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0273 Committee on Agriculture

Colorado Legislative Council

0273 Committee on Agriculture

Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1983 COMMITTEE ON:

Agriculture

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 273
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Colorado Legislative Council
recommendations for 1983

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COLORADO LEGISLATIVE COUNCIL

RECOMMENDATIONS FOR 1983

COMMITTEE ON AGRICULTURE

Legislative Council

Report to the

Colorado General Assembly

Research Publication No. 273
December, 1982

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

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November 29, 1982

To Members of the Fifty-fourth Colorado General Assembly:

Pursuant to Senate Joint Resolution No. 19, 1982 regular session, the Legislative Council appointed a Committee on Agriculture and Natural Resources to conduct a study of: the feasibility of a pilot project for continuous monitoring of water flows; the statutory responsibility of the Colorado Division of Mines; the impact of snowmobiles on the economy and natural resources of the state; and the various state and federal potable water and wastewater programs and regulatory agencies involved with such programs.

In response to the disaster resulting from the failure of the Lawn Lake dam near Estes Park, the Legislative Council authorized the committee on August 19, 1982, to undertake a study of dam safety.

Submitted herewith is the report of the Committee on Agriculture and Natural Resources, accepted by the Legislative Council for transmittal to the General Assembly.

Respectfully submitted,

/s/ Representative John Hamlin
Chairman
Colorado Legislative Council

LEGISLATIVE COUNCIL

COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

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SUMMARY OF RECOMMENDATIONS

COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

The Committee on Agriculture and Natural Resources was assigned the following topics for study pursuant to Senate Joint Resolution No. 19.

-- The feasibility of implementing a pilot project for the utilization of recent technology available through private research firms for the continuous monitoring of water flows.

-- The statutory responsibilities of the Colorado Division of Mines.

-- The impacts of snowmobiles on the economy and natural resources of the state of Colorado.

-- Compilation of an inventory of all the various state and federal potable water and wastewater programs and regulatory agencies involved with such programs.

The committee received authorization to study dam safety from the Legislative Council at its August 19 meeting. The study of dam safety was conducted in response to the heightened public awareness following the failure of the Lawn Lake Dam near Estes Park.

The committee conducted hearings on each of the assigned topics. As a result of the hearings, the committee adopted a number of recommendations concerning dam safety, snowmobiles, and potable water and wastewater. The committee makes no recommendations concerning the Division of Mines and the feasibility of a project for monitoring stream flows. The committee's conclusions with respect to these two topics are presented in the text of the committee report. In addition, the committee recommends one bill concerning diversion of groundwater outside the state. Following is a summary of the major provisions of the committee recommendations. A more detailed explanation of each recommendation is included in the text of the committee report.

Dam Safety

Bill 1 makes a number of revisions in the law concerning the inspection and regulation of reservoirs which are intended to enhance the effectiveness of the dam inspection program. In addition, the bill provides for the creation of a joint underwriting association to ensure that reservoir liability insurance is available in Colorado. The bill would:

-- require dam owners to keep records and perform certain actions to safeguard life and property;

-- establish annual inspection fees to be paid by dam owners;

-- increase fines for violations; and

-- increase fees paid by owners for review and approval of dam construction plans.

Funding. The committee recommends that the General Assembly increase funding for the dam inspection program to a level sufficient to provide for annual inspections of each high hazard and moderate hazard dam, and inspection of each low hazard dam once every three years.

Involvement of soil conservation districts. The committee recommends that the Department of Natural Resources conduct a study to develop a plan to involve soil conservation districts in the dam inspection program, and report its findings and recommendations to the agriculture committees of the General Assembly during the 1983 session.

Snowmobiles

The committee recommends Bill 2 which makes a number of changes in the law concerning snowmobiles:

-- increases snowmobile registration fees and requires that money generated from the increase in fees be used exclusively for direct services;

-- requires dealers to register snowmobiles sold from their inventories; and

-- requires rental operators to register and pay a fee for each snowmobile owned by them for rental purposes.

Potable Water and Wastewater

The recommendations of the committee concerning potable water and wastewater address two primary issues identified during the course of committee hearings: 1) fees for wastewater discharge permits; and 2) construction of potable water and wastewater systems.

Bill 3 creates a committee on budget program planning to determine annually the reasonable cost of administering the discharge permit program which will be used as the basis for setting fees on discharge permits. The committee membership includes representatives of local government, industry, members of the General Assembly, and the executive directors of the Department of Health and the Department of Local Affairs. Local government and industry representation on the committee will provide discharge permit holders with a voice in the determination of costs to be charged through permit fees. The fees

collected will be deposited in a fund and shall be appropriated annually to the Department of Health by the General Assembly to fund the costs of the permit program, as determined by the committee.

Bill 4 authorizes by statute the emergency water and sewer grant program of the Department of Local Affairs. Statutory authorization is required or funding for the program, in existence since 1974, will cease in accordance with footnote 68(a) of the 1982 long bill.

Financing recommendation. The committee was unable to develop a proposal in bill form for the creation of a state-supported program to assist local governments in financing construction of potable water and wastewater systems. However, the committee concluded that the need for assistance is critical and that a formal recommendation should be included in the committee's report. The recommendation sets forth the general framework of a program; recognizes the efforts of a work group assembled during the interim to develop a proposal; and requests the group to continue its efforts and submit a proposal for consideration by the General Assembly as soon as practicable. The full text of the recommendation is included in the committee's report.

Diversion of Groundwater

Bill 5 authorizes the diversion of groundwater to an adjacent state under certain circumstances. Each diversion must be authorized by the General Assembly on the advice of the state engineer. The bill is recommended in response to the state engineer's concern over the potential ramifications of the recent United States Supreme Court decision in Sporhase v. Nebraska (No. 81-613).

DAM SAFETY

As a result of the Lawn Lake Dam failure, the committee requested permission from the Legislative Council to include dam safety as a study topic. The Legislative Council approved the request at its August 19 meeting. The committee hearing on dam safety was held on September 9.

In its study of dam safety, the committee was primarily concerned with an evaluation of the dam inspection program of the Division of Water Resources, Department of Natural Resources. To facilitate this evaluation, the committee prepared a list of questions concerning the dam inspection program and requested the state engineer to respond. The questions are enumerated below.

-- What have been the inspection procedures for the past few years? What is the frequency of inspection?

-- What is the procedure if an inspection reveals a problem at the dam?

-- What changes in the inspection procedures are being considered?

-- What is necessary to make the inspection program work more effectively?

-- How effective is dam inspection per se?

The responses of the state engineer to these questions, and information and testimony provided by others are summarized in the following sections of this report.

Dam Inspection Program

The authority of the state engineer to inspect reservoirs is contained in section 37-87-107, Colorado Revised Statutes 1973, which reads:

> The state engineer shall annually determine the amount of water which is safe to impound in the several reservoirs within this state, and it is unlawful for the owners of any reservoir to store in said reservoir water in excess of the amount so determined by the state engineer to be safe.

Inspection procedures and frequency of inspection. The inspection procedures manual provides for the prioritizing of dam inspections, the proper method for conducting and recording the inspections, and the basis for restriction and maintenance orders. Pursuant to the procedures manual, field engineers of the Division of Water Resources study the plans and specifications of the dam to be

inspected. They meet with the appropriate persons at the dam site, make the inspection, prepare a report, brief the division engineer, and provide a copy of the report to the dam owner. Recommendations in the report are followed up by letter. Basically the system is based on self-management by the field engineer with performance evaluations by the supervisor.

Several of the field engineers have not been able to work on a full-time basis the last four years due to budget limitations and due to involvement in the Federal Dam Safety Program according to the state engineer. As a result, only 573 inspections were conducted in fiscal year 1980-81 and 614 inspections in fiscal year 1981-82. The fiscal year 1982-83 goal is to make 840 inspections, according to the state engineer.

The state engineer's, goal based on present resources available, is to inspect each high hazard dam (240 dams) and each moderate hazard dam (346 dams) annually and each low hazard dam (1,691 dams) once every five to seven years. This is based on each of the present eight field engineers performing 130 inspections annually. The hazard ratings are used as the criteria for selecting dams for inspection. The hazard rating of a dam has nothing to do with the actual physical condition of a dam. A dam is classified as "high hazard" if the dam's failure would result in more than the loss of a few lives. A dam is classified as "moderate hazard" if substantial property damage, but no loss of life, would result from a failure. The failure of a "low hazard" dam would result in minimal property damage and no loss of life.

Procedures when a problem arises. If the safety of the dam is in jeopardy, the first step is usually to withdraw water immediately and as quickly as it can be safely done. Simultaneously, warning is given to emergency officials and residents downstream, and the owner of the dam is ordered to perform procedures necessary to alleviate the problem.

In the case where an inspection reveals a problem that could jeopardize the safety of the dam, the owner is ordered to restrict the reservoir to an amount which the state engineer determines will be safe. The division engineer is empowered to enforce the storage restriction and the owner is subject to a fine if the order is not followed.

