



Committee on
Water and State
School Lands
Issues

Report to the
COLORADO
LEGISLATIVE COUNCIL

Colorado Legislative Council
Research Publication No. 387
December 1993

RECOMMENDATIONS FOR 1994

**INTERIM COMMITTEE ON WATER AND
STATE SCHOOL LANDS ISSUES**

**Report to the
Colorado General Assembly**

**Research Publication No. 387
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December 7, 1993

To Members of the Fifty-ninth Colorado General Assembly:

Submitted herewith is the report of the 1993 Interim Committee on Water and State School Lands Issues. House Bill 93-1246 directed the Executive Committee of the Legislative Council to, in the absence of the adoption of a study resolution during the regular session, determine the interim studies and provide for the conduct of such studies. The Interim Committee Study Resolution, adopted by the Executive Committee of the Legislative Council on May 25, 1993, created the Interim Committee on Water and State School Lands Issues.

At its November 15, 1993 meeting, the Legislative Council reviewed this report and approved a motion to forward two bills and four resolutions with favorable recommendation to the Fifty-ninth General Assembly.

Respectfully submitted,

Representative Paul D. Schauer
Chair, Colorado Legislative Council

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INTERIM COMMITTEE ON WATER AND STATE SCHOOL LANDS ISSUES

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EXECUTIVE SUMMARY

Committee Charge

The interim committee resolution adopted by the Executive Committee of the Legislative Council at its May 25 meeting provides for an interim committee to study water and state school lands issues, including: oversight of the activities of the Colorado Water Conservation Board; providing the state's input into the reauthorization of the Clean Water Act, Safe Drinking Water Act, and the Endangered Species Act; and reviewing the State Board of Land Commissioners policies relating to the management of state lands.

Committee Activities

The major issues examined by the committee included: a review of the authority of the United States Forest Service to require instream flows as a condition for issuance or renewal of a special use permit; consideration of a variety of organizational viewpoints on the reauthorization of the Clean Water Act, Safe Drinking Water Act, and the Endangered Species Act; and a review of the statutory and constitutional provisions governing the State Board of Land Commissioners (SLB), as well as the management policies of the SLB.

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends two bills for consideration in the 1994 legislative session.

- Bill 1 authorizes the Colorado Water Conservation Board (CWCB) to provide new loans totalling \$6.3 million for water resource projects from the CWCB Construction Fund, including small projects without prior approval by the General Assembly.
- Bill 2 removes the requirement that a person exporting water from the state prove that credit will be given to Colorado under interstate water compacts for the exported water.

Four resolutions are recommended for consideration in the 1994 legislative session.

- Resolution 1 requests that the federal government allow state governments the authority and flexibility to enact legislation and adopt regulations implementing federal environmental statutes which achieve federal goals while recognizing the unique circumstances of each state.

- Resolution 2 calls upon the United States Senate Committee on Environment and Public Works to consider amending S. 1114, the proposed Clean Water Act reauthorization legislation, to reflect state concerns with various provisions of the act.
- Resolution 3 requests that the United States Congress incorporate various state concerns in legislation reauthorizing the Endangered Species Act.
- Resolution 4 suggests amendments to the Safe Drinking Water Act, including provisions that the mandates of the act shall be of no force and effect unless the federal government provides adequate funding.

COMMITTEE ON WATER AND STATE SCHOOL LAND ISSUES

FINAL REPORT

Committee Charge

The interim committee resolution adopted by the Executive Committee of the Legislative Council at its May 25 meeting provides for an interim committee to study the following water and state school lands issues:

Water Issues

- resolve the water transfer/transbasin of origin issue;
- provide oversight of the various studies being conducted by the Colorado Water Conservation Board;
- provide input into the federal effort required by the Western Water Policy Review Act of 1992;
- monitor the Colorado River negotiations;
- monitor the activities of the Water Quality Forum;
- provide the state's input into re-authorization of the Clean Water Act, Safe Drinking Water Act, and the Endangered Species Act;
- determine the state's role in the Endangered Species Critical Habitat issue; and
- consider the feasibility of the Roan Creek proposal.

State Lands Issues

- review the constitutional provisions governing school lands and the disposition of proceeds from the permanent school fund;
- determine the impact of leasing public lands for recreational purposes;
- determine the impact of requiring the state board to sell up to 25 percent of state school lands over an eight-year period;

- evaluate the impact of directing the state board to replace low-income generating lands with lands that have the potential for higher income; and
- review the use of proceeds and interest earnings from the sale of school lands.

Committee Activities

The committee examined the following major issues:

- the authority of the United States Forest Service to require instream flows as a condition for issuance or renewal of a special use permit;
- the status of the Colorado Water Conservation Board Construction Fund and the non-construction uses of the fund;
- the provisions of the federal Endangered Species Act and the comments of a variety of organizations on the reauthorization of the act;
- the major provisions of federal Clean Water Act reauthorization proposals and comments from a number of citizens and interest groups concerning proposals to reauthorize the act;
- the need for additional legislation to regulate intrastate water transfers; and
- the statutory and constitutional provisions governing the State Board of Land Commissioners and the management policies of the board.

In addition, the committee went on a Colorado River tour to help members better understand critical issues relating to the management of the river in the coming years (such as, protection of Colorado's interstate compact entitlements and environmental concerns, including endangered species and water quality).

MAJOR ISSUES AND RECOMMENDATIONS

Colorado Water Conservation Board

Representatives of the Colorado Water Conservation Board (CWCB) provided briefings on the duties of the board, studies conducted by CWCB, and the status of CWCB construction fund.

Duties and Activities of the Board. CWCB is the state's primary water policy and planning agency and is organized as a division within the Department of Natural Resources. Section 37-60-106 (1), C.R.S., states that the duty of the board is "to promote the conservation of the waters of the state of Colorado in order to secure the greatest utilization of such waters and the utmost prevention of floods." Major activities of CWCB include the following:

- protecting the state's interests in interstate water issues;
- evaluating and overseeing state-financed water projects;
- working with federal agencies to develop water projects;
- assisting local governments with floodplain mapping;
- managing the state's program for protecting instream flows and natural lake levels; and
- providing a forum for the evaluation of water resource conflicts among Colorado communities.

Studies Conducted by CWCB. CWCB is currently participating in a number of water studies. Major studies which involve CWCB include:

- ***Colorado River Decision Support System.*** The Colorado River Decision Support System will provide the data and information necessary to evaluate compact protection and water development issues among the seven Colorado River basin states as well as in-state issues such as the implementation of endangered fish recovery actions, water quality protection measures, and various federal land use protection measures which could limit the ability of Colorado water users to develop Colorado compact apportionment in the Colorado River basin.
- ***Enlargement of Elkhead Reservoir.*** CWCB is participating in a feasibility study in conjunction with the Colorado River Water Conservation District, the United States Bureau of Reclamation, and other participants in the recovery program for endangered fish of the upper Colorado River basin. The study will also evaluate opportunities to obtain federal financing and support for expansion of the Elkhead Reservoir, which is located in the Yampa River basin.

- *Fort Lyon Canal Company Transfer Alternatives Study.* The purpose of this study is to develop information concerning the Fort Lyon Canal Company system and the surrounding communities in southeast Colorado and to evaluate possible alternatives to the traditional methods of transferring agricultural water to urban uses.
- *Front Range Water Supply Opportunities.* House Bill 93-1273, the CWCB construction fund bill, appropriated \$450,000 to CWCB to obtain additional information related to potential opportunities for integrating existing water supplies along the Front Range.

Status of Construction Fund. CWCB representatives commented on the status of the construction fund. The construction fund was established by the General Assembly in 1971 to provide low interest, long-term loans to water entities for the development and maintenance of water projects. In addition, the fund is a continuing cash fund, and therefore balances do not revert to the General Fund at the end of the fiscal year. Since the first project was completed in 1973, the fund has provided over \$70 million in financing for 114 water projects. There are currently 102 outstanding loans paying interest and principal back into the fund. House Bill 93-1273 approved requests for the construction or rehabilitation of 12 projects totalling \$11.4 million.

CWCB representatives also briefed the committee on specific water resources projects for which funding will be required in Fiscal Year 1994-95.

Recommendation. The committee recommends Bill 1 which authorizes the CWCB to provide new loans totalling \$6.3 million for water resource projects from the CWCB Construction Fund. Colorado law requires that the first priority of the CWCB in utilizing the construction fund is for projects which will increase the beneficial consumptive use of Colorado's compact entitled waters. In addition, state law directs that the second priority of the CWCB fund is to repair and rehabilitate existing water storage and delivery systems and invest in water management activities and studies.

