, compliance with interstate water compact agreements, and maximizing the state's benefit from surface water and groundwater resources; monitoring the conservation, use, development, and financing of the state's water resources; and proposing water resource legislation.

Committee Activities

The committee held four meetings and learned that challenges to using and protecting the state's water resources are influenced by many factors including state agency programs, private, state, and federal water rights, and local and federal government activities. For example, the Colorado Department of Natural Resources described several programs designed to increase endangered species populations in Colorado rivers. The Colorado Water Quality Control Division explained that additional funding is needed to comply with new federal drinking water standards. Local irrigation districts requested that legislative changes be made to irrigation district statutes to make the laws consistent. The committee heard testimony regarding the National Park Service's filing for quantification of a federal reserved water right in the Black Canyon of the Gunnison Nation Park. The committee also learned that the U.S. Forest Service may designate a reach of the South Platte River as wild and scenic, which will affect the way river water is used.

The committee heard testimony from several state agencies that manage the state's water resources. The State Engineer explained how recommendations from the 1996 technical study of the Denver Basin aquifers and the water banking pilot program are being implemented. The director of the Colorado Water Conservation Board described how construction funds, which are approved annually by the legislature, are allocated to state and local government projects. Representatives from the Colorado Department of Natural Resources and the Office of the Attorney General addressed recent controversy surrounding the public's recreational use of streams and rivers on private property.

As a result of committee discussion and deliberation, the committee recommends three bills for consideration in the 2002 legislative session.

- Bill A Creation of a Permanent Water Resources Review Committee of the Colorado General Assembly. The bill makes the committee a permanent committee that meets during the legislative interim. It adjusts the committee's bill deadline, increases the number of meetings the committee may hold, and permits the committee to take up to two field trips per year. It also changes the committee's western slope representation.
- Bill B Reconciliation of Inconsistent Statutory Provisions Regarding the Qualifications of Electors for Irrigation Districts. The committee heard testimony from the Colorado Water Congress' irrigation district task force regarding inconsistencies in the current irrigation district laws. Bill B changes the qualifications for electors in an irrigation district. The bill lowers the minimum age for irrigation district electors from 21 years to 18 years. It also repeals the provision that allows electors for water conservancy districts to be directors and electors for irrigation districts. Unlike water conservancy districts, irrigation districts are supported by revenues generated by property taxes. Repealing the provision will require irrigation districts directors and electors to own property in the district.
- Bill C Increase in the Amount of Moneys in the Species Conservation Trust Fund, and Making an Appropriation in Connection Therewith. In 1998, the General Assembly created the Species Conservation Trust Fund and appropriated \$10 million for species recovery programs in Colorado. In 2000, the General Assembly appropriated \$5 million to the fund for the recovery programs. The programs are recuperating species that are federally listed as threatened or endangered under the Endangered Species Act. The programs are also preventing other species from declining to a point that warrants federal listing. It is estimated that the recovery programs will cost \$25 million. Bill C provides the remainder of the funding necessary for the programs. Specifically, the bill appropriates \$10 million from the state's general fund to the Species Conservation Trust Fund.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to HB 01-1240, the Water Resources Legislation Review Committee was created to review the administration and monitoring of Colorado's water resources. The committee was composed of ten members — five from the House and five from the Senate. Statute permitted the committee to hold four meetings. The committee was also charged with:

- reviewing the administration and monitoring of the state's water resources;
- reviewing water resource legislation pertaining to present and future water needs
 of the state, protection of water quality and quantity, compliance with interstate
 water compact agreements, and maximizing the state's benefit from surface
 water and groundwater resources;
- continuing Special Water Committee (SB 99-1222) studies;
- monitoring the conservation, use, development, and financing of the state's water resources; and
- proposing water resource legislation.

COMMITTEE ACTIVITIES

Overview of Federal and State Water Resource Issues

State issues. Colorado is one of the fastest growing states in the country. Most new residents locate along the front range, however, population projections anticipate substantial growth on the west slope as well. The state's growing population has increased competition for water between east and west slope communities and agricultural, municipal, and environmental interests. The committee heard testimony concerning several state water issues related to growth, environmental protection, and water use. The issues include irrigation district laws, public use of streams through private property, endangered species recovery programs, and state agency funding needs for water quality programs.