In a situation where an inspection reveals that maintenance is required to prevent deterioration of a condition at the dam, the owner is directed to do the work required within a specified period of time. In each instance, the owner is sent a copy of the inspection report and a letter directing that the required work be done within a specified period of time.

Procedural changes under consideration. The inspection procedures followed under the present law are appropriate and do not require major modifications, according to the state engineer. An

inspection scheduling program is being developed which will weigh various common factors related to each dam in order to assure that certain "critical" dams are inspected more frequently.

Changes to make the program more effective. In response to this question the state engineer indicated that both increase in inspections and certain statutory changes would make the dam inspection program more effective. The state engineer provided the committee with cost estimates of two alternative levels of inspection effort. To inspect each high and moderate hazard dam yearly and each low hazard dam once every five years, $522,740 in additional funds would be necessary. To inspect each dam once a year, $1,214,163 in additional funds would be necessary.

The state engineer submitted a draft of amendments to the law. The amendments are included in a bill recommended by the committee, except for amendments proposed to the dam owner liability provisions of the current law which are not recommended. The amendments contained in the bill will be addressed in the recommendations section of this report. The liability provisions are discussed in a following section of this report.

Effectiveness of dam inspection. As evidence of the effectiveness of dam inspection in assuring public safety, the state engineer provided several examples of problems discovered by inspections in Colorado. In 1981, for example, a safety inspection of Horsecreek Dam near Hudson revealed a serious problem of movement of the dam embankment. An immediate release of water was ordered and impoundment was restricted until repairs were made. In 1982, safety inspections of two high hazard dams found problems that could have resulted in dam failures had immediate action not been taken by the owners at the direction of the state engineer.

The state engineer provided tables comparing the dam inspection programs in Colorado, California, and Arizona. California spends on the average $2,885 per dam compared to Colorado's average expenditure of $248 per dam. The tables are reproduced below.

COMPARISONS OF DAM INSPECTION PROGRAMS

State	No. of Jurisdictional Dams 1/	No. of Field Engineers	No. of Dams/ Engineers	No. of Inspections/ Field Engineer/ Year	No. of Dams Not Inspected/ Year
Arizona	175	4	44	75	25 2/
California	1,144	17	67	100-120	0
Colorado	1,860	8	233	110-130 3/	1,000

COMPARISON BETWEEN CALIFORNIA'S AND COLORADO'S DAM INSPECTION PROGRAMS

	California	Colorado
Number of Jurisdictional Dams 4/	1,144	1,860
Number of Total Staff	64	11
Number of Professional Staff	52	10
Number of Clerical Staff	8	1
Number of Support Staff	4	0
Total Budget 1981-82	$3,300,000	$ 461,000
Total Budget Divided by Number of Dams	$2,885	$ 248

1/ Corps of Engineers standards height of 25 feet or greater.

2/ Arizona inspects low hazard dams once every two years.

3/ Each engineer performs on the average 105 safety and 25 construction inspections.

4/ Corps of Engineers criteria height of 25 feet or greater.

Dam inspection can never be absolutely effective. It is possible that a dam could be inspected one day and fail the next. As an example, a muskrat burrow below the water line, not visible during an inspection, could cause seepage resulting in failure of the dam. It is also possible that when a dam is inspected at a full condition, a slide of the upstream face of the dam below the water line could not be observed and the dam could fail due to the weakened embankment.

Dam Owner Liability

Under current law (37-87-104, C.R.S. 1973, as amended) a reservoir owner is liable for damages arising from leakage or overflow of water, or floods caused by the breaking of the embankments of the reservoir. No employee, shareholder, or member of a board of directors shall be liable if a liability insurance policy has been purchased by the owner and is in effect at the time the damage occurs. This section establishes minimum liability coverage of $50,000 per claim and an aggregate amount of $1,000,000 for all claims arising from one incident.

The state engineer in his recommendation to the committee proposed to increase the minimum liability provisions. An attorney involved in the litigation arising from the Lawn Lake Dam failure informed the committee that the constitutionality of the liability provisions of the law will be tested in conjunction with the litigation. He requested that the committee and the General Assembly refrain from amending these provisions until the court rules on the constitutionality question. The committee agreed not to recommend changes in the liability provisions.

Testimony revealed that liability insurance for dam owners is becoming increasingly difficult to obtain, and the cost of insurance is becoming prohibitive. The suggestion was made that an insurance pool concept be explored as a solution to the problem. An insurance program patterned after the current medical malpractice insurance program is recommended by the committee as part of Bill 1.

Committee Recommendations - Dam Safety

Bill 1 has two major parts, one containing amendments to the current law, and one establishing a liability insurance program for dam owners. A second committee recommendation pertains to the level of inspection activity the committee asserts is necessary for an effective inspection program. A third recommendation is a request for the Department of Natural Resources to study the possible involvement of soil conservation districts in the dam inspection program.

Bill 1

Bill 1 contains the amendments to the current law concerning reservoirs, and establishes a liability insurance program for dam owners. The major provisions of the bill are outlined below.

Amendments to the current law. The following explanation of the major provisions are in reference to sections of the bill.

-- SECTION 1 -- provides definitions for terms used in the current law, but for which definitions are not currently provided.

-- SECTION 2 -- concerns the submission of plans for construction, alteration, or repair of a dam to the state engineer for approval. The law is amended to require that such plans be prepared by a registered engineer. Currently the state engineer in many cases is forced to redesign the plans. Amendments will also require that the owner provide evidence of a water right and pay all required fees prior to the state engineer's approval of the plan.

-- SECTION 3 -- concerns the state engineer's determination of safe reservoir storage levels. The amendments require that a dam owner keep records on the maintenance and operation of the dam. The state engineer is further authorized to issue orders requiring an owner to perform certain actions which will safeguard life and property. In addition, an owner is required to inform the state engineer of any unusual or alarming circumstance or occurrence affecting the dam.

-- SECTION 4 -- contains new provisions concerning periodic inspection. The major new provision in this section requires each dam owner to pay an annual inspection fee of fifty dollars plus one dollar per foot of height of the dam. According to the state engineer, California requires owners to pay a similar fee. The fee provision in Colorado will generate approximately $170,000 annually. The fees will be credited to a dam inspection fund from which the General Assembly will appropriate funds to pay the expenses of the dam inspection program. Another major provision establishes a procedure for a dam owner to appeal a decision of the state engineer to a board of consultants. The state engineer is required to review the board's report, but is not bound by the board's findings.

-- SECTION 8 -- increases the fine for the failure or refusal of an owner to obey the instructions of the state engineer as to the construction or operation of a reservoir. The fine is increased from the current two hundred dollars per day to two thousand dollars per day.

-- SECTION 11 -- replaces the current fee for the examination and approval of plans for construction, alteration, or repair of a reservoir with a fee schedule based on estimated construction costs. The current maximum fee is two hundred dollars. The maximum fee under the new schedule is six thousand dollars. The current fee is not

realistic as the examination and approval of plans is time consuming. For example, the approval of plans for the Strontia Dam required seven man-months of work. The new schedule will generate an additional $190,000, according to the state engineer.

Dam owner liability insurance program. The liability insurance program provisions of the bill are patterned after Colorado's medical malpractice insurance provisions. Bill 1 creates a joint underwriting association which will offer reservoir liability insurance in the event that such insurance is not available to reservoir owners or, if available, is so unreasonably expensive as to be practicably unavailable. The association shall be self-supporting, without subsidy from its members, and operated on a nonprofit basis.

In addition the bill provides for the creation of a reservoir liability extraordinary loss fund. The fund is to be financed by an annual assessment upon reservoir owners and is to be administered by the commissioner of insurance. The coverage of the fund will be for those liabilities in excess of a reservoir owner's basic insurance coverage. No insurance carrier providing the basic insurance coverage shall be liable in excess of such basic coverage.

An insurer's right to cancel a reservoir liability insurance policy is restricted and the insurer is required to give advance notice of his intention not to renew such a policy. The policyholder, upon request, is entitled to receive the insurer's reasons for such cancellation or nonrenewal.

An appropriation is made to the Division of Insurance in the Department of Regulatory Agencies for implementation and administration of the reservoir liability extraordinary loss fund.

Recommendation -- Frequency of Dam Inspections

The interim Committee on Agriculture recommends that the General Assembly increase the funding for the dam inspection program of the Department of Natural Resources. The level of funding should be sufficient to provide the resources necessary to inspect each high and moderate hazard dam at least once a year, and each low hazard dam at least once every three years.

Recommendation -- Involvement of Soil Conservation Districts in Dam Inspection

The interim Committee on Agriculture recommends that the Department of Natural Resources undertake a study to develop a plan to involve soil conservation districts in the dam inspection program. Enhancement of the effectiveness and efficiency of the dam inspection program should be the primary objective of such a plan. For example, one proposal advanced during committee hearings would give the soil conservation districts responsibility for visually inspecting low

hazard dams in their respective areas on a regular basis. Any apparent problems discovered would be brought to the attention of the Division of Water Resources for a thorough inspection. Records of the visual inspections would be kept by the district and reports would be made regularly to the Division of Water Resources.