Bill 1 also creates a "Small Project Loan Account" and authorizes the CWCB to make loans from this account for small projects under a certain amount without prior approval of the General Assembly. The bill also authorizes the CWCB to make a loan for a study of a substitute water supply plan in the Arkansas River basin. In addition, Bill 1 deauthorizes \$1.8 million in loans previously approved from the fund for certain water projects and specifies that certain loans made from the fund are substitutes for loans previously made from the emergency infrastructure account.

Colorado River Strategies

The Executive Director of the Department of Natural Resources reviewed the 1991-95 work plan of the department. A number of water-related goals of the department have been formulated. One of those goals is to protect Colorado's interstate compacts by strengthening Colorado's ability to defend its water against

claims from the other Colorado River basin states. The demands on Colorado River water by lower basin states (i.e., Arizona, California, and Nevada) will be in excess of their allocated 7.5 million acre feet per year.

A CWCB representative emphasized that problems relating to the use and allocation of water in the lower basin states should be resolved among the lower basin states. However, upper basin states (i.e., Colorado, New Mexico, Utah, and Wyoming) need to be willing to accommodate agreements among the lower basin states through greater operational flexibility within the Colorado River system reservoirs.

A proposed set of principles and strategies to guide Colorado's position relating to the Colorado River was provided by CWCB. Key principles and strategies are the following:

- The apportionments to the upper and lower basins established under the Colorado River Compact of 1922 should not be reallocated.
- The historic yields of existing water projects must be protected. Resources should not be reallocated from existing projects. Instead, existing projects should be made more efficient, resulting in better management of Colorado's overall water resources.
- The lower basin states should develop solutions within the lower basin to their water supply allocation issues.
- Colorado needs to make a commitment to recover Colorado River endangered fish species.
- Colorado needs to recognize the need for additional water development to meet identified demands.

Recommendation. In recognition of the need to clarify the statute concerning the export of water from the state, the committee recommends Bill 2 which removes the requirement that a person exporting water from the state prove that credit will be given to Colorado under interstate water compacts for the exported water. Current law authorizes the state engineer to collect a \$50 per acre foot fee on water diverted outside the state. The bill also requires that effective January 1, 1994, the fee charged by the state engineer for the diversion of water to another state must be adjusted annually for inflation, as measured by the Denver-Boulder consumer price index.

Clean Water Act Reauthorization

A considerable amount of testimony was provided concerning the reauthorization of the federal Clean Water Act. A comprehensive reauthorization bill, S. 1114 introduced by Senators Max Baucus and John Chafee, is now being considered by the U.S. Congress. Included in S. 1114 are provisions to: reauthorize the State Water

Pollution Control Revolving Fund program (i.e., loan programs for the construction of wastewater treatment facilities) through fiscal year 2000; further regulate industrial toxic pollutant discharges; expand the act's nonpoint source (e.g., runoff from farm and city streets) management program and increase funding for the program; establish new procedures to comprehensively manage all sources of pollution in watershed areas; and increase regulation of stormwater and sanitary sewer systems.

Pursuant to the interim study directive to provide the state's input into reauthorization of the Clean Water Act (CWA), testimony was provided by a number of organizations (e.g., Colorado Farm Bureau, Northern Colorado Water Conservancy District, and Colorado Water Congress) which enumerated concerns with the provisions of S. 1114. Several persons suggested that passage of the reauthorization legislation could result in additional unfunded mandates being imposed on state and local governments. Testimony emphasized that specific and adequate funding mechanisms should be established for any new CWA requirements adopted by Congress. Other concerns with S. 1114 included:

- The antidegradation provisions of the bill could severely limit future water development in Colorado.
- Federal biological criteria and nonpoint source control mandates in the bill could limit a state's flexibility in managing its water resources.
- All sections of the bill should include language stating that the act will not interfere with state primacy in allocating and developing water rights.
- Federal mandates provided in the bill should include realistic compliance deadlines.

Recommendation. In response to concerns with S. 1114 expressed by committee members and interested persons, the committee voted to draft a letter to Senators Baucus and Chaffee enumerating these concerns. A copy of the letter is located on pages 33-36 of this report.

In addition, the committee recommends Resolution 2 which requests that the United States Senate Committee on Environment and Public Works consider amending the following S. 1114 provisions: 1) remove the Clean Water Act mandate requiring states to collect permit fees to fund said act; 2) include a section specifically preserving state water allocation law and water rights in the Clean Water Act; and 3) include realistic compliance deadlines in any Federal mandates imposed pursuant to the bill.

Endangered Species Act

Several individuals testified concerning the provisions of the proposed federal Endangered Species Act (ESA) and proposed ESA reauthorization legislation. The

purpose of the act is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and to create a program for the conservation of such species. An endangered species is defined as "any species which is in danger of extinction throughout all or a significant part of its range...." A threatened species is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant part of its range."

The protection of most species is administered by the Secretary of the United States Department of the Interior through the Fish and Wildlife Service (FWS). FWS is responsible for publishing a list of all threatened and endangered species in the Federal Register and updating the list periodically. Detailed procedures are enumerated in ESA regarding additions of endangered or threatened species to the list. There are 24 species in Colorado which have been listed as endangered or threatened under ESA, including one mammal, six birds, five fish, ten plants, and one insect. The act specifies that once a species is listed, a recovery plan must be developed unless it would not promote the conservation of the species. A recovery plan is a guide that enumerates, justifies, and schedules those research and management actions necessary to recover a species so that it is a self-sustaining component within its ecosystem and is no longer in need of protection under ESA. The major purpose of a recovery plan is to provide a schedule that, if implemented, will improve the status of the species to the point where the species qualifies for delisting. The recovery process is not the sole responsibility of FWS. The process must include other federal and state agencies and private conservation organizations. The act requires all federal departments and agencies to conserve endangered and threatened species.

Reauthorization Legislation. An update was given on the two bills for reauthorization of ESA (HR 2043 by Representative Gerry Studds and HR 1490 by Representative W.J. "Billy" Tauzin). Both pieces of legislation increase the requirements for the listing and delisting of endangered and threatened species and broaden the requirements for developing recovery plans. The "Studds Bill" would require that recovery plans identify area and circumstances where habitat conservation plans would contribute to species recovery and would minimize impacts between species conservation and economic activity. The bill would also require that the recovery plan include a description of actions that would minimize the socio-economic impacts of recovering the species. The "Tauzin Bill" would require detailed biological and economic assessments in all recovery plans. The biological assessments would include information on the current population and population trends of the species, in addition to an identification of the precise geographical range of the species.

Concerns with Endangered Species Act. Representatives of a number of organizations expressed concerns relating to ESA (e.g., Colorado Water Congress, Colorado Water Conservation Board, Northern Colorado Water Conservancy District, and Colorado Farm Bureau). Major suggestions regarding the reauthorization of ESA include:

- The act should be implemented to minimize adverse social and economic impacts.

- Decisions regarding species should be based on adequate and verifiable scientific information.
- Species should be listed as threatened or endangered only if the listing is accompanied by a viable, funded recovery plan.
- The act should not affect allocation of water under interstate compacts.
- No federal agency should acquire water except on a voluntary basis by a state and in compliance with the state's water laws.
- The act should include provisions for compensation for loss of property rights.

Recommendation. The committee recommends Resolution 3 which requests that the federal government consider including several factors in legislation reauthorizing the Endangered Species Act. Specifically, the resolution suggests that: 1) permits for proposed actions and projects be allowed to proceed and federal listings of endangered species be delayed in any state that has an endangered species recovery program in place; 2) the definition of species recovery be amended to include progress towards recovery; and 3) states be allowed jurisdiction over species designated as "candidate" and "sensitive species." In addition, the resolution suggests that Colorado fund and build a fish hatchery to recover native fish species.

United States Forest Service and Instream Flows

Committee members and water supply providers expressed concern with the United States Forest Service (USFS) proposal to require instream flows as a condition for renewal of seven special use permits held by Boulder, Ft. Collins, Greeley, Loveland, Public Service Company, and the Water Supply and Storage Company for water supply facilities located in the Arapaho and Roosevelt National Forests. (An instream flow is the amount of water maintained in the stream to protect the stream's aquatic habitat or maintain the channel's physical stability.)

A USFS representative testified that special use permits are subject to the provisions of the forest plan where the permitted facility is located and that the Federal Land Policy and Management Act (FLPMA) requires that special use permits contain terms and conditions, such as instream flows, which minimize damage to the environment. Therefore, special use permits that require instream flows may have the effect of altering private water rights. In addition, the USFS representative testified that before permits are renewed the United States Fish and Wildlife Service must determine if the operation of the seven facilities jeopardizes endangered species located in the Platte River basin of Colorado and Nebraska.