Federal issues. The federal government owns and manages approximately 35 percent of the land in Colorado. Federal agencies, such as the U.S. Forest Service and National Park Service, manage water use and development on federal lands. These management practices may affect how water is used and developed elsewhere in the state. The U.S. Fish and Wildlife Service is charged with implementing the federal Endangered Species Act. The Fish and Wildlife Service and the Colorado Department of Natural Resources have programs in Colorado rivers designed to recover the populations of species listed as threatened or endangered under the Act. These programs also restrict the way state water may be developed and used. The committee heard testimony concerning several other federal water issues including compliance with the Endangered Species Act, designation of a reach of the South Platte River as wild and scenic, and federal reserved water rights in the Black Canyon of the Gunnison National Park.

Recommendation. The committee recommends Bill A. Creating policy to address Colorado's water challenges requires an understanding of federal and state water issues. The bill makes the committee a permanent committee that meets during the legislative interim to address important federal and state water resource issues. It adjusts the committee's bill deadline, increases the number of meetings the committee may hold, and permits the committee to take up to two field trips per year. It also changes the committee's western slope representation.

Water Quality

Complying with federal water quality standards. In July 2000, the Environmental Protection Agency issued total maximum daily load (TMDL) requirements for pollutants in U.S. water bodies. The Water Quality Control Commission is determining how the state will comply with the new TMDL standards. A representative from the Colorado Water Quality Control Division provided information on water quality funding issues. The committee learned that maintaining water quality permitting programs, such as TMDL programs, laboratory analysis,

wastewater programs, and drinking water programs, to comply with federal standards will exceed the division's current funding for the programs. The division requested that the legislature appropriate additional moneys for these programs in the 2002 legislative session.

Committee letter concerning federal water quality standards. The committee drafted a letter to the Administrator of the Environmental Protection Agency (EPA), Secretary of the Department of the Interior, and Secretary of the Department of Agriculture expressing concern regarding federal water quality initiatives, instream flow protection strategies, and Endangered Species Act consultation requirements for private and federal water projects (Appendix A). Specifically, the letter supported the EPA's proposal to delay implementation of the new TMDL rules, and encouraged resource management that respects state water law regarding the U.S. Forest Service's instream flow protection strategy. The letter also expressed the committee's concern about water delivery obligations in river reaches where endangered species exist.

Recommendation. The committee makes no recommendation regarding funding for state water quality programs.

Surface Water Use

Right to float. Floating in kayaks and rafts on streams and rivers is an increasingly popular sport in Colorado. This type of recreation occurs on waters that flow through both private and public land. This summer, contentious issues associated with floating received media attention. Private landowners have accused floaters of trespassing when floating through the landowner's property. Floaters claimed that they are entitled to use waters that are deemed "public" under state and federal law. The committee learned that statutes and case law addressing floating and trespassing matters are complex. Representatives from the River Surface Recreation Forum, which includes members from Colorado agencies, river outfitters, private floaters, and private landowners, explained that the Forum has identified river reaches that are potential sites for negotiations between landowners and floaters. Specifically, the Forum has developed a system of signs to place along troublesome river reaches that inform floaters of property boundaries and permissible conduct through private property.

Committee letter concerning the Black Canyon of the Gunnison National Park.

In 1978, the state's water court decreed a federal reserved water right for the Black Canyon of the Gunnison National Monument, and in 1999 the Black Canyon of the Gunnison became a National Park. Currently, the National Park Service has filed an application for quantification of the reserved water right. The committee heard testimony opposing as well as supporting the basis of the quantification. Supporters pointed out the need for historic peak water flows to be released in the canyon from upstream dams to continue the canyon's natural flooding and erosion processes. A representative from the Colorado Department of Natural Resources said a filing for historic peak water flows may jeopardize gold metal fisheries downstream, power production

upstream, and river water use by other water rights holders in the Gunnison and Colorado river basins.

The committee sent a letter to Secretary Gale Norton, U.S. Department of the Interior, expressing concern with the Park Service's application for quantification of a reserved water right for the park (Appendix A). In the letter, the committee said that the water right poses a threat to Colorado's compact apportioned water and future generations' ability to use it. The committee encouraged the Department of the Interior to pursue coordinated negotiations with the state as soon as possible concerning the water right application.

Trans-basin diversions. A trans-basin diversion is the transport of water from its geographic basin of origin into another geographic basin. Water transfer proposals must be approved by the state's water court to determine the effects on traditional users, such as agricultural irrigators, and the benefits of a new use, such as municipal water supplies.