In developing the plan, the department should consult with representatives of the local soil conservation districts as well as the Division of Water Resources and the Colorado Soil Conservation Board. Such study should include an analysis of the costs of a proposed plan to the parties involved, including possible cost savings to the current dam inspection program. It is the intent of the committee that the recommendation to increase funding from the dam inspection program include an amount necessary to defray the costs associated with the implementation and operation of a plan involving soil conservation districts in the dam inspection program.

The committee requests that the department report its findings and recommendations to the standing committees on agriculture of the house and senate during the 1983 session.

MONITOR STREAMFLOWS

The committee conducted, pursuant to Senate Joint Resolution No. 19, a study of the feasibility of implementing a pilot project for the utilization of recent technology through private research firms for the continuous monitoring of streamflows in Colorado. The committee concluded at the outset that continuous monitoring of streamflows was technologically feasible based on testimony provided by COMSAT General Corporation. The committee learned that COMSAT, inconjunction with the United States Geological Survey, has a functional project in the Arkansas river basin.

Having reached a conclusion that continuous monitoring of streamflows was feasible, the committee undertook to evaluate the benefits and costs of a statewide monitoring system. The committee received testimony on the benefits of the Arkansas system from COMSAT General, the state engineer, and water users from the Arkansas river basin. In addition, the committee received testimony on an alternative to the system proposed by COMSAT from Electronic Techniques, Inc., a competitor of COMSAT. The cost estimates of a statewide system to the state under the COMSAT proposal were provided to the committee.

Description and Costs of a Monitoring System

The COMSAT system involves the installation of automated monitoring sites to collect information on river height and flow. Stream sensors located at the site measure actual river height. This information is then passed to a processor in a nearby data collection

platform. At various time intervals, the data is relayed through a weather satellite to the computer center in Concord, Massachusetts. The data is processed and converted into usable formats immediately and made available through telephone lines to terminals in Colorado.

The COMSAT proposal for a statewide monitoring system calls for the installation of a system of one hundred monitoring sites The cost to the state for calendar year 1983 would be $500,000. This amount according to COMSAT will cover about fifty percent of the expected operating expenses for 1983. This will allow COMSAT to market additional services to other customers needed to make the service successful as a business, according to COMSAT.

The alternative system proposed by Electronic Techniques would blend a ground based system and a satellite system. The company asserted that the use of satellites to transmit data is only necessary for monitoring sites located in remote areas in rough terrain. According to the company, this combination system would be more cost effective than a system based solely on the use of satellites. Electronic Techniques did not provide a cost estimate for a monitoring system equivalent to the system proposed by COMSAT. No cost comparisons were therefore possible.

Benefits of the System

Benefits estimated by COMSAT. COMSAT General conducted an analysis of the potential benefits of a statewide monitoring system. The results of the analysis and summary of cost savings and economic gains as presented to the committee by COMSAT are reproduced below.

> Our benefit calculations were derived from the following kinds of circumstances, with which we have had some practical experience during March-September, 1982:
>
> - A 1% savings of Colorado entitlements to the major waters flowing from the state could easily exceed 100,000 acre feet; we used a conservative estimate of 25,000 acre feet, valued at $10 an acre foot.
>
> - Improved in-State allocation of water to rights holders is a proven capability of our system; given that active management of rights is estimated to be on the order of 25%, we estimated that the 1983 service would result in an additional 25,000 acre feet of water use.
>
> - Water storage, conservation and release decisions can be more effectively managed; we believe an enhanced "water accounting system" can save additional thousands of acre feet of water.

- Although our system has not yet been used for project planning, evaluation and alternative formulation, we believe that the system's real time and current archives can contribute to sound economic and technical decisions.

From a cost savings standpoint, we reviewed the experience with our still-developing system and its potentials and estimated that significant cost avoidance and savings are possible in the following areas:

- The proven ability of our system to provide early warning of potential flood conditions, more accurate flood tracking and improved transit time predictions was assigned a value of $650,000; advanced warning and prediction of even one flash flood event, several of which occur each year, would exceed this assigned value by several times; use of the system in a major event warrants an "insurance" value of large proportions.

- The system's informal dispute mediation potential has been used successfully on several occasions; its data is being used to reach a settlement with Kansas; our estimate of avoiding even a prolonged administrative or judicial dispute was assigned a conservative value of $250,000.

- The system has proven that it can improve the provisions of public information and public services without the need for additional manpower; we believe that it can also provide government efficiencies through better field dispatch procedures, automated record keeping and publication, reduction in the need for constant travel to attend to field administration and other applications; we assigned a value of $100,000 to these activities.

- Finally, we believe that the integration of our system capabilities into the workings of Colorado's many compact and judicial responsibilities and the avoidance of penalties thereunder has a high, but as yet unquantified value to the State.

Benefits according to the state engineer. The state engineer in his testimony concerning the benefits to be derived from the monitoring system emphasized that the state is several years behind in applying technology to the administration of waters in the state. In order for a system to become a reality the state must support with state money the initial development of the system. The level of support should be determined by the needs of the state. After the system is in place and the benefits demonstrated, water users will possibly approach COMSAT to purchase services. The benefits of a

system to the state, according to the state engineer, are summarized below.

-- The state would be in a position to meet more accurately interstate river compact commitments. Constant monitoring will minimize overdeliveries of water thus allowing Coloradans to use water to which Colorado is entitled. Constant monitoring will also minimize the risk of underdelivery thus avoiding water compact violations.

-- Junior water rights, particularly on overappropriated streams, will be better served. For example, early detection of high flows would provide an opportunity for junior appropriators to put excess water to use.

-- The system will provide advanced flood detection thereby enhancing public safety.

-- Misunderstandings over water measurement would be obviated as water users would have access to the same information on water flows. Litigation precipitated by these disputes would be reduced.

The state engineer did not anticipate that the system would yield significant cost savings to the state. Travel costs would be reduced to the extent that visits to gauge stations would be made less frequently.

Committee Recommendation -- Streamflow Monitoring

The committee on October 6 approved a bill to appropriate $750,000 to the Department of Natural Resources for a water monitoring system. The bill was reconsidered by the committee on November 11, and subsequently rejected. The committee in not recommending funding for a monitoring system, based its decision on the following points.

-- The committee learned from COMSAT at a meeting late in the interim that they had approached the Colorado Water Resources and Power Development Authority for funding support sufficient to maintain their Arkansas river system through the remainder of calendar year 1982. The board authorized $100,000 of support and as part of the authorization, requested COMSAT to prepare a feasibility study for future expansion of the system. The General Assembly will be in a better position to evaluate the system once the feasibility study is completed.

-- The committee was apprised of the fact that the Department of Natural Resources has made provision in their budget request for additional funds for fiscal year 1983-84 for the COMSAT proposal presented to the committee.

-- The estimates of state revenue for the fiscal year suggest that revenues will not permit the expenditure of funds for new programs such as a water monitoring system.

DIVISION OF MINES

The committee devoted approximately one full meeting to the study of the statutory responsibility of the Division of Mines. The committee received testimony from the United Mine Workers, mine owners, federal Mine Safety and Health Administration representatives, the Colorado Mining Association, and the Department of Natural Resources.

The committee makes no recommendation concerning the statutory responsibility of the Division of Mines. The limited amount of time available to the committee, the complexity of the issues presented, and the wide divergence of opinion on the predominant issue of the inspection role of the division prevented the committee from reaching agreement on a recommendation. Other issues and attendant recommendations were overshadowed by the inspection issue. When the inspection issue is resolved and agreement reached between factions in the mining industry and between industry and labor, the resolution of other issues will be facilitated.

Issues Raised

Several issues were raised with respect to the functions of the division during the hearings, in addition to the inspection issue. These issues were raised in response to the committee's request for input on the roles the division should perform and the activities that should be emphasized or deemphasized.

Inspection function. The need for the division to perform mine safety inspection has been an issue before the General Assembly since the passage of the Federal Mine Safety and Health Amendments Act of 1977 (P.L. 95-164). Unlike previous federal acts, P.L. 95-164 precluded state participation in the enforcement of the federal mine health and safety program. However, the existence of the grant provisions of the federal law appear to encourage states to adopt legislation to conduct an inspection program independent of the federal program. The law authorizes grants to improve workmen's compensation and occupational disease laws and programs related to coal or other mine employment, and to promote federal/state coordination and cooperation in improving the health and safety conditions in mines. However, in order to qualify, a state must provide assurances: that the state has a qualified staff to conduct inspections; that an inspection program without advance notice of inspection is provided; and that grants will supplement, not supplant, existing state coal and other mine health and safety programs.

Since the passage of P.L. 95-164, the issue of dual inspection of mines by both the state and federal government has been the topic of significant debate in the General Assembly. Senate Bill 5, passed in 1981, was the last major piece of legislation enacted to address the dual inspection issue. Senate Bill 5 exempted all mines with over 75

employees from state inspection. House Bill 1222, considered by the General Assembly in 1982, contained a provision that would have exempted all coal mines from state inspection. This provision was removed during the legislative process.