The USFS representative also stated that USFS will follow the policy outlined by former Secretary of Agriculture Edward Madigan in renewing the permits and that USFS intends to renew the permits by January 31, 1994. In a letter to Senator Hank

Brown, Secretary Madigan indicated that new instream flow requirements would not be imposed on existing water supply facilities. However, the permits will require that the permittee accommodate the resource goals of the forests to the extent possible without diminishing the project water yield or substantially increasing the cost of the water yield.

Representatives from various municipalities and water supply providers stated that USFS has no authority to require instream flows as a condition for issuing or renewing a special use permit. Testimony suggested that FLPMA requires USFS to defer to state water laws and that special use permits must be granted subject to existing state law and water rights. Testimony also indicated that approximately 700 special use permits for water-related projects are up for renewal by USFS in the next several years; therefore, the committee should encourage USFS and the United States Fish and Wildlife Service to seek a negotiated solution to the instream flow requirements.

Recommendation. Committee members expressed concern with the potential impact of USFS instream flow requirements on the state's water law system. Therefore, the committee forwarded a letter to USFS representatives stating that the water rights for the seven water projects up for permit renewal are property rights established under state law. In addition, the letter states that USFS forest plans must recognize that the state has jurisdiction over the allocation and administration of water, including water flowing through national forests. A copy of this letter is located on pages 37-39 of this report.

Water Transfer/Basin of Origin Issue

The General Assembly has considered 11 legislative proposals regarding the transfer of water from one basin to another basin since the 1989 legislative session. Six of these proposals required some form of compensation and mitigation to the basin of origin, three imposed additional requirements before approval of a water transfer could be granted, and two required voter authorization prior to a water transfer. As a result of the significant recent legislative activity on water transfer issues, the committee took testimony regarding the need for basin of origin legislation.

Representatives from various water and environmental organizations testified concerning the need for legislation to address possible economic, social, and environmental impacts associated with the transfer of water from one area ("basin of origin") to another area. Testimony revealed a diversity of viewpoints regarding the need for basin of origin legislation. These diverse viewpoints are summarized below.

- A representative of the Northern Colorado Water Conservancy District suggested that any basin of origin legislation must not devalue private water rights and that water right holders should be able to sell water rights without outside interference.
- The Colorado Conservancy District Act requires that any conservancy district which proposes to transfer water from the Colorado River basin file a plan stating

that the transfer will not impair the consumptive use of water in the originating basin or increase the cost of water in the basin of origin. A representative of the Colorado River Water Conservation District noted that all water transfers should be required to meet the conservancy district act requirements.

- Representatives from the Denver Water Department and the City of Colorado Springs commented that any basin of origin legislation should be based on the following principles: 1) the state's prior appropriation system should not be compromised; 2) mitigation requirements for the basin of origin must be related to the transfer and must be measurable either through specific monetary payments or specific actions; 3) legislation should only apply to future decreed water rights; and 4) any benefits to the basin of origin should also be considered when calculating mitigation requirements.
- Representatives from the Northwest Colorado Council of Governments, the High Country Citizens Alliance, the University of Colorado Natural Resources Law Center, and the environmental community stated that alternatives to water transfers should be examined prior to the approval of a transfer. In the event that a water transfer is deemed necessary, water transfer proponents should be required to address the social, economic, and environmental impacts of water transfers on the basin of origin. In addition, the proponents should be required to provide water rights or compensatory storage to provide for the future water needs of the basin of origin.

Recommendation. The committee makes no recommendation regarding the water transfer/basin of origin issue.

State School Lands

Representatives from the State Board of Land Commissioners briefed the committee on the state's trust lands, which were given to Colorado by the United States when Colorado was granted statehood in 1876. Revenues from rents, mineral royalties, and land sales are used for the benefit of the state's K-12 public schools and several other small trusts. Colorado's school and other trust lands total approximately three million surface acres and four million acres of subsurface mineral rights.

The State Board of Land Commissioners (SLB), established in the state constitution, is charged with administering state trust lands. SLB representatives stated that the mission of the board is to manage state lands and maximize trust revenues while also preserving the long-term productivity and value of the land assets. In fiscal year 1991-92, state trust lands produced approximately \$24.0 million in revenue to the state's public schools. Of this amount, \$17.5 million was from interest on the school trust permanent fund and \$6.5 million was income from the school trust income fund.

SLB Land Sale and Exchange Policy. SLB representatives explained that the land board often sells land that produces a marginal return or land that has a marginal appreciation in value. The proceeds from the sale of state lands are placed in the permanent fund. Board representatives also discussed their land exchange policy. The land board may use the proceeds from the sale of lands to exchange for other lands with a higher income potential. SLB staff described the board's recent acquisition of the Box T Ranch in Pueblo and El Paso counties. The board sold four separate parcels of state land and placed the proceeds from these sales in an escrow account administered by the state treasurer. The proceeds from the land sales were then used to purchase the Box T Ranch.

Committee members expressed concern with the SLB's policy on the sale and exchange of state lands and questioned whether the board has the constitutional and statutory authority to purchase land. Committee members commented that the purchase of land by SLB removes land from county property tax rolls and thus results in a reduction of income to the county where the land is purchased. Several members of the committee suggested that SLB make payments in lieu of taxes to counties to compensate for lost tax revenue. In addition, members suggested that the investment risks associated with a working cattle ranch such as the Box T Ranch may not represent an appropriate use of the proceeds from the sale of state school lands.

SLB Agricultural Lands Policies. SLB representatives reviewed recent rental rate increases for irrigated, dryland farming, and grazing lands. SLB representatives stated that the objective of these increases is to obtain market rental rates and thus maximize the return on these lands. These increases will be phased in over a three-year period. Rental rates for irrigated lands were determined based on a Colorado State University survey of private sector rental rates for irrigated lands. Once a rental rate is determined for a given piece of land, the land board gives the lessee a \$25 dollar per acre credit for capital improvements, such as a sprinkler system, provided by the lessee. SLB representatives stated that rental rates for grazing lands are based on private grazing rates and that the first increase in grazing rates, effective October 1, 1993, reflects 65 percent of the average of the five most recent years private grazing rates as determined by the United States Department of Agriculture. Effective October 1, 1994 rates will be increased to reflect 75 percent of private rates.

Committee members and state lands lessees expressed concern about the effect of irrigated lands and grazing lands rental rate increases on the lessees of state lands. Specifically, members commented that rental rate increases may substantially reduce the profit margin of many lessees. Many of the lessees noted that private irrigated lands available for lease typically include capital improvements, while state lands do not. Several lessees testified that without improvements by lessees, the state lands are simply grasslands. Concern was also expressed that the SLB credit of \$25 per acre may not adequately reflect the value of all lessee improvements and that the credit will benefit some lessees more than others, given the variation in per acre lease rates.

In response to committee concerns with the board's management practices, the committee considered a bill regarding the administration of state school lands. The main provisions of the bill would have:

- transferred SLB from the Department of Natural Resources to the Department of Agriculture;
- specified a public auction process for the leasing of state lands and required that existing lessees of state lands have the first right of refusal to meet the highest bid submitted;
- required SLB to consider the sale of up to five percent per year of the total state school land acreage over a period of ten years;
- authorized SLB to exchange low-income generating lands for lands to be leased or transferred to a state agency for governmental functions;
- authorized SLB to lease lands for recreational purposes, provided that the rental rate on the land equals the market rental rate;
- required SLB to consider selling lands rather than leasing them for recreational purposes if the revenue from the sale would equal or exceed revenue from recreational leasing; and
- required that a certain percentage of monies received from the sale of state lands be credited to a capital construction loan program for the purpose of providing loans to school districts for capital improvements.

Following considerable discussion, the committee was unable to reach a consensus on the necessary elements of state lands legislation.

Recommendation. Although the committee does not recommend any specific legislation on this topic, it drafted a letter to the members of the General Assembly regarding the management of state lands. A copy of this letter is located on pages 41-42 of this report. In the letter, the committee expresses concern with SLB's current management policies, including its policies relating to the sale and exchange of state lands and the lease rates on agricultural lands. Based on these concerns, the committee urges the General Assembly to give serious attention to the administration of state lands during the 1994 session.

Other Issues Considered

Roan Creek. The committee was briefed by proponents and opponents of the proposed Roan Creek Project. This project involves the building of a reservoir and pipeline for the storage of up to 175,000 acre feet of water on Roan Creek, which is located in Northwest Colorado near the town of DeBeque. The purpose of the project is to provide water storage in Colorado for Colorado River water which would be leased to Las Vegas, Nevada.