There are conflicting views concerning water diversions. For example, the committee heard testimony regarding the City of Aurora's diversion of Rocky Ford ditch water. In 1989, Aurora purchased land to obtain shares of stock in the Rocky Ford ditch. Aurora is in the process of purchasing additional land and Rocky Ford ditch water. An Otero County commissioner explained that cities are exempt from paying property tax, therefore, the county is losing thousands of dollars in property tax annually when cities purchase lands. Other citizens representing rural southeastern Colorado said that a municipality's purchase of agricultural land results in a loss of jobs and personal income when the land is taken out of production. Otero County and Aurora are negotiating the mitigation of projected tax revenue losses. Representatives from Aurora and Otero County suggested the legislature consider measures that would require mitigation of damages to rural communities when trans-basin diversions from a rural area to a municipality occur.

Irrigation ditches. During the 2001 legislative session, the General Assembly considered House Bill 01-1356, which would have changed state laws regarding irrigation ditches. The bill was postponed indefinitely. A Colorado Water Congress task force composed of irrigation ditch stakeholders studied irrigation ditch laws and suggested changes to the committee. A representative from the task force recommended that the provision be repealed in current law that allows electors for water conservancy districts to be directors and electors for irrigation districts. He explained that repealing the provision would require irrigation districts directors and electors to own property in the district. Unlike water conservancy districts, irrigation districts are supported by revenues generated by property taxes.

Recommendation. The committee recommends Bill B. The bill changes the qualifications for electors in an irrigation district. The bill lowers the minimum age for irrigation district electors from 21 years to 18 years. It also repeals the provision that allows electors for water conservancy districts to be directors and electors for irrigation districts.

Protection of Rivers and Endangered Species

Committee letter concerning federal wild and scenic designation. The committee learned that the U.S. Forest Service may designate a reach of the South Platte River as "wild and scenic" to prevent any future water development projects on that part of the river. Representatives from the Denver Water Department and Trout Unlimited testified that federal designation would jeopardize existing river uses and land uses adjacent to the river. The representative presented information on the "South Platte Protection Plan," which is a locally-supported and more protective alternative to federal designation. The committee sent a letter to the Forest Service in support of the South Platte Protection Plan (Appendix A). Specifically, the committee expressed concern that federal designation may usurp valuable existing water uses on the river and local land use decisions adjacent to the river. The committee urged the Forest Service to support the South Platte Protection Plan as a viable strategy to protect resources.

State recovery programs for threatened and endangered species. The committee heard testimony concerning species recovery programs on the Platte and Colorado rivers. The rivers provide habitat to several federally protected species. The committee learned details about programs developed by the Colorado Department of Natural Resources to recover four endangered fish species on the Colorado River. The committee also received an update on state negotiations with Nebraska, Wyoming and the U.S. Department of the Interior to protect endangered species on the Platte River in Nebraska. In 1998, the General Assembly created the Species Conservation Trust Fund and appropriated \$10 million for species recovery programs. The recovery programs on the Platte and Colorado rivers receive moneys from this fund. Furthermore, the fund provides moneys to programs designed to prevent species from declining to a point that triggers federal listing. In 2000, the General Assembly appropriated \$5 million to the fund, however, the committee learned that species programs will cost \$25 million.

Recommendation. The committee recommends Bill C. The bill provides the remainder of the funding necessary for species recovery programs. Specifically, the bill appropriates \$10 million from the state's general fund to the Species Conservation Trust Fund.

Summary of Recommendations

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

Bill A — Concerning the Creation of a Permanent Water Resources Review Committee of the Colorado General Assembly

The bill makes the committee a permanent committee that meets during the legislative interim. It adjusts the committee's bill deadline, increases the number of meetings the committee may hold, and permits the committee to take up to two field trips per year. It also changes the committee's western slope representation. Under the bill, the Legislative Department will require a General Fund appropriation of \$33,645 and 0.4 FTE for FY 2002-2003.

Bill B — Concerning the Reconciliation of Inconsistent Statutory Provisions Regarding the Qualifications of Electors for Irrigation Districts

The committee heard testimony from the Colorado Water Congress' irrigation district task force regarding inconsistencies in the current irrigation district laws. Bill B changes the qualifications for electors in an irrigation district. The bill lowers the minimum age for irrigation district electors from 21 years to 18 years. It also repeals the provision that allows electors for water conservancy districts to be directors and electors for irrigation districts. Unlike water conservancy districts, irrigation districts are supported by property tax. Repealing the provision will require irrigation districts directors and electors to own property in the district. The bill will not affect state or local government revenue or expenditures.