The testimony presented to the committee diverged greatly on the issue of dual inspection. The United Mine Workers advocated that the law be changed to require state inspection of all mines, arguing that there is no such thing as "too much" inspection. Advocates of strengthening the state inspection program advanced several other arguments.

-- The state inspection program is not duplicative because the state inspection process emphasizes support, advice, and consultation. The federal program is geared to strict enforcement including citations for violations of mine safety regulations.

-- The number of coal mine inspectors in Colorado, both federal and state, have decreased from twenty-nine in 1978 to fifteen in 1981 at a time when coal production has increased thirty percent.

-- The Mine Safety and Health Administration, due to a reduction of inspectors, has not been able to inspect all underground coal mines in Colorado at least four times per year as required by federal law.

-- Rates of serious injuries in Colorado coal mines are climbing with fifty-seven percent more serious injuries occurring in 1981 than in 1978. Serious injuries include fatalities and injuries resulting in one or more days lost from work.

Opponents of strengthening the state inspection program presented several arguments for their position that dual inspection is not necessary. The arguments for maintaining the present level of state inspection are summarized below.

-- Federal inspection of coal mines is adequate despite the reduction in the number of inspectors. The state inspection resources should be shifted to small non-coal mines, some of which have never been federally inspected.

-- Part of the reduction in the number of federal metal/nonmetal mine inspectors can be attributed to the recent exemptions of sand and gravel operations from inspection.

-- Accident rates must be viewed and compared with a great deal of caution. Several factors other than inspection influence accident rates. For example, accident rates are normally higher for underground mines than surface mines. The composite accident rate is therefore affected by the mix of underground and surface mines. In addition, lower accident rates in eastern states reflect the fact that mining in the west is inherently more dangerous due to such things as steeply pitched veins.

-- The validity of the relationship between accident rates and frequency of inspection is questionable. Some studies indicate that the accident rate is higher subsequent to an inspection.

The committee did not have sufficient time to fully investigate the assertions made by both the opponents and proponents. The arguments presented above are included in this report to exemplify the uncertainties encountered in assessing the impact of state inspections on the health and safety of Colorado miners.

Other issues. In general the testimony indicated support for continuing and or expanding the division's role in the following areas: reporting and recordkeeping; mine safety training and education programs, conducted through community colleges; accident investigation; certification of coal mine officials; and the issuance of diesel and explosive permits.

General support was also expressed for recodification of Colorado mining laws. According to the Department of Natural Resources the statutes are confused, contradictory and out of date. Examples of out-date material and necessary minor changes are reproduced below.

- The division is responsible for safety at operating oil and gas wells. No such program has existed for several years, and none is needed.

- The division is required to gather and keep a file of "the geological surveys and reports bearing upon the mining industry" published by any federal or state agency. Some division records are invaluable, but collecting every federal report is quite unnecessary and duplicates the work of other state agencies.

- The division may collect fees for inspecting small metal and non-metal mines but not for inspecting small coal mines.

- All coal mines are required to submit monthly reports to the division, but large metal and non-metal mines need submit no reports at all. (We still request these reports because the division's statistics on mining production are invaluable to industry.)

- The division is required to investigate every accident, fatal or not, in small metal and non-metal mines.

House Bill 1222 and Senate Bill 123, both considered by the General Assembly in 1982, were in large part intended to recodify the current mining laws. The two bills were nearly identical in this respect. Senate Bill 123 was not enacted. House Bill 1222 was eventually enacted, but the recodifying provisions were removed. The significant amount of time required to analyze the complex provisions of the current mining laws precludes the committee from recommending a comprehensive recodification proposal.

SNOWMOBILES

Pursuant to Senate Joint Resolution 19 the committee held two hearings to assess the impact of snowmobiles on the economy and natural resources of the state. The committee received an overview of the snowmobile program and the scope and role of the Division of Parks with respect to the development of the program and the distribution of money from the snowmobile recreation fund. Representatives from the Colorado Association of Snowmobile Clubs as well as representatives from individual clubs provided the committee with information on the impact of snowmobiles on the economy and natural resources of the state. Representatives of the Division of Wildlife and the Colorado Cattlemen's Association were contacted for their input on the impact of snowmobiles on the natural resources of the state.

Economic Issues

Assessing the economic impact of snowmobile activity in Colorado requires measuring the effects on the state's economy as a whole, the impact on local economies in areas where snowmobiling is popular, and the impact on state and local governments from a revenue and expenditure standpoint. In addition, a major economic question involves consideration of the future potential of the activity of snowmobiling and whether the industry should be encouraged to grow in Colorado.

The committee received testimony that the sport has had a significant impact on the national economy and local areas of Colorado such as Grand Lake and Lake City. In 1981 over two and one-half billion dollars were spent on the activity in the United States and Canada. The sport provided 110,000 jobs and generated approximately eighty-five million dollars in sales tax and gas tax revenues. Evidence of the positive economic impact on local areas of the state was exemplified by the increase in sales tax receipts for Grand Lake, Colorado. Receipts for the month of January increased from $253 in 1966/67 to $8,639 in 1980/81, according to testimony received by the committee. The increase was attributed in large part to the sport of snowmobiling, as Grand Lake has in the past been considered predominately a summer resort area.

Environmental Issues

Assessing the environmental impacts of snowmobiling in Colorado is extremely difficult. Several general areas of potential environmental concern include noise pollution, air pollution, compaction and erosion, intentional damage, harassment of wildlife, and the general impact on wildlife (propagation, habitat, and migration).

According to testimony received by the committee, most of the environmental concerns associated with snowmobiling have been overcome through technological improvements in machinery. Harassment of wildlife is not a prevalent problem according to the Division of Parks and Outdoor Recreation and the Division of Wildlife, as no violation citations have been issued in the past two years. In addition, no major problems were brought to the committee's attention by the Colorado Cattlemen's Association.

One important issue involves the multiple use of Colorado's outdoor recreation resources. During the winter months, snowmobiling, cross country skiing, and snowshoeing are recreational pursuits that compete with one another. Testimony received on the nature and extent of this competition and the cooperation among the various outdoor winter sports indicated that cooperation between users of multiple use areas has resulted in very few problems over the past two to three years.

Committee Recommendations - Snowmobiles

The committee received several recommendations for amendments to the current snowmobile law, primarily from the Colorado Association of Snowmobile Clubs. The provisions of Bill 2, incorporating many of the recommendations presented by the association, are directed to two concerns: first, revenue generated from snowmobile permit fees is not sufficient to meet the present and future need for direct services such as snowmobile trail grooming; and second, many snowmobile owners are not registering and paying the fee.

Fee increases. Bill 2 increases the regular registration permit fee from five dollars to eight dollars in fiscal year 1983-84 and to ten dollars beginning with fiscal year 1984-85. Fees for permits for out-of-state users increase proportionately to the fee increases for regular registration permits.

The increase in fees will provide funds necessary to maintain the current level of services funded through the snowmobile recreation fund. Annual registration revenues have remained stable at $70,000 for at least the past six fiscal years, as the number of snowmobiles registered has stabilized at 14,000. The level of annual expenditures from the fund prior to fiscal year 1982-83 has allowed a surplus to accumulate. For fiscal year 1982-83, $140,000 was appropriated from the fund for use in the snowmobile program, $70,000 of which represent a part of the accumulated surplus. The remainder of the surplus will be utilized in fiscal year 1983-84 to maintain the program at the $140,000 level of the current year.

The amount and timing of the fee increases relates directly to the current program funding level of $140,000 and the exhaustion of the fund surplus. By fiscal year 1984-85, registration fees will generate sufficient revenues to maintain the program at the current $140,000 level. During the interim period of fiscal year 1983-84, the

first phase of the fee increase combined with the use of remaining surplus funds will maintain the program at the $140,000 level.

The bill provides that the funds generated from the fee increases will be used exclusively for direct services. This provision will insure that administrative costs of the program will be controlled, and the intended purpose of the fee increases to provide direct services will be effectuated.

Registration requirements. Testimony received by the committee indicated that approximately 3,000 snowmobiles are owned and operated in Colorado without a valid registration, representing a loss of $15,000 in registration fees. In addition, current law does not require rental operators to obtain a registration for each snowmobile owned by them and rented to the public. Presently rental operators are charged a flat fee of twenty-five dollars per year.

Bill 2 requires snowmobile dealers to register each snowmobile sold from their inventory. Dealers will be permitted to register snowmobiles sold between private parties, and to issue permits for out-of-state users. These provisions should provide a more effective means of insuring that the requirement for registration is observed.

Rental operators will be required to register each snowmobile owned for rental purposes. This provision is designed to correct an inequity brought to the attention of the committee by the Colorado Association of Snowmobile Clubs. Renters use facilities and trails provided in part by registration fees, and the existence of such facilities is advantageous to the operator's business. Accordingly, each snowmobile owned for rental purposes should bear the full cost of registration.