Western Water Policy Review Advisory Commission. The Colorado representative on the Western Water Policy Review Advisory Commission briefed the committee concerning the functions of the commission. The commission, which was created pursuant to the Western Water Policy Review Act of 1992, is directed to undertake a comprehensive review of all federal activities within the 19 Western states which directly or indirectly affect water allocation and use.

Water Quality Forum. A progress report on the activities of the Water Quality Forum was provided to the committee. The Water Quality Forum was created to improve communication among the various parties involved in water quality issues (e.g., Division of Water Quality, Department of Agriculture, Environmental Defense Fund, and Colorado Water Congress).

Safe Drinking Water Act. Proposed legislation relating to the reauthorization of the Safe Drinking Water Act was reviewed by local government representatives. Such legislation, which will be considered by the U.S. Congress in 1994, may impose additional unfunded mandates on state and local governments.

Recommendation. The committee recommends Resolution 4 which suggests amendments to the Safe Drinking Water Act, including provisions that the mandates of the act shall be of no force and effect unless the federal government provides full and adequate funding.

MATERIALS AVAILABLE

The following meeting summaries and memoranda are available from Legislative Council staff.

Meeting Summaries	Topics Discussed
July 9, 1993	Colorado's interstate compacts and United States Forest Service requirements for instream flows
August 4, 1993	Colorado Water Conservation Board studies
August 24, 1993	Water transfer - basin of origin issues, Endangered Species Act
September 15, 1993	Water Quality Forum, Clean Water Act, Safe Drinking Water Act
October 6, 1993	Western Water Policy Review Act, state school lands
October 7, 1993	State school lands
October 27, 1993	State school lands, discussion and approval of bills
November 22, 1993	Colorado Water Conservation Board construction fund, consideration of resolutions

Memoranda

- "Attempts by the United States Forest Service to Obtain Instream Flows in the Arapaho and Roosevelt National Forests," July 2, 1993.
- "Colorado Water Conservation Board Construction Fund," July 29, 1993.
- "Western Water Policy Review Act of 1992," September 28, 1993.
- "State Trust Lands," September 30, 1993.
- "Update on the Renewal of Special Use Permits by the United States Forest Service," November 17, 1993.

BILL 1

A BILL FOR AN ACT

101 CONCERNING THE COLORADO WATER CONSERVATION BOARD CONSTRUCTION
102 FUND, AND MAKING APPROPRIATIONS IN CONNECTION THEREWITH.

Bill Summary

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

Authorizes the Colorado water conservation board to make loans from the Colorado water conservation board construction fund for certain water resources projects. Specifies that certain loans from the fund are substitutes for loans previously made from the emergency infrastructure account. Deauthorizes loans from the fund for certain water resources projects. Authorizes the expenditure of moneys from the fund for certain nonreimbursable purposes. Creates and authorizes the board to make loans from the "Small Project Loan Account" for small projects up to a certain amount without prior approval of the general assembly. Authorizes the board to make a loan for the study of a substitute water supply plan in the Arkansas river basin.

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

2 SECTION I. Project authorization. (1) Pursuant to section
3 37-60-122 (1) (b), Colorado Revised Statutes, the Colorado water
4 conservation board is hereby authorized to loan moneys to enable the
5 construction of the following water resources projects:

Table with 4 columns: Priority, Name, Loan, (years). Row 1: 1.* Beaver Park Water Co. - Row 2: 8 Brush Hollow Dam Rehab. \$ 825,000 30

Table with 4 columns: Line number, Description, Amount, Term. Rows include: 2 Summit Res. Dam Repair 60,000 30; 4 Beaver Creek Dam Rehab. 343,000 30; 6 Military Park Res. Dam Rehab. 30,000 30; 8 Cedar Mesa Res. Outlet Rehab. 10,500 15; 10 Lake Enlargement and Rehab. 86,000 30; 12 Dist. - Meadow Creek Dam Outlet 97,500 20; 14 Jackson Lake Res. & Irrig. Co. - Jackson Res. Dam Rehab. 1,000,000 30; 16 Bull Basin Owners - Bull Basin Res. No. 2 Rehab. 25,000 30; 18 Elmwood Lateral Ditch Co. - Convert Ditch to Pipeline 80,000 20; 20 Highline Buzzard Ditch Co. - Convert Ditch to Pipeline 50,000 30

1	12.	Lateral 35 Association -		
2		Rehabilitate Lateral	35,000	30
3	13.	Rainbow Park Water Co. -		
4		Rainbow Park Ditch	130,000	30
5	14.	Town of Johnstown -		
6		Johnstown Pipeline	2,542,500	30
7	15.	Town of Monument -		
8		Well System Improvements	94,000	30
9	16.	Vouga Reservoir Assoc. -		
10		Vouga Res. Outlet Rehab.	350,000	30
11	17.	City of Salida - Raw Water		
12		Pipeline Replacement	<u>553,000</u>	30
13		TOTAL	\$6,311,500	

14 * This project was authorized by the Colorado water conservation board
15 during 1993 under the emergency infrastructure repair cash account in
16 section 37-60-122.6, Colorado Revised Statutes, established by HB 93-1273.

17 (2) The Colorado water conservation board may make loans for the
18 construction of the projects specified in subsection (1) of this section from
19 such moneys as are or may hereafter become available to the Colorado water
20 conservation board construction fund. Said loans shall be in the amounts
21 listed in subsection (1) of this section plus or minus such amounts, if any,
22 as may be justified by reason of ordinary fluctuations in construction cost as

1 indicated by the engineering cost indices applicable to the types of
2 construction required for each project or as may be justified by reason of
3 changes in the plans for a project if those changes are required by final
4 engineering drawings and specifications or by federal, state, or local
5 governmental requirements.

6 (3) Contracts entered into by the Colorado water conservation board
7 pursuant to section 37-60-119 (2), Colorado Revised Statutes, for loans to
8 enable the construction of the projects specified in subsection (1) of this
9 section shall be subject to the repayment periods and total repayments set
10 forth therein; except that the total repayment for a project shall be adjusted
11 to reflect any changes in the amount loaned by reason of subsection (2) of
12 this section. Pursuant to section 37-60-120 (1), Colorado Revised Statutes,
13 the board shall require such terms and conditions in such contracts as will
14 ensure repayment of funds may available by it. The board shall not disburse
15 any moneys for any loan authorized by subsection (1) of this section unless
16 and until it is satisfied, in its sole discretion, that the recipient of any such
17 loan will be able to make repayment pursuant to the terms and conditions
18 established by the board and by subsection (1) of this section.

1 SECTION II. Project deauthorizations.

2	Authorization	Amount	Amount
3 Project Name	Bill and Year	Authorized	Deauthorized
4 1. Blaine Lateral			
5 Ditch Co.	SB 90-41	\$ 155,000	\$ 155,000
6 2. Town of			
7 Lochbuie	HB 93-1273	100,000	100,000
8 3. Spring Cr.			
9 Ext. Ditch			
10 Co.	HB 93-1273	46,000	46,000
11 4. Kern Res.			
12 & Ditch Co.	SB 81-439	123,000	40,033
13 5. White River			
14 Geo. Study	HB 83-1102	430,000	30,000
15 6. Bauer Lakes			
16 Water Co.	HB 85-1042	50,000	7,149
17 7. Clinton Ditch			
18 & Res. Co.	SB 92-87	8,400,000	550,000
19 8. Florida Farm			
20 Irrig. Proj.	HB 85-1042	<u>260,000</u>	<u>260,000</u>
21 TOTAL		\$9,564,000	\$1,188,182

1 SECTION III. Colorado river compact decision support system -

2 appropriation. (1) The Colorado water conservation board is hereby
 3 authorized to continue designing a decision support system for the Colorado
 4 river, to continue development of the necessary database, and to operate and
 5 maintain the associated computer hardware and software. The Colorado
 6 water conservation board is hereby authorized to expend not more than one
 7 million eight hundred forty-four thousand dollars (\$1,844,000) from the
 8 Colorado water conservation board construction fund for these purposes.

9 (2) In addition to any other appropriation, there is hereby appropriated,
 10 out of any moneys in the Colorado water conservation board construction
 11 fund not otherwise appropriated, to the department of natural resources for
 12 allocation to the Colorado water conservation board and the division of water
 13 resources, for the fiscal year beginning July 1, 1994, the sum of two
 14 hundred fifty thousand dollars (\$250,000) and 3.0 FTE, or so much thereof
 15 as may be necessary, for the continued implementation of this section.

16 SECTION IV. South Platte river water rights management support

17 system. The Colorado water conservation board and the division of water
 18 resources are hereby authorized to continue their participation in the
 19 development of a South Platte river water rights management support
 20 system. The Colorado water conservation board is hereby authorized to
 21 expend not more than fifty seven thousand dollars (\$57,000) from the
 22 Colorado water conservation board construction fund for this purpose.