Bill C — Concerning an Increase in the Amount of Moneys in the Species Conservation Trust Fund, and Making an Appropriation in Connection Therewith

In 1998, the General Assembly created the Species Conservation Trust Fund and appropriated \$10 million for species recovery programs in Colorado. In 2000, the General Assembly appropriated \$5 million to the fund for the recovery programs. The programs are recuperating species that are federally listed as threatened or endangered under the Endangered Species Act. The programs are also preventing other species from declining to a point that warrants federal listing. It is estimated that the recovery programs will cost \$25 million. The fund balance on June 30, 2002, is estimated to be \$14,623,974. Bill C provides the remainder of the funding necessary for the programs. Specifically, it appropriates \$10 million from the state's General Fund to the Species Conservation Trust Fund.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303) 866-2055. For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www. state.co. us/gov_dir/leg_dir/lcsstaff/2001/01interim.

Meeting Summaries	Topics Discussed
August 9, 2001	Update on implementation of recommendations in the "Denver Basin and South Platte River Basin Technical Study;" South Platte River issues; and federal and state water issues.
September 6, 2001	Briefing on public recreational use of streams on private property and state water quality issues.
October 1, 2001	Presentation/amendment/adoption of draft legislation.
October 23, 2001	Briefing on Rocky Ford water transfer and Black Canyon of the Gunnison National Park — federal reserved water right.

Memoranda and Reports

Chronology of Special Water Committee Activities, Allison Pasternak, July 31, 2001.

Primer on Colorado Water Courts, Allison Pasternak, July 31, 2001.

Public Recreational Use of Water on Private Property, Allison Pasternak, August 30, 2001.

Floating Access Issues, Felicity Hannay, Deputy Attorney General, June 8, 1999.

Denver Basin and South Platte Basin Technical Study, Colorado Department of Natural Resources, April 1998.

Colorado Nonpoint Source Program, FY 2000 Annual Report, Water Quality Control Division, Colorado Department of Public Health and Environment.

Second Regular Session Sixty-third General Assembly STATE OF COLORADO

DRAFT

LLS NO. 02-0116.01 Thomas Morris

SENATE BILL

SENATE SPONSORSHIP

Entz, Isgar, and Taylor

HOUSE SPONSORSHIP

Rippy, Hodge, Hoppe, Tapia, and White

Senate Committees

House Committees

A BILL FOR AN ACT 101 CONCERNING THE RECONCILIATION OF INCONSISTENT STATUTORY 102 PROVISIONS REGARDING THE QUALIFICATIONS OF ELECTORS FOR 103 IRRIGATION DISTRICTS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Water Resources Legislation Review Committee. Lowers the minimum age for irrigation district electors to 18 years from the previous minimum age of 21 years. Repeals the provision that allows electors under the "Water Conservancy Act" to be eligible to be a director and an elector for irrigation districts.

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

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2 **SECTION 1.** 37-42-106 (2), Colorado Revised Statutes, is amended to read:

37-42-106. Notice of organization meeting and election. (2) At all elections held under the provisions of this article, every owner of agricultural land within said district over the age of twenty-one WHO IS EIGHTEEN years OF AGE OR OLDER, who is a citizen of the United States or has declared his OR HER intention to become a citizen of the United States, and is a resident of the state of Colorado, and has paid real property taxes upon the property located within said district on an area in excess of one acre during the year preceding the date of said election if a resident of the district or on an area of forty acres or more if a resident of the state outside the district or who is an entryman upon public lands of the United States and is residing thereon, shall be entitled to vote at such election in the precinct where he OR SHE resides or, if a nonresident of the precinct, in the precinct within which the greater portion of his OR HER land is located. Any person so qualified to vote, and who resides in any county into which said district extends, is eligible for election as a director in and for the division in such district in which he OR SHE is entitled to vote. All lands platted or subdivided into residence or business lots shall not be considered agricultural land.