POTABLE WATER AND WASTEWATER

The committee received testimony on the various state and federal potable water and wastewater programs from the United States Environmental Protection Agency, the Colorado Department of Health, the Department of Local Affairs, the Colorado Municipal League and political subdivision representatives. Two prominent issues surfaced with respect to this study: the need for control of fees for wastewater discharge permits; and the critical need for funding construction of potable water and wastewater systems.

State and Federal Potable Water and Wastewater Programs

The Environmental Protection Agency and the Colorado Department of Health provided the committee with inventories of potable water and wastewater programs in Colorado. Appendix A of this report contains

the inventory of federal programs in Colorado as of July 1982, prepared by the Environmental Protection Agency. Appendix B contains the inventory of programs prepared for the committee by the Colorado Department of Health.

The majority of the programs identified by the department and the Environmental Protection Agency stem from the requirements of two major federal laws, the Safe Drinking Water Act of 1974 and the Clean Water Act of 1977. A brief explanation of each act and reference to the inventories of programs provide a framework for understanding the nature of the programs and the federal-state relationship.

The Safe Drinking Water Act can be divided into two parts, one covering public water supply and the other covering the protection of groundwater through regulating waste injection. Established standards for drinking water are classified as either primary or secondary. Primary standards are mandatory and are concerned with pollutants which have a direct adverse affect on health. Secondary standards which are voluntary cover pollutants which are not direct health hazards. The congressional intent of the act is for states to assume responsibility for a program to insure that standards are met. Colorado assumed responsibility in 1978. Federal requirements for state programs include the development of state standards with primary standards being at least as stringent as federal standards, and the development of a program to implement the law with provision for surveillance and enforcement.

According to the Environmental Protection Agency, $445,000 in federal money for fiscal year 1982 has been earmarked for support of the state program in Colorado. This amount represents 60% of the total budget for the state program. EPA's role is limited to providing technical assistance and evaluating the state program. A new EPA role will be to develop alternative ways to assist communities in complying with the law and standards.

The Clean Water Act is divided into four titles, three of which impact wastewater. Title 2 establishes the sewer construction grants program. Funding for the program for FY 1982 is twenty-two million dollars for Colorado. The federal share for any construction project is limited to seventy-five percent of project costs, with the entity constructing the project providing the remainder. The federal share will be reduced to fifty-five percent beginning October 1, 1984. The states have the option to lower the federal funding percentage. Colorado has decided to limit the federal share to fifty percent of project costs beginning October 1, 1982, in an effort to make the federal program dollars available to a greater number of construction projects.

Title 3 concerns water quality standards, including provision of state development of stream standards. The Colorado Water Quality Control Commission has primary responsibility in this area. Title 4 establishes the National Pollutant Discharge Elimination Systems program for the permitting of pollutant discharges. The Colorado

Department of Health is administering the program and is responsible for the issuance of point source permits.

Discharge Permit Fees

The concerns relating to fees for discharge permits expressed during the hearings stem from changes made by Senate Bill 10 to the "Colorado Water Quality Control Act," enacted by the General Assembly in 1981. The concerns expressed were precipitated by the recent substantial increases in discharge permit fees.

Prior to the enactment of Senate Bill 10 in 1981, a fee for an application for a waste discharge permit was set by statute at one hundred dollars. In addition, each permit was subject to an annual charge of fifty dollars to defray costs of monitoring discharges. Senate Bill 10 replaced the one hundred dollar fee with a provision authorizing the Colorado Water Quality Control Commission to establish and revise a schedule of fees sufficient to cover the reasonable costs of processing and administering discharge permits. Senate Bill 10 also established fee ceilings of $25,000 for new permits, and $5,000 for renewal permits. Under S.B. 10, the fees collected are deposited in the Water Quality Control Fund, and are appropriated annually to the Department of Health by the General Assembly.

The intent of the General Assembly was to place the permit program on a cash-funded basis. The intent was manifested in the 1982 Long Bill as cash funds from permit fees in the amount of $961,509 were appropriated. The 1981 Long Bill, which did not reflect the enactment of Senate Bill 10, appropriated $72,054 in fee-generated cash funds. The 1982-83 Appropriations Report of the Joint Budget Committee explains that:

> The appropriation reflects a shift between General Fund and cash funds for activities related to permitting which became cash funded under S.B. 10 of last session. The source of cash funds is the discharge permit fees provided for in Section 25-8-502, C.R.S. 1973, including the fees collected to cover the reasonable costs of processing permit applications and issuance of permits, as well as the annual fees to cover the reasonable costs of administering the permits ....

The commission established a fee schedule, pursuant to the law, which reflected the increased appropriation of cash funds made by the General Assembly. According to the Colorado Special District Association, fees increased significantly. The results of a survey conducted by the association show, for example, the annual fee increased from fifty dollars to $1,072 for the Vail Water and Sanitation District Gore Creek permit.

The system of fees adopted by the commission establishes two fees, which form the basis for allocating the costs of the program. The issuance and processing fee is based on an hourly rate assessed to dischargers for actual time spent by the Department of Health on the issuance and processing of individual permits. The annual administration fee is an assessment made on all dischargers for costs associated with the administration of the program not specifically identifiable with any one permit. Both the issuance and processing fee are subject to the statutory ceilings of $25,000 for a new permit and $5,000 for a renewal permit.

Processing activities include the review of the application for a permit, the establishment of discharge limits, the evaluation of facilities, the development of compliance schedules, negotiation, and public notices. Administrative costs constitute the remainder of the costs incurred by the program. Examples of administrative costs include program policy development, management activities, EDP support, and overhead.

Issues and Concerns

The major issues and concerns emerging from the testimony are highlighted below.

Statutory cap. The $5,000 cap on fees for renewal permits is a problem which will become more severe in the next few years, according to the Department of Health. The cap applies to the duration of the five-year permit, including permit processing and annual administrative costs. These costs are assessed during the five year period and once the accumulated costs reach the cap, no further costs can be assessed to the permit holder. Currently some large dischargers have reached the cap, and others will reach the cap in the near future. The law is not explicit on what should be done with costs incurred once the cap is reached. The potential exists that the small discharger will have to subsidize the larger discharger by absorbing the costs of the program not assessible to the larger discharger because of the cap. Representatives of the Colorado Municipal League indicated that small municipal dischargers are aware of the subsidy potential but insist that the cap be retained to insure that costs are controlled.

Administrative fee. Objections were raised with regard to the assessment of fees to dischargers to pay for general administrative activities of the program. Those objecting argued that the fees were intended to relate to the direct costs of the permit by virtue of the phrase "reasonable costs of processing and administering the permit" contained in section 25-8-502 (1) (b) of the Colorado Water Quality Control Act. Further, it was argued that the public derives the benefit of clean water and should share in the costs of the discharge permit program. The dischargers should be responsible for the costs of work done on their permits, and the public benefit should be recognized through general fund appropriations for costs not directly

attributable to individual permits. A second concern expressed with respect to administrative fees is the lack of a clear delineation between costs of processing and costs of administration.

The role of the commission. The law requires the commission to establish a schedule of fees sufficient to cover the "reasonable costs" of processing and administering discharge permits. The General Assembly determines the costs of the program through the Long Bill. Once the Long Bill is passed the commission holds hearings to establish the fee schedule. The word "reasonable" can be interpreted to require the commission to make a finding on the reasonableness of a budget already established by the General Assembly, according to the testimony of members of the commission. This interpretation places both the department and the commission in an awkward position. The question was raised as to who should determine the amount of resources necessary to operate the program? The conclusion reached was that the General Assembly has the final authority, but that the commission through hearings could serve in a valuable advisory capacity to the General Assembly.

Definition of renewal permit. Under current law an application for a permit shall be considered a renewal if it is based on the same facility, process, and flow upon which the current permit is based, including any application for expansion or change which has been granted. According to the testimony this provision is subject to various interpretations. The application may be viewed by the discharger as a renewal. The department may view the application as requiring a new permit because of a change in flow, for example. The importance of the distinction between what constitutes a renewal permit and what constitutes a new permit is the difference in fees. The fee for a renewal is limited to $5,000 whereas a fee for a new permit may be as much as $25,000. The suggestion was made that the definition of a renewal permit be amended to allow for moderate growth.

Committee Recommendation - Discharge Permit Fees

The committee recommends Bill 3 as one alternative to address the issues presented with respect to discharge permit fees. A committee on budget and program planning for discharge permits is created to determine the program and administrative expenses to be funded through the annual permit fee imposed on wastewater dischargers. The fees collected are credited to the newly created discharge permit system fund. The General Assembly is required to annually appropriate to the Department of Health the moneys in such fund. The General Assembly is further required to review the expenditure of the moneys to insure that they accomplish the purposes established by law. The committee includes representatives of local government, members of various industries required to operate under a discharge permit, members of the General Assembly, and the executive directors of the Department of Health and the Department of Local Affairs. The major objective of the bill and the makeup of the committee is to provide the permit

holders a voice in decisions having a direct impact on the fees assessed against their permits.