1 **SECTION V. Satellite monitoring system maintenance -**
 2 **appropriation.** In addition to any other appropriation, there is hereby
 3 appropriated, out of any moneys in the Colorado water conservation board
 4 construction fund not otherwise appropriated, to the department of natural
 5 resources for allocation to the state engineer, for the fiscal year beginning
 6 July 1, 1994, the sum of one hundred thirteen thousand dollars (\$113,000),
 7 or so much thereof as may be necessary, for the maintenance of the satellite
 8 monitoring system established and operated pursuant to section 37-80-102
 9 (10), Colorado Revised Statutes.

10 **SECTION VI. Small dam site reconnaissance program.** The
 11 Colorado water conservation board is hereby authorized to continue its field
 12 reconnaissance study of potential small dam sites in Colorado and to increase
 13 the level of technical assistance available to small organizations interested in
 14 constructing small new storage facilities and for rehabilitating or enlarging
 15 existing facilities. The Colorado water conservation board is hereby
 16 authorized to expend not more than fifty thousand dollars (\$50,000) from the
 17 Colorado water conservation board construction fund for these purposes.

18 **SECTION VII. Extreme precipitation investigation.** (1) The state
 19 engineer is hereby authorized to investigate available evidence of extreme
 20 precipitation in the mountains of Colorado in relation to the requirements
 21 which govern the size of spillways to enable reservoirs to safely pass large
 22 floods. The state engineer shall evaluate the available data and recommend

1 to the governor and the general assembly any appropriate actions which may
 2 lead to a reduction in the cost of dam spillway improvements, an increase in
 3 the conservation pool of reservoirs, an increase in power generation
 4 capabilities, or other benefits, while assuring adequate protection from flood
 5 risks.

6 (2) In addition to any other appropriation, there is hereby appropriated,
 7 out of any moneys in the Colorado water conservation board construction
 8 fund not otherwise appropriated, to the department of natural resources for
 9 allocation to the state engineer for the fiscal year beginning July 1, 1994, the
 10 sum of one hundred thousand dollars (\$100,000), or so much thereof as may
 11 be necessary, for the purposes as specified in subsection (1) of this section.

12 **SECTION VIII. Arkansas river substitute water supply plan - loan**
 13 **authorized.** The Colorado water conservation board is hereby authorized
 14 to loan out of any moneys in the Colorado water conservation board
 15 construction fund not otherwise appropriated, to the Colorado water
 16 protective and development association, for the fiscal year beginning July 1,
 17 1994, the sum of seventy-five thousand dollars (\$75,000), or so much
 18 thereof as may be necessary, for the purpose of preparing a substitute water
 19 supply plan in the Arkansas river basin. Said loan shall be repayable in
 20 annual installments at four percent (4.0%) interest over a term of ten (10)
 21 years commencing one year from the date the moneys are disbursed.

1 **SECTION IX. Small project loan account - creation.** The Colorado
2 water conservation board is hereby authorized to make loans in a maximum
3 amount of one hundred thousand dollars (\$100,000) for small projects.
4 These loans will be funded from the "Small Project Loan Account", which
5 account is hereby created in the Colorado water conservation board
6 construction fund, which shall have a total starting balance of two million
7 dollars (\$2,000,000). These loans will not require prior general assembly
8 approval, and will be approved by the board for the purpose of avoiding
9 undue delay in completion of the project. The board shall submit to the
10 general assembly a written determination of the basis for each loan from the
11 "Small Project Loan Account" not later than December 1 of the year in
12 which the loan was made.

13 **SECTION X. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.

BILL 2

A BILL FOR AN ACT

101 CONCERNING THE ADMINISTRATION OF INTERSTATE DIVERSIONS OF WATER.

Bill Summary

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

Deletes language from Colorado law related to interstate diversions of water being credited as a "delivery" of water to another state pursuant to interstate water compact or otherwise. Specifies that the fee charged by the state engineer for the diversion of water to another state be adjusted annually for inflation based on the consumer price index.

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

2 SECTION XI. 37-81-101 (3) (a), Colorado Revised Statutes, 1990
3 Repl. Vol., is amended to read:

4 37-81-101. Diversion of water outside state - application required
5 - special conditions - penalty. (3) Prior to approving an application, the
6 state engineer, ground water commission, or water judge, as the case may
7 be, must find that:

8 (a) The proposed use of water outside this state is expressly authorized
9 by interstate compact or credited as a delivery to another state pursuant to
10 section 37-81-103 or that the proposed use of water does not impair the
11 ability of this state to comply with its obligations under any judicial decree

1 or interstate compact which apportions water between this state and any other
2 state or states;

3 SECTION XII. 37-81-103 (1) and (2), Colorado Revised Statutes,
4 1990 Repl. Vol., are amended to read:

5 37-81-103. Considerations in applications for interstate diversion of
6 water. (1) For the purpose of evaluating applications made pursuant to
7 section 37-81-101, no water occurring in any aquifer or being a part of or
8 hydraulically connected to any interstate stream system may be diverted or
9 appropriated in Colorado for a use which contemplates or involves the
10 transportation of such water into or through another state or states through
11 which such interstate stream system flows, for use of such diverted water in
12 such other state or states whether as a vehicle or medium for the
13 transportation of another substance, or for any other use, unless the amount
14 of water so diverted or appropriated and transported through or into such
15 other state or states is credited as a delivery to such other state or states by
16 Colorado, of water to which such other state or states may be or claim to be
17 entitled from such interstate source under an existing interstate compact or
18 otherwise. FOR PURPOSES OF EVALUATING APPLICATIONS MADE PURSUANT
19 TO SECTION 37-81-101, water mixed with other substances in the process of
20 forming a slurry for the purpose of transporting any substance as a
21 suspended solid shall not be deemed to have lost its character as water.

1 (2) The burden shall be upon the claimant or other person seeking to
 2 divert or appropriate water or seeking a water right based upon a claimed
 3 diversion or appropriation coming within the provisions of ~~subsection (1) of~~
 4 ~~this section~~ THIS ARTICLE to prove that ~~a means exists and is accepted by~~
 5 ~~each state, including Colorado, through which said stream system and said~~
 6 ~~diverted water flows or will flow by which the credit required in this section~~
 7 ~~will be entered and recognized by each such state.~~ IT HAS MET THE
 8 REQUIREMENTS OF THIS ARTICLE.

9 **SECTION XIII.** 37-81-104, Colorado Revised Statutes, 1990 Repl.
 10 Vol., is amended to read:

11 **37-81-104. Fee for diversion - fund created.** (1) To effectuate the
 12 purposes of this article, the general assembly hereby authorizes a fee of fifty
 13 dollars per acre-foot to be assessed and collected by the state engineer on
 14 water diverted, carried, stored, or transported in this state for beneficial use
 15 outside this state measured at the point of release from storage or at the point
 16 of diversion. BEGINNING JANUARY 1, 1994, THE STATE ENGINEER SHALL
 17 ADJUST ANNUALLY THE FEE PER ACRE-FOOT IN EFFECT FOR CALENDAR YEAR
 18 1993 AS SPECIFIED IN THIS SUBSECTION (1) IN ACCORDANCE WITH THE
 19 CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR
 20 THE DENVER METROPOLITAN AREA (CPIU); EXCEPT THAT SUCH FEE SHALL
 21 NOT BE LESS THAN FIFTY DOLLARS PER ACRE-FOOT.

1 (2) All moneys collected pursuant to subsection (1) of this section shall
 2 be credited to the water diversion fund, which fund is hereby created. The
 3 general assembly shall annually appropriate all moneys in said fund for water
 4 projects for the state. Said appropriation shall be consistent with part 13 of
 5 article 3 of title 2, C.R.S.

6 **SECTION XIV. Safety clause.** The general assembly hereby finds,
 7 determines, and declares that this act is necessary for the immediate
 8 preservation of the public peace, health, and safety.

RESOLUTION 1

101 CONCERNING THE ENFORCEMENT OF FEDERAL ENVIRONMENTAL STATUTES.

1 WHEREAS, Federal environmental statutes frequently place substantial
2 mandates upon state governments; and

3 WHEREAS, Under federal statutes, state governments are called upon
4 to develop environmental regulatory programs which substantially adopt the
5 requirements of such federal statutes; and

6 WHEREAS, The burden of proof that the state environmental regulatory
7 programs meet federal statutory requirements has traditionally fallen upon
8 the state governments; now, therefore,

9 *Be It Resolved by the Senate of the Fifty-ninth General Assembly of the*
10 *State of Colorado, the House of Representatives concurring herein:*

11 That the Colorado General Assembly believes that each state
12 government should explicitly be given the responsibility and authority to
13 enact legislation and to adopt regulations and policies which implement
14 federal environmental statutes including the "Clean Water Act", the "Clean
15 Air Act", the "Resource Conservation and Recovery Act of 1976", and the
16 "Safe Drinking Water Act" and which achieve the goals of such federal
17 statutes while conforming to the unique circumstances of the individual state.