SECTION 2. 37-43-101, Colorado Revised Statutes, is amended to read: **37-43-101. Definition of landowner.** For the purposes of sections 37-43-101 to 37-43-103, a "landowner" shall be held to be any individual over the age of twenty-one EIGHTEEN years OF AGE OR OLDER, owning in fee within an irrigation district land in excess of one acre which THAT is subject to irrigation district taxation or assessment, who is a citizen of the United States or has declared his OR HER intention to become a citizen of the United States and is a resident of the state

-2- DRAFT

1	of Colorado or who is an entryman upon public lands of the United States and is
2	residing thereon. Any landowner shall be eligible to election as a director of the
3	district in which he THE LANDOWNER is entitled to vote.
4	SECTION 3. Repeal. 37-43-104, Colorado Revised Statutes, is
5	repealed as follows:
6	37-43-104. Qualifications of directors and electors. Any
7	provision in articles 41 to 43 of this title to the contrary notwithstanding, and in
8	addition to those persons otherwise qualified to vote and hold office in a district, any
9	elector of the district, as defined in section 37-45-103 (4), shall be eligible to election
10	as a director and shall be entitled to a vote at all elections of the district.
11	SECTION 4. Safety clause. The general assembly hereby finds,
12	determines, and declares that this act is necessary for the immediate preservation of
13	the public peace, health, and safety.

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Colorado Legislative Council Staff

STATE FISCAL IMPACT

Drafting Number: LLS 02-0115 **Date:** October 4, 2001

Prime Rep. White Bill Status: Water Legislation Review

Sponsor(s): Sen. Taylor Committee

Fiscal Analyst: Steve Tammeus (303-866-2756)

TITLE: CONCERNING THE CREATION OF A PERMANENT WATER RESOURCES

REVIEW COMMITTEE OF THE COLORADO GENERAL ASSEMBLY.

Fiscal Impact Summary	FY 2002/2003	FY 2003/2004	
State Revenues General Fund			
State Expenditures General Fund	\$33,645	\$33,645	
FTE Position Change	0.4 FTE	0.4 FTE	
Other State Impact: None			
Effective Date: Upon signature of the Governor			
Appropriation Summary for FY 2002/2003: Legislative Department - \$33,645 and 0.4 FTE - General Fund			
Local Government Impact: None.			

Summary of Legislation

This bill changes the name of the Water Resources Legislation Review Committee to the Water Resources Review Committee and permanently establishes the committee to review and propose water resources legislation and related matters. The bill also:

- requires the committee to meet up to six times during the interim periods of evennumbered years and up to eight times during interim periods of odd-numbered years;
- allows the committee to take up to two field trips per year;
- retains the requirement for certain state agencies, including the Legislative Council Staff, to cooperate with the committee and/or to assist the committee in researching any matters; and
- repeals the committee repeal date of July 1, 2002.

State Expenditures

Per current law, the Water Resources Legislation Review Committee is comprised of ten legislative members and is required to meet at least once during the interim. Committee members are eligible for compensation and reimbursement of expenses per section 2-2-307, C.R.S. The committee is assisted by the staffs of the Legislative Council and the Office of Legislative Legal Services. Committee and staff expenses have been provided within existing appropriations as an element of the Legislative Department's annual budget for interim committees. The committee is to be repealed, effective July 1, 2002.

This bill establishes the Water Resources Review Committee as a permanent legislative committee to annually meet during the interim. Therefore, starting in FY 2002-03, the Legislative Department will incur additional General Fund expenditures. Table 1 provides a summary of the those expenditures, based upon the following assumptions:

- ten committee members will attend four one-day meetings per year;
- the committee will conduct two field trips per year;
- the Office of Legislative Legal Services and Legislative Council will provide legal services and research assistance.

Table 1. Water Resources Review Committee General Fund Expenditures				
	FY 2002/2003	FY 2003/2004		
Personal Services				
Sr. Research Asst	0.3 FTE - \$11,041	0.3 FTE - \$11,041		
Attorney	<u>0.1 FTE - 4,482</u>	<u>0.1 FTE - 4,482</u>		
Subtotal	15,523	15,523		
PERA/Med	<u>1,762</u>	<u>1,762</u>		
Total	17,285	17,285		
Legislative Per Diem and Expenses @ \$159/day	6,360	6,360		
Trip/Travel Expenses	10,000	10,000		
Total Expenses	0.4 FTE - \$33,645	0.4 FTE - \$33,645		

State Appropriations

The Legislative Department will require a General Fund appropriation of \$33,645 and 0.4 FTE for FY 2002-03.

Departments Contacted

Bill A

Legislative Council Legislative Legal Services Natural Resources