Other alternatives considered. A subcommittee was appointed by the committee to develop recommendations on wastewater discharge permit fees for consideration at the committee's final meeting in November. The subcommittee met to resolve the issues on several occasions with representatives of the Colorado Municipal League, the Colorado Water Congress, the Department of Health, the Colorado Water Quality Control Commission, and the Colorado Special District Association. The subcommittee recommended two draft bills for consideration by the committee. The subcommittee explained that the provisions of the two bills were conceptual in form and that time was not sufficient to develop specific language agreeable to the parties involved. The committee, recognizing the importance of the issues, approved the bills in concept for recommendation to the Legislative Council, subject to the subcommittee working out specific provisions to resolve the issues.

Following the meeting, the subcommittee met once more with the concerned parties. The parties were unable to reach agreement, and submitted an informal letter recommending that the draft bills in the form as approved in concept by the committee not be recommended by the Legislative Council. The subcommittee accepted the recommendation, and requested the parties to continue their efforts to resolve the issues. According to the letter, an ad hoc group comprised of representatives of the Colorado Water Quality Control Commission, the Division of Water Quality, the Colorado Water Congress, the Colorado Municipal League, the Colorado Special District Association, the City of Colorado Springs and the Colorado Association of Commerce and Industry met to discuss the common goals for revision of the permit and annual fee schedules proposed by the two committee draft bills. Full agreement was not reached as to several important points and concepts which will need additional time to resolve. The points at issue are:

-- Should the statutory ceiling on permit fees and annual fees be retained, modified, or eliminated?

-- What costs should be attributed to and paid for by permit holders, and what costs should be paid for through general fund appropriations?

-- What general tasks should be included in determining the costs of permit program administration?

-- What should be the relationship between the Water Quality Control Commission and the General Assembly relative to program budget matters?

Pursuant to the directive of the committee, and in recognition of the importance of resolving the issues identified by the ad hoc group, the subcommittee recommends that the General Assembly consider legislation to resolve these issues.

Construction of Potable Water and Wastewater Systems

The problems faced by local governments in financing construction of potable water and wastewater systems were brought to the committee's attention by the Colorado Municipal League, the Colorado Special District Association, the Department of Health, and the Department of Local Affairs. The committee was provided with information on the need for construction and funding sources currently available to assist local governments in financing construction projects.

Water and Sewer Needs

The identification of water and sewer needs in Colorado is a primary function of the ad hoc Colorado Water/Sewer Needs Categorization Committee, established two years ago at the request of the governor. The committee is composed of A-95 reviewers concerned with water and sewer issues, and representatives of the Colorado Municipal League, Colorado Counties, Inc., the Special District Association of Colorado, and Farmers Home Administration.

The committee publishes an annual water needs list and an annual sewer needs list ranking communities and special districts by category of needs based primarily on health concerns. The following criteria are used to categorize each community's and special district's water needs. Sewer needs are based on similar categories.

A Category: Immediate needs, construction required within 3-5 years:

A-1. Demonstrated health hazard.

A-2. Violation of the primary drinking water regulations in a manner that has immediate health effects.

A-3. Inadequate supply of water to meet the reasonable needs of the current population.

B Category: Longer term, emerging needs with construction required within 5-10 years:

B-1. Potential health hazard.

B-2. Violation of the primary drinking water regulations in a manner that results in a long-term health effect.

B-3. Growth projections indicate that the current water supply will not meet the reasonable needs of the projected population within five years.

C Category: No known health hazard, violation of the primary drinking water regulations, or projected supply problems within the next five years.

Water needs. Eighty-four local government agencies have water system problems which require improvements or new construction within the next three to five years, according to an analysis of the October 1981 water needs list made by the Colorado Municipal League. Thirty-five of these systems fall under the A-1 category of demonstrated health hazards. Twenty-two of the thirty-five are municipal systems with needs estimated to be $30,083,500. The populations of these municipalities range from 100 in Kim to 12,773 in Brighton. The costs of construction for the total "A" category is estimated to be $82,336,970.

Sewer needs. The total sewer construction needs of "A" category local government agencies is estimated to be $181.3 million dollars over the next five years, according to the Colorado Municipal League. Twenty-three municipalities with populations under 5,000 have an estimated need of $20,600,000. Municipalities with populations between 5,000 and 25,000 have estimated needs of $32,200,000. Seven municipalities with populations exceeding 25,000 have needs estimated to be $129,000,000.

Available Funding

Funding sources at the state and federal levels were identified by the Colorado Municipal League, the Department of Health, the Department of Local Affairs and the Environmental Protection Agency. The sources identified in some cases are available for both potable water and wastewater system construction. It was noted that nearly all sources available are experiencing budget reductions.

Potable water. According to testimony, at the state level no substantial statewide financial assistance sources are available. The only statewide source is the emergency water and sewer program administered by the Department of Local Affairs. The energy and mineral impact assistance fund is another possible source, but is limited to communities impacted by energy development.

Two federal funding sources exist for potable water. The Farmers Home Administration provides grants and low interest loans for rural water systems. A financing program for municipal water facilities is available through the Community Development Block Grant program administered by the Department of Housing and Urban Development. However, water facilities must compete with other municipal service funding requests.

Wastewater. The state provides a sewer construction grants program administered by the Department of Health. Grants are limited to communities with populations of under 5,000. The emergency water and sewer program administered by the Department of Local Affairs, mentioned previously, is also available.

The primary funding source at the federal level is the sewer construction grants program administered by the Environmental Protection Agency. The program requires matching funds, with the federal share limited to seventy-five percent of the project costs. The federal share limitation will be reduced to fifty-five percent beginning October 1, 1984. Colorado has exercised an available option to reduce the federal match to fifty percent beginning October 1, 1982. The action was taken in an effort to extend the resources to more projects. The Housing and Urban Development program and the Farmers Home Administration program apply to wastewater as well as potable water construction.

Committee Recommendations - Construction of Potable Water and Wastewater Systems

The committee makes two recommendations. The first recommendation is made in recognition of the need facing local government for financial assistance in constructing potable water and wastewater systems in Colorado. Bill 4, the second recommendation, authorizes the Department of Local Affairs to award grants for water and sewer emergencies of local governments.

Recommendation -- financing system construction. The Interim Committee on Agriculture recommends the creation of a state-supported local government water and sewer system construction financing program. The financial assistance should primarily be in the form of state subsidized low-interest loans, with a flexible payback period. Additionally, a nominal amount of grant moneys should be available for local government agencies unable to qualify for a loan. To become eligible, a system must have a documented health need as determined by the State Department of Health and undergo a fiscal capacity analysis done by the State Department of Local Affairs to determine the local government's own financial capability and the extent to which it needs state assistance. Projects eligible to receive assistance are storage facilities constructed for treated water, water and sewer distribution, and collection and treatment facilities. Use of the perpetual severance tax trust fund, unallocated state lottery proceeds, a possible state sales tax increase earmarked for state and local capital construction projects, or use of the state general fund all should be examined as potential state revenue sources to support the program.

The committee received throughout the interim periodic updates on the efforts of a work group assembled to develop a proposal for funding construction of potable water and wastewater systems. The group (composed of representatives from the Department of Health, the Colorado Municipal League, the Special District Association, the Colorado Water Conservation Board and others) was unable to develop a specific proposal in time for consideration by the committee. The above recommendation, submitted by the group as part of their report to the committee, represents the general concept of the program proposal being developed by the group.

The committee understands the complexities involved and is supportive of the efforts of the work group. The committee recommends that the group continue its efforts to develop a proposal for a funding program to assist local governments, and submit such proposal to the General Assembly for consideration as soon as practicable.

Bill 4. The emergency water and sewer grant program authorized by this bill has been funded since 1974 through line-item appropriations in the Long Bill. However, footnote 68a of the 1982 Long Bill states in part that "It is the intent of the General Assembly that this shall be the final year of state General Fund support for this program as a special purpose line item, unless specific statutory authority for this program is established." The committee recommends that the program be statutorily authorized and the program be continued.

DIVERSION OF GROUNDWATER

Current Colorado law prohibits the diversion of groundwater from Colorado into any other state, whether tributary or nontributary to a natural stream (37-90-136, C.R.S. 1973). In contrast the diversion of surface water is permitted in limited circumstances. The law permits diversion by an owner of agricultural land in Colorado who also owns contiguous agricultural land in an adjacent state. Specific authorization by the general assembly, on the advice of the state engineer, is required to enable the water to be used in the adjacent state. The diversion and use in the adjacent state is limited to agricultural purposes.

The state engineer briefed the committee on the recent United States Supreme Court decision in Sporhase v. Nebraska, 81-613, and its potential effect on Colorado's prohibition on diversion of groundwater outside the state. The court indicated that groundwater is an article of interstate commerce and state laws regulating it are subject to burden-of-commerce analysis. Colorado's absolute prohibition on interstate groundwater diversion may not survive a burden-on-commerce analysis, by acting as an unreasonable bar to commerce between two states.

Committee Recommendation

The committee recommends Bill 5, based on the state engineer's analysis of the supreme court decision. The bill authorizes the diversion of groundwater under the same conditions set forth in the law for the authorization for diversion of surface waters outside the state.