18 *Be It Further Resolved*, That upon enactment of legislation and adoption
19 of regulations and policies by a state government, it shall be the duty and

1 responsibility of the federal government and each federal department and
2 agency to facilitate the enforcement of any such state law under the
3 applicable federal statute.

4 *Be It Further Resolved*, That in the case of a conflict between state law,
5 regulation, or policy and federal law, regulation, or policy, the federal
6 government may disapprove such state law, regulation, or policy, if it
7 consults and negotiates with such state and provides proof based upon clear
8 and convincing evidence and accepted scientific information that such state
9 law, regulation, or policy does not meet the requirements of the federal
10 statute.

RESOLUTION 2

1 WHEREAS, The United States Congress is considering measures to
2 reauthorize the federal Clean Water Act in S. 1114; and

3 WHEREAS, The Clean Water Act has made considerable progress
4 toward its stated goal to restore and maintain the chemical, physical, and
5 biological integrity of the nation's water with approximately 75% of the
6 nation's waters complying with applicable standards; and

7 WHEREAS, This success is based on the flexibility of the Clean Water
8 Act to allow the states to create and administer innovative programs to meet
9 the Clean Water Act goals; and

10 WHEREAS, Legislative proposals such as S. 1114 threaten state
11 primacy and flexibility which are essential components of the Clean Water
12 Act by substituting provisions which would amount to a federally supervised
13 zoning and land use program; and

14 WHEREAS, Additional unfunded federal mandates to support this
15 program without state primacy and flexibility is bad public policy; and

16 WHEREAS, The United States Senate Committee on Environment and
17 Public Works is currently considering S. 1114, and the General Assembly
18 wants the concerns of the state to be addressed during consideration of the
19 measure; now, therefore,

1 *Be It Resolved by the House of Representatives of the Fifty-ninth*
2 *General Assembly of the State of Colorado, the Senate concurring herein:*

3 That we, the members of the General Assembly, hereby call upon the
4 United States Senate Committee on Environment and Public Works to
5 consider the following:

6 (1) That the Environmental Protection Agency's administration of the
7 Clean Water Act should not interfere with the states' adoption of use
8 classifications, water quality standards, nonpoint source programs, or the
9 antidegradation policy;

10 (2) That the proposed antidegradation provisions of S. 1114 could halt
11 current and future viable uses of water in Colorado because virtually all the
12 waters of the state originate in or flow through federal lands;

13 (3) That the proposed antidegradation provisions if adopted by
14 Congress will destroy the opportunity for meaningful state input into the
15 implementation of the Clean Water Act and end state administration of the
16 Clean Water Act;

17 (4) That the proposed extension of the Clean Water Act to the use and
18 consideration of "biological criteria" must recognize the fact that most waters
19 cannot be restored to a pristine condition as long as people live, work, and
20 recreate in and along the water;

1 (5) That any reauthorization bill must avoid the creation of a regulatory
2 program which will result in the expenditure of vast resources on an
3 unattainable goal;

4 (6) That in light of the passage in Colorado of Amendment 1, the
5 "Taxpayer's Bill of Rights", that imposes tax and spending limits on state
6 and local governments, a Clean Water Act mandate requiring states to collect
7 permit fees to fund the Clean Water Act is unacceptable and may result in
8 the return of primacy to the federal government;

9 (7) That a section preserving state water allocation law and water rights
10 be included in the Clean Water Act to reaffirm that such protection applies
11 to all provisions within the Clean Water Act.

12 *Be It Further Resolved,* That copies of this Resolution be sent to the
13 President of the United States Senate, the Chairman and Ranking Minority
14 Member of the Senate Environment and Public Works Committee, the
15 Administrator of the Environmental Protection Agency, and the Colorado
16 Congressional Delegation.

RESOLUTION 3

1 WHEREAS, The current authorization of the Endangered Species Act
2 (ESA, 16 U.S.C. 1531 et seq.) has expired and Congress will be considering
3 legislation to reauthorize the ESA; and

4 WHEREAS, The ESA's current emphasis on enforcement of penalties,
5 and listing of species already on the verge of extinction rather than on
6 measures which prevent species decline, is counterproductive; and

7 WHEREAS, The Colorado Division of Wildlife's Nongame and
8 Endangered Wildlife Program has been successful in its efforts to recover the
9 sandhill crane, the peregrine falcon, the bald eagle, the river otter, and the
10 squawfish, demonstrating the need to incorporate greater state primacy into
11 the ESA; and

12 WHEREAS, The ESA should be implemented, like other federal
13 statutes, to minimize adverse social and economic impacts; and

14 WHEREAS, Where the implementation of the ESA potentially results
15 in the taking of private property rights, the injured person should receive fair
16 and just compensation; and

17 WHEREAS, The ESA should be implemented in a manner which
18 respects interstate water compacts, equitable apportionment decrees, and the
19 water allocation laws and water rights laws of the affected states; and

20 WHEREAS, It is important that the State of Colorado be proactive in
21 identifying solutions to existing and future endangered species problems

1 which minimize the ESA's potential for interference with land and water use;
2 now, therefore,

3 *Be It Resolved by the Senate of the Fifty-ninth General Assembly of the*
4 *State of Colorado, the House of Representatives concurring herein:*

5 That we, the members of the General Assembly, request that the United
6 States Congress consider that:

7 (1) If a species is listed and a state has a recovery plan in place,
8 individual permits for proposed actions and projects may proceed in that state
9 unless the state decides that they are in direct conflict with the state recovery
10 program;

11 (2) Populations of a nonlisted species established under a state recovery
12 program be treated as experimental populations if the species were later
13 listed under the ESA, in order to provide incentives for prevention of the
14 species' decline;

15 (3) A State Wildlife Commission not list species as threatened or
16 endangered under a state program unless the listing is accompanied by a
17 viable recovery plan that is fully funded;

18 (4) The ESA expand the definition of species "recovery" to include
19 progress toward recovery;

20 (5) Reauthorization of the ESA should contain a provision for state
21 jurisdiction over "candidate" and "sensitive species" so designated by federal
22 agencies;

1 (6) The reauthorization of the ESA contain a provision for delaying a
2 federal listing in states where a funded state recovery plan is in place.

3 *Be It Further Resolved*, That the State of Colorado should consider
4 funding and building a fish hatchery dedicated to native fish species
5 primarily for the reproduction and stocking of species which may be listed
6 under the ESA in the future.

7 *Be It Further Resolved*, That copies of this Resolution be sent to the
8 President of the United States Senate, the Chairman and Ranking Minority
9 Members of the Senate Environment and Public Works Committee, the
10 Administrator of the Environmental Protection Agency, and the Colorado
11 Congressional Delegation.

RESOLUTION 4

1 WHEREAS, The United States Congress is considering measures to
2 reauthorize and amend Title XIV of the federal "Public Health Service Act",
3 known as the federal "Safe Drinking Water Act", in both the Senate and the
4 House of Representatives (S. 1547 and H.R. 3392); and

5 WHEREAS, The State of Colorado has passed legislation to assist in
6 reaching the goals of the federal "Safe Drinking Water Act" and certifies
7 domestic treatment operators and tests and monitors domestic water
8 treatments systems (sections 25-9-101, Colorado Revised Statutes, et seq.);
9 and

10 WHEREAS, The 1987 amendments call for listing twenty-five new
11 contaminants every three years without a cost/benefit analysis built into the
12 risk assumptions underlying the listing; and

13 WHEREAS, There is no requirement for a scientific basis for listing
14 these contaminants; and

15 WHEREAS, There is inadequate federal funding to assist Colorado
16 communities in meeting the federal "Safe Drinking Water Act" mandates;
17 and

18 WHEREAS, Many Colorado communities and water treatment districts
19 do not have the funding nor the budget flexibility to meet costs for testing
20 imposed without their input and outside their control; and

1 WHEREAS, The federal "Safe Drinking Water Act" is creating a
2 hardship for Colorado communities to meet nationwide testing procedures
3 which are applied with little or no regard to their efficacy in eliminating
4 listed contaminants; and

5 WHEREAS, Congress is holding ongoing hearings on amendment and
6 reauthorization of the federal "Safe Drinking Water Act" and will continue
7 to take testimony on the interaction between the state and federal government
8 regarding this act; now, therefore,

9 *Be It Resolved by the House of Representatives of the Fifty-ninth*
10 *General Assembly of the State of Colorado, the Senate concurring herein:*

11 That the General Assembly of the state of Colorado urges the Congress
12 of the United States to amend and reauthorize the federal "Safe Drinking
13 Water Act" so that:

14 (1) All reasonable health standards be met to assure a safe drinking
15 water supply for all citizens of the State of Colorado;

16 (2) Congress eliminate the requirement for listing twenty-five
17 contaminants;

18 (3) The federal Environmental Protection Agency and each state
19 become partners under the act, and this partnership encourage flexibility in
20 responding to conditions existing in each individual state;

21 (4) The mandates of the act be of no force and effect unless the federal
22 government provide full and adequate funding, including but not limited to,

1 a revolving loan fund administered by the state with sufficient flexibility to
2 assist those disadvantaged communities which do not qualify for loans;

3 (5) Each contaminant only be listed after a thorough cost/benefit
4 analysis as part of the risk assessment procedure; and

5 (6) Each contaminant listed be based on sound and exhaustive scientific
6 research.

7 *Be It Further Resolved, That:*

8 (1) In light of the passage of Amendment 1 to the Colorado State
9 Constitution, the "Taxpayer's Bill of Rights", which imposes tax and
10 spending limits on state and local governments, a mandated fee to fund the
11 federal "Safe Drinking Water Act" is unacceptable; and

12 (2) Nothing in the federal "Safe Drinking Water Act" should be
13 interpreted to impair, supersede, delete, or amend in any manner whatsoever
14 the procedures for water rights allocation contained in the statutes and
15 constitution of the State of Colorado.

16 *Be It Further Resolved, That* copies of this Resolution be sent to the
17 President of the United States Senate, the Chairman and ranking minority
18 member of the Senate Committee on Environment and Public Works, the
19 Chairman and ranking minority member of the House Subcommittee on
20 Health and the Environment, and to each member of the Colorado
21 Congressional delegation.

LETTER 1

COLORADO GENERAL ASSEMBLY

EXECUTIVE COMMITTEE

Rep. Chuck Berry, Chairman
Sen. Tom Norton, Vice Chairman
Sen. Sam Cassidy
Sen. Jeffrey Wells
Rep. Tim Foster
Rep. Samuel Williams



COMMITTEE

Rep. Paul Schauer, Chairman

Sen. Tilman Bishop
Sen. Michael Feeley
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Sen. Jana Mendez
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Rep. Peggy Kerns
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STAFF

Charles S. Brown, Director
David Hite, Deputy Director
Stanley D. Eloffson, Asst. Director

LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
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October 7, 1993

Senator Max Baucus
511 Hart Senate Building
Washington, D.C. 20510-2602

Senator John H. Chafee
567 Dirksen Senate Building
Washington, D.C. 20510-3902

Dear Senators Baucus and Chafee:

We, the members of the Interim Committee on Water and State School Lands Issues, wish to take this opportunity to express to you serious concerns we have pertaining to reauthorization of the Clean Water Act by Congress. In particular, the committee is very concerned by a number of the provisions of S.1114.

The committee believes that you agree with the principle that the Clean Water Act is not intended to interfere with state water allocation and administration decisions, or to create a basis for the assertion of federal water rights for water quality purposes. The committee also believes that you do not intend that the Clean Water Act become a federally supervised and locally administered zoning and land use program. Congress has long recognized the importance of allowing state and local governments necessary authority regarding land and water uses, and this fundamental principle of federalism should not be abandoned.

Among the major concerns of the committee with S.1114 are the following:

1. **State Flexibility.** State primacy and flexibility are essential components of the Clean Water Act and the willingness of states to continue implementation of that Act. However, this flexibility has been steadily eroded by the use of EPA "Guidance" or "Policies" to force states to change their water quality programs. EPA's administration of the Act should not interfere with the states' adoption of use classifications, water quality standards, nonpoint source programs, or the

antidegradation policy. Otherwise, the incentive for states to accept delegation of the cost and responsibility for implementation of the Act will no longer exist.

2. Antidegradation Policy. The committee strongly opposes the proposed "antidegradation" provisions of S.1114. This suggested change to the Clean Water Act would effectively eliminate the ability of the Colorado Water Quality Control Commission to achieve the goals of the Clean Water Act in a manner which allows the appropriate use of land and water resources within the state.

The antidegradation provisions of S.1114 are of particular concern to Colorado for several reasons. First, the proposed extension of "Outstanding Natural Resource Water" (ONRW) status to waters flowing through federal lands or which have species listed under the Endangered Species Act would affect most, if not all, of the watersheds in Colorado. This could create a nondegradation standard which could halt current and future viable water uses in the state of Colorado.

Second, in arid states like Colorado, some interests will claim that all waters could be asserted to have "exceptional recreational, cultural, or ecological significance." Under Section 202(c) of S.1114, the state could be forced to designate any and all waters as ONRW pursuant to guidance issued by EPA. In this state, where waters must be put to a variety of uses, preservation of water quality through a nondegradation standard cannot be pursued as a viable federal or state policy. Colorado's water quality program protects existing and reasonably foreseeable uses of our waters, and the Clean Water Act cannot be turned into a prohibition of the use of our water.

Third, requirements in S.1114 for mandatory and enforceable best management practices (BMPs) as part of antidegradation reviews, or as implemented through site-specific plans under watershed or nonpoint source programs, may once again deprive states of necessary flexibility while proving to be significant economic burdens for agricultural, municipal, and industrial interests. Those requirements could foster intense conflict between point and nonpoint sources. This is inconsistent with prior commitments by Congress to allow states to develop programs for nonpoint source control which emphasize voluntary BMPs.

Finally, the proposed antidegradation provisions, if adopted, would effectively destroy the opportunity for meaningful state input into the implementation of the Act and, in our opinion, would lead to states no longer assuming administration of Clean Water Act programs.

3. Section 101(g). The committee believes that it is critical that Section 101(g) be incorporated into the body of the Act. While we appreciate the intent to achieve this goal by adding similar language as Section 302(j) and Section 304(g) of S.1114, in each case the language of the original Section 101(g) has been changed to substantially weaken the protection for state water systems that was intended to be provided by Section 101(g). Section 302(j) is not adequate because it only applies to Section 302,

requirement imposed, or right provided under any federal or state environmental or public health law," which will be asserted to include the CWA itself. Section 304(g) is also unacceptable because it only appears to protect water allocation systems, and does not extend to water rights created under state systems.

4. **Biological Criteria.** The proposed extension of the CWA to the use and consideration of "biological criteria" must recognize the fact that most waters cannot ever be restored to a pristine condition as long as people live, work, and recreate in and along the water. Consequently, any extension of the CWA to include the use of biological criteria must acknowledge the reality of human-induced changes to the aquatic environment, and avoid the creation of a regulatory program which will result in the expenditure of vast resources on an unattainable goal. In addition, because it is impossible to both divert water for use and maintain a waterbody which is biologically or physically unaltered, the Act should not permit regulations under the Act to be extended to the diversion and storage of water under state water systems.

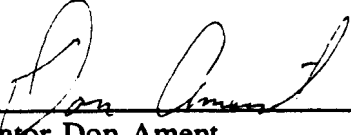
5. **Funding.** The committee is very concerned by the proposed permit fee requirements of S.1114. In 1992 the voters approved the "Taxpayer's Bill of Rights" which is an amendment to the Colorado constitution that imposes tax and spending limits on state and local governments. Those limitations are in addition to current statutory restrictions on revenues and expenditures. The requirement of a federally-mandated increase in permit fees to support a significant expansion of the Clean Water Act is not acceptable, particularly given the radical expansion in the scope and cost of the Clean Water Act which is proposed in S.1114.

S.1114 incorrectly assumes that permittees and the public are willing and able to bear the costs of the extensive monitoring programs and development of new standards, criteria, and guidelines. Money spent for this purpose by our citizens and communities will not be available for other, more pressing needs like education, healthcare, and the criminal justice system. The effect of a Congressional mandate to the states to collect permit fees is the denial of our ability to weigh competing needs of society, and prioritize our expenditures accordingly. Finally, the mandatory imposition of these fees by Congress will ultimately increase the pressure for a state to return primacy for the CWA programs to the federal government, since there is no reason for the states to act as the collection and enforcement mechanism for a program that they do not have any meaningful discretion to define or implement.

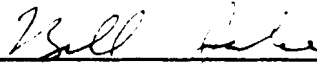
The attempted avoidance of the fiscal impacts of S.1114 by shifting the costs to states and permittees is bad public policy. If Congress does not trust states to accurately assess and prioritize the needs of our citizens, it should fully fund the mandates it imposes.