BILL 1

A BILL FOR AN ACT

CONCERNING RESERVOIRS, AND RELATING TO THE INSPECTION AND REGULATION THEREOF AND THE PROVISION OF LIABILITY INSURANCE THEREFOR AND MAKING AN APPROPRIATION THEREFOR.

Bill Summary

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

Makes numerous amendments to provisions concerning the regulation of reservoirs and dams by the state engineer.

Adds new definitions of "reservoir", "dam", and "owner". Specifies that enlargements and alterations of reservoirs must be approved by the state engineer and changes the standards as to which reservoirs must be approved. Increases the fees required for examination and approval of plans and specifications for reservoirs.

Authorizes the state engineer to require owners of reservoirs to report certain information on their reservoirs, including operations and any unusual circumstances.

Specifies that the state engineer shall make periodic inspections of reservoirs and may require owners to make necessary repairs.

Authorizes the state engineer to take immediate remedial action to protect life or property if necessary and to assume control of unsafe reservoirs until they are made safe.

Allows a reservoir owner to request, at his expense, the opinion of a consulting board on certain decisions of the state engineer.

Grants injunctive power to the state engineer to prohibit unlawful acts and increases the per diem penalty for violations.

Creates a joint underwriting association which will offer reservoir liability insurance in the event that such insurance

is not available to reservoir owners or, if available, is so unreasonably expensive as to be practicably unavailable. States that such association shall be self-supporting, without subsidy from its members, and operated on a nonprofit basis.

Provides for the creation of a reservoir liability extraordinary loss fund upon the finding of a special committee, composed of the commissioner of insurance, the state auditor, and the executive director of the department of natural resources, that the reservoir liability insurance coverage to be provided by the fund is unavailable or, if available, is so unreasonably expensive as to be practicably unavailable. Provides that the fund is to be funded by an annual assessment upon reservoir owners and is to be administered by the commissioner of insurance. States that coverage of the fund will be for those liabilities in excess of a reservoir owner's basic coverage insurance. Provides that no insurance carrier providing the basic coverage insurance shall be liable in excess of such basic coverage.

Restricts an insurer's right to cancel a reservoir liability insurance policy and requires the insurer to give advance notice of its intention not to renew such a policy. Provides that the policyholder, upon request, is entitled to receive the insurer's reasons for such cancellation or nonrenewal.

Makes an appropriation to the division of insurance in the department of regulatory agencies for implementation and administration of the reservoir liability extraordinary loss fund.

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

SECTION 1. Article 87 of title 37, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

37-87-100.3. Definitions. As used in this article, unless the context otherwise requires:

(1) "Alteration" or "repair" means only an alteration or repair which affects the safety of a dam or reservoir.

(2) (a) "Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert

water or slurry and which either:

(I) Is or will be ten feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the state engineer, or from the lowest elevation of the outside limit of the barrier, as determined by the state engineer, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation; or

(II) Has or will have an impounding capacity of fifty acre-feet or more.

(b) "Dam" does not include an obstruction in a canal used to raise or lower water therein, a levee, a railroad fill or structure, a road or highway fill or structure, a livestock water tank, as defined in section 35-49-103, C.R.S. 1973, or an erosion control dam as defined in section 37-87-122.

(3) "Enlargement" means any change in or addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded or which increases the volume of water which may be impounded.

(4) (a) "Owner" means any of the following who own, control, operate, maintain, manage, or propose to construct a dam or reservoir:

(I) The state and its departments, divisions, institutions, agencies, and political subdivisions;

(II) A municipal or quasi-municipal corporation or entity;

(III) A public utility;

(IV) A special district or other district authorized by law;

(V) A public or private corporation, company, or entity;

(VI) An individual;

(VII) The duly authorized agents, lessees, or trustees of any owner.

(b) "Owner" does not include the United States.

(5) "Reservoir" means any area which contains or will contain the water impounded by a dam.

SECTION 2. 37-87-105, Colorado Revised Statutes 1973, as amended, is amended to read:

37-87-105. Approval of construction, alteration, or repair of reservoir. (1) No reservoir of a capacity of more than ~~one--thousand~~ FIFTY acre-feet, or having a dam or embankment in excess of ten feet in vertical height ~~from-the bottom-of-the-channel-to-the-bottom-of-the-spillway;-or-having a-surface-area-at-high-waterline-in--excess--of--twenty--acres~~ FROM THE NATURAL BED OF THE STREAM OR WATERCOURSE AT THE DOWNSTREAM TOE, AS DETERMINED BY THE STATE ENGINEER, OR FROM THE LOWEST ELEVATION OF THE OUTSIDE LIMIT OF THE BARRIER, AS DETERMINED BY THE STATE ENGINEER, IF IT IS NOT ACROSS A STREAM CHANNEL OR WATERCOURSE shall be constructed, ENLARGED, ALTERED, OR REPAIRED in this state unless the plans and specifications for the same have first been approved by the state engineer and filed in his office. ~~In--making-his~~

determination;-the-state-engineer-shall-be-guided-by--criteria related-to-the-probability-that-precipitation-will-be-exceeded once---in---five---hundred--years BEFORE APPROVAL OF ANY CONSTRUCTION OR ENLARGEMENT OF ANY NEW OR EXISTING DAM OR RESERVOIR MAY BE GRANTED, THE OWNER MUST SHOW EVIDENCE OF A CONDITIONAL OR ABSOLUTE WATER RIGHT GRANTED BY THE WATER COURT. The state engineer, shall-act-as--consulting--engineer during the construction thereof, and shall have authority to require the material used and the work of construction to be done to his satisfaction.

(2) No work shall be deemed complete, NOR STORAGE OF WATER ALLOWED, until the state engineer furnishes to the owners of such structures A STRUCTURE a written statement of the work of construction and the full completion thereof, together with his acceptance APPROVAL of the same, which statement shall specify the dimensions of such dam and capacity of such reservoir AND ANY TERMS OR CONDITIONS GOVERNING THE STORAGE THEREIN. NO APPROVAL OF ANY CONSTRUCTION, ENLARGEMENT, ALTERATION, OR REPAIR SHALL BE GIVEN UNTIL THE OWNER HAS PAID ALL REQUIRED FEES SET FORTH IN SECTIONS 37-80-110 (1) (e) AND 37-87-106.

SECTION 3. 37-87-107, Colorado Revised Statutes 1973, is amended to read:

37-87-107. Safe storage levels - owner reports. (1) The state engineer shall annually determine the amount of water which is safe to impound in the several reservoirs

within this state, and it is unlawful for the owners of any reservoir to store in said reservoir water in excess of the amount so determined by the state engineer to be safe.

(2) TO ASSIST HIM IN DETERMINING THE SAFE STORAGE LEVEL, THE STATE ENGINEER MAY REQUIRE THAT OWNERS OF RESERVOIRS OR DAMS KEEP RECORDS OF AND REPORT ON THE MAINTENANCE, OPERATION, STAFFING, AND ENGINEERING AND GEOLOGIC INVESTIGATIONS CONCERNING RESERVOIRS AND SHALL ISSUE ORDERS AS NECESSARY TO INSURE ADEQUATE MAINTENANCE AND OPERATION AND TO REQUIRE ADEQUATE STAFFING AND ENGINEERING AND GEOLOGIC INVESTIGATIONS WHICH WILL SAFEGUARD LIFE AND PROPERTY. IN ADDITION, THE OWNER OF A DAM OR RESERVOIR SHALL FULLY AND PROMPTLY ADVISE THE STATE ENGINEER OF ANY SUDDEN OR UNPRECEDENTED FLOOD OR UNUSUAL OR ALARMING CIRCUMSTANCE OR OCCURRENCE AFFECTING THE DAM OR RESERVOIR.

SECTION 4. Article 87 of title 37, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

37-87-108.5. Periodic inspections - unsafe conditions. (1) The state engineer, from time to time, shall make inspections of dams and reservoirs for the purpose of determining their safety but shall require owners to perform, at their expense, such work as is necessary to disclose information sufficient to enable the state engineer to determine conditions of dams and reservoirs in regard to their safety and to perform other work necessary to safeguard life

and property.

(2) The state engineer shall immediately employ any remedial means necessary, including the lowering of a reservoir level, to protect life and property if either:

(a) The condition of any dam or reservoir is so dangerous to life or property, in the opinion of the state engineer, as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or

(b) Passing or imminent floods threaten the safety of any dam or reservoir.

(3) The state engineer shall continue in full charge and control of any such unsafe dam or reservoir and its appurtenances until they are rendered safe or the emergency occasioning the action has ceased; however, the reservoir or dam owner shall remain liable for any unsafe condition of the dam or reservoir. The cost and expense of any remedial action taken pursuant to this section, including cost of any work done to render a dam or reservoir safe, shall be recoverable by the state from the owner and if not reimbursed may be collected by action brought by the state in the water court of the water division wherein the reservoir is situated.