Thank you for your consideration of these concerns.

Very truly yours,



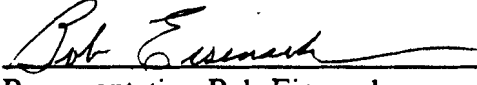
Senator Don Ament
Chairman
*Interim Committee on Water and
State School Lands Issues*



Representative Bill Jerke
Vice Chairman
*Interim Committee on Water and
State School Lands Issues*



Senator Tilman Bishop




Representative Bob Eisenach



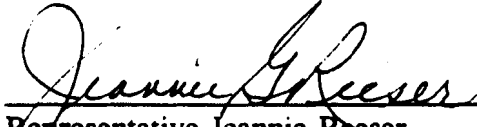
Senator Tom Blickensderfer



Representative Michelle Lawrence



Senator Joan Johnson



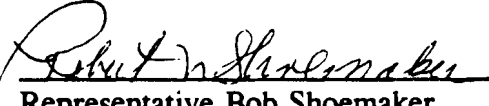
Representative Jeannie Resser

Senator Bob Pastore

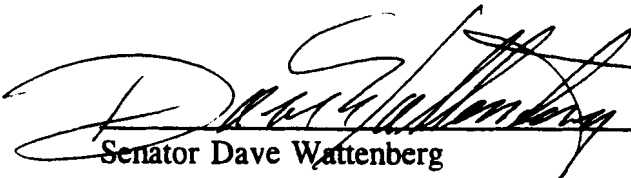


Representative Mike Salaz

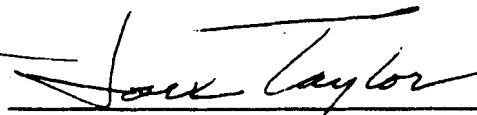
Senator Linda Powers



Representative Bob Shoemaker



Senator Dave Wattenberg



Representative Jack Taylor

LETTER 2

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

October 8, 1993

Ms. Elizabeth Estill
Regional Forester
United States Forest Service
11177 West 8th Avenue
Box 25127
Lakewood, CO 80225

Mr. M.M. Underwood, Jr.
Forest Supervisor
Arapaho and Roosevelt National Forests
240 W. Prospect Road
Fort Collins, CO 80526

Dear Ms. Estill and Mr. Underwood:

Thank you for testifying this summer before the General Assembly's Interim Committee on Water and State Lands Issues about the renewal of Special Use Permits by the United States Forest Service. As you are aware, the State of Colorado has a vital interest in protecting the water rights established under state law and used by its citizens.

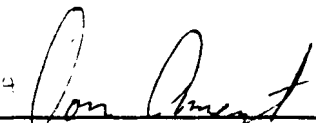
The committee wishes to express its position that it is inappropriate for the Forest Service to impose bypass flow requirements on existing facilities as a condition of permit renewal. In the course of our hearing on this issue we learned that the Forest Service has indicated an interest in resolving the special use permit issues by requesting that the owner of the facility "donate" a part of the water right to the Colorado Water Conservation Board (CWCB) for inclusion in the state instream flow program. The committee is strongly opposed to any such use of the CWCB program, as this has the direct result of reducing the water supplies historically available for beneficial use by our citizens.

Ms. Estill and Mr. Underwood
October 8, 1993
Page 2

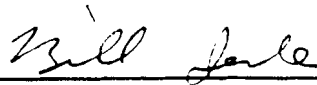
The Forest Service has solicited comments on the proposed renewal of these permits from state agencies. The committee believes that the water rights for these facilities are property rights established and protected under state law, and that any permit conditions must not result in a diminution of the yield, or increase in the cost of the yield of these facilities. In addition, it is not appropriate to require mitigation for the continued operation of these facilities or exercise of these water rights. Forest Management Plans must recognize that the State has jurisdiction over the allocation and administration of water, including waters flowing through national forests.

Thank you for your attention to this important issue, and we look forward to working with you to protect the water supplies currently used and relied upon by our citizens.

Very truly yours,



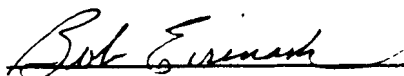
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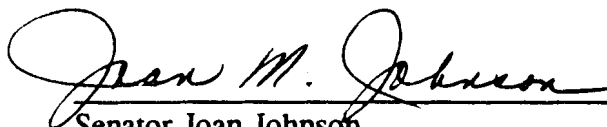
 Representative Bob Eisenach



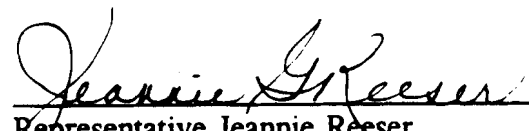
 Senator Tom Blickensderfer



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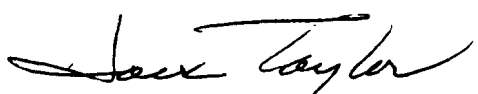
 Senator Linda Powers



 Representative Bob Shoemaker



 Senator Dave Wattenberg



 Representative Jack Taylor

LETTER 3

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November 22, 1993

To Members of the Fifty-ninth Colorado General Assembly:

The Interim Committee Study Resolution adopted by the Executive Committee of the Legislative Council directed the Interim Committee on Water and State School Lands Issues to conduct a study of state school lands. Pursuant to this directive, the committee spent several hours during the interim taking testimony and discussing the management of the state's school lands. Public testimony and committee discussion revealed a variety of concerns about the State Board of Land Commissioner's current management policies.

As a result of this testimony, the committee considered a bill relating to the management of state lands. However, we were unable to reach a consensus on the necessary elements of such legislation. Although the committee does not recommend any specific legislation as a result of its study of state school lands, we feel that the State Board of Land Commissioners needs to adopt clear and consistent policies with respect to the management of state lands. Therefore, we wish to express the following concerns related to the current management practices of the State Board of Land Commissioners:

1. ***Agricultural lands rental rate policies.*** While the committee supports the State Land Board's efforts to maximize the return on state lands, we are concerned about the effect of recent irrigated and grazing lands rental rate increases on lessees of state lands. State lands lessees should be required to pay a fair rental rate on state lands, yet recent rental rate increases may substantially reduce the profit margins of many lessees. In addition, the current lease policies may have an inequitable impact on lessees of state lands. Testimony from several irrigated lands lessees indicated that the

State Land Board's policy of basing new lease rates on private sector lease rates may be flawed since private sector lands typically include improvements, while state lands typically do not. In addition, the \$25 per acre credit for capital improvements provided by the lessee may not adequately reflect the true appraised value of the lessee's improvements, especially given that the lease rate may be increased to a rate comparable to private sector rates. We support the state land board's commitment to form an irrigated lands advisory group to provide input into lease rates on state lands. However, the State Land Board should be directed to develop an equitable method for setting lease rates that allows lessees to obtain a fair return on their investment.

2. ***Land sales and land "exchange" policies.*** The committee expressed concern with the State Land Board's land exchange policy. This policy involves the sale of certain lands and the use of the sale proceeds to purchase other properties. For example, the committee discussed the State Land Board's recent "exchange" of four separate parcels for the 85,000 acre Box T Ranch located in El Paso and Pueblo counties. The committee is concerned that these "exchanges" actually involve the purchase of land and that the State Land Board may lack the constitutional and statutory authority to purchase land. The State Land Board's involvement in these exchange transactions, especially those such as the Box T Ranch that involve the operation and management of a working cattle ranch, may include a level of investment risk that could significantly impact the income derived from the state lands, and thus the income available to the permanent trust. Furthermore, the committee questions the appropriateness of the State Land Board hiring outside management firms to manage state lands, such as in the case of the Box T Ranch. In addition, State Land Board purchases of land remove privately owned lands from county tax rolls and thus result in a reduction in income to the county where the land is sold. Therefore, we feel the State Land Board should be directed to develop management policies that clearly reflect the board's role and mission as defined in the Colorado Constitution and in state statutes.
3. ***Legislative oversight of State Land Board activities.*** In an effort to insure that the State Land Board adopt and implement management policies that are consistent with the General Assembly's views on the management of state lands and the state school permanent trust, several committee members suggested that the State Land Board be required to submit certain actions to the General Assembly for approval. However, the General Assembly's ability to oversee and direct the State Land Board's management policies is restricted due to the unique constitutional authority of the board.

As mentioned above, the committee feels that the State Land Board needs to adopt clear and consistent policies with respect to the management of state school lands. In addition, the committee feels that the State Land Board management policies discussed above may not reflect the views of the General Assembly regarding the management of state lands. Therefore, we urge you to give serious attention to the administration of state lands during the 1994 legislative session.