37-87-108.6. Appeals of decisions on construction, storage levels, and inspections - consulting board. Whenever an owner of a dam or reservoir desires review of the state engineer's decision under section 37-87-105, 37-87-107, or

37-87-108.5, he may request in writing that the state engineer appoint a consulting board of two or more consultants to report to the state engineer on the issue in question. The cost and expense of such consulting board shall be paid by the owner. The state engineer shall consider the report of the consulting board, but, in every case, the final decision shall rest solely with the state engineer.

SECTION 5. 37-87-111, Colorado Revised Statutes 1973, is amended to read:

37-87-111. Expense of examination. The person calling upon the state engineer to perform the duty required of him by section 37-87-109 shall pay him in advance when requested or invoiced expenses, as provided in section 37-87-106, and mileage at the PREVAILING rate ~~of ten cents per mile~~ for each mile actually and necessarily traveled in going to and from said reservoir, and should the state engineer find upon examination that such reservoir is in an unsafe condition, the owners thereof shall be liable for all expenses incurred in such examination.

SECTION 6. 37-87-112, Colorado Revised Statutes 1973, is amended to read:

37-87-112. Appeal from decision of engineer. In the event of either party being dissatisfied with the decision of the state engineer MADE UNDER SECTION 37-87-109, he may take an appeal to the district court of the county wherein said reservoir is located, and said court shall hear and determine

the matter summarily at the earliest practicable time without written pleadings or the aid of a jury, subject to the right of either party to take an appeal as in other civil cases; except that the judgment of the state engineer shall control until final determination of the cause.

SECTION 7. Article 87 of title 37, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

37-87-113.5. Injunction. (1) The state engineer may commence, through the attorney general, an action or proceeding under this article, either by mandamus or injunction, for the purpose of stopping violations or threatened violations whenever any owner:

(a) Fails or omits or is about to fail or omit to do anything required of him by this article or by an order of the state engineer; or

(b) Does or permits to be done or is about to do or permit to be done anything in violation of or contrary to this article or an order of the state engineer.

(2) Any action or proceeding under this section shall be commenced by petition in the water court of the water division wherein the reservoir is situated. The water court shall specify a time, not to exceed twenty days after the service of a copy of the petition, within which the owner or person complained of shall respond to the petition. Prior to such hearing, the court may issue a temporary restraining order

against such owner or person. Upon response or default of response, the court shall immediately inquire into the facts and circumstances of the case.

SECTION 8. 37-87-114, Colorado Revised Statutes 1973, is amended to read:

37-87-114. Penalty - disposition of fines. Any ~~reservoir company~~ OWNER failing or refusing, after ten days' notice in writing has been given, to obey the directions AND ORDERS of the state engineer as to the construction or ~~filling~~ OPERATION of any reservoir shall be subject to a fine of not less than two ~~hundred~~ THOUSAND dollars for each offense, and each day's continuance after time of notice has expired shall be considered a separate offense. Such fines shall be recovered by civil action in the name of the people, by the district attorney, upon the complaint of the state engineer, in the county where the injury complained of occurred. The proceeds of all fines, after payment of costs and charges of the proceedings, shall be paid into the county treasury for the use of the general fund of the county.

SECTION 9. 37-87-117, Colorado Revised Statutes 1973, as amended, is amended to read:

37-87-117. Landowner to submit plans. If any such dam has a maximum height of ten feet or less, or will create a reservoir having a ~~surface area of twenty acres or less, or has a~~ capacity of ~~sixty-five~~ FIFTY acre-feet or less, the landowner desiring to take advantage of sections 37-87-116 to

37-87-121 shall first submit to the state engineer sufficient engineering data, in the way of maps and plans, to show the location, type, and dimensions of the proposed dam, reservoir, and spillway and character of the foundation and of the materials available for construction purposes. The state engineer has authority to pass upon the adequacy of such data and plans for such proposed dam and to require that the work of construction be carried out and completed to his entire satisfaction. ~~In making his determination, the state engineer shall be guided by criteria related to the probability that precipitation will be exceeded once in five hundred years.~~

SECTION 10. 37-87-118, Colorado Revised Statutes 1973, is amended to read:

37-87-118. State engineer's authority over construction. The provisions of sections 37-87-116 to 37-87-121 shall not in any way, manner, or degree exempt the sponsor of any proposed, or the owner of an existing, dam in this state from the provisions of law which now require the approval by the state engineer of plans and specifications for all dams having a maximum height in excess of ten feet or which will create a reservoir with a ~~surface in excess of twenty acres~~ CAPACITY IN EXCESS OF FIFTY ACRE-FEET, nor from compliance with the present or any future authority of the state engineer over the construction, supervision, and administration of such dams.

SECTION 11. Article 87 of title 37, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW

SECTION to read:

37-87-123. Annual fee - dam inspection fund. (1) (a) Each reservoir or dam owner shall pay an annual fee on or before December 31, 1983, and on or before December 31 of each succeeding year, based upon the height of the dam, including all enlargements thereto, substantially completed by or in operation on June 30, 1983, and on June 30 of each succeeding year. The annual fee shall be fifty dollars plus one dollar per foot of height of the dam.

(b) For purposes of this subsection (1), "height of the dam" means the vertical distance, to the nearest foot, from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the state engineer, or from the lowest elevation of the outside limit of the barrier, as determined by the state engineer, if it is not across a stream channel or watercourse, to the maximum possible water storage elevation.

(2) All moneys collected under subsection (1) of this section and section 37-80-110 (1) (e) (I) shall be transmitted to the state treasurer who shall credit the same to the dam inspection fund, which fund is hereby created. All moneys credited to said fund and all interest earned on such moneys shall be used for paying the expenses of the dam safety program as appropriated by the general assembly. Any unexpended balance remaining in the dam inspection fund at the end of each fiscal year shall remain in the fund and become

available for appropriation during the following fiscal year. The controller, upon presentation of vouchers properly drawn and signed by the state engineer, or an authorized employee of the division of water resources, shall issue warrants drawn on said fund, in accordance with any appropriation made by the general assembly.

SECTION 12. 37-80-110 (1) (e), Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

37-80-110. Fees collected by state engineer. (1) (e) (I) For the examination and approval of each set of plans and specifications required by section 37-87-105, the fees required are:

(A) For the first one thousand dollars, or fraction thereof, of estimated construction cost, a fee of one hundred dollars;

(B) For each additional thousand dollars or fraction thereof, of the next nine thousand dollars of estimated construction cost, an additional fee of twelve percent;

(C) For each additional thousand dollars or fraction thereof, of the next ninety thousand dollars of estimated construction cost, an additional fee of three and one-half percent;

(D) For each additional thousand dollars or fraction thereof, of the next one million four hundred thousand dollars of estimated construction cost, an additional fee of one hundred eighteen thousandths of one percent;

(E) For projects where all estimated construction costs are in excess of one million five hundred thousand dollars, a total fee of six thousand dollars will be charged.

(II) In no case, however, shall the minimum fee be less than one hundred dollars nor the maximum fee more than six thousand dollars.

(III) Requests for preliminary review and comment on design reports and preliminary drawings shall be accompanied by a one hundred dollar fee. This fee for preliminary review and comment may be applied to the total fee to be charged for the examination and filing of the formal submittal.

SECTION 13. Article 4 of title 10, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW PARTS to read:

PART 11

RESERVOIR LIABILITY INSURANCE - JOINT UNDERWRITING ASSOCIATION

10-4-1101. Legislative declaration. The purpose of this part 11 is to ensure the continuing availability of protection to the people in this state by establishing a market for reservoir liability insurance coverage which would be available to reservoir owners in the event that such insurance is not available from the voluntary market or the cost of such insurance becomes so unreasonably expensive as to be practicably unavailable. It is intended that the nonprofit joint underwriting association created by this part 11 shall

operate on a self-supporting basis and without subsidy from its members.

10-4-1102. Definitions. As used in this part 11, unless the context otherwise requires:

(1) "Association" means the joint underwriting association created pursuant to this part 11.

(2) "Board" means the board of directors of the association.

(3) "Net direct premiums" means gross direct premiums written on all kinds of direct insurance, including accident and sickness insurance, except life, title, surety, credit, mortgage guaranty, and ocean marine insurance, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

(4) "Reservoir liability insurance" means insurance coverage for a reservoir owner's legal liability concerning damages arising from the leakage or overflow of the waters of the reservoir or floods caused by the breaking of the embankments of such reservoir.

10-4-1103. Joint underwriting association - when operations commenced - coverage - powers. (1) A nonprofit joint underwriting association is hereby created, consisting of all insurers who are subject to the premium tax provided for in section 10-3-209 and who are authorized to write and who are engaged in writing, at any time during the existence of the association, all kinds of direct insurance in this

state, including accident and sickness insurance, except life, title, surety, credit, mortgage guaranty, and ocean marine insurance. Every such insurer shall participate in the association as a condition of its authority to continue to make contracts of such kind of insurance in this state.

(2) The purpose of the association shall be to provide for a market for reservoir liability insurance on a self-supporting basis without subsidy from its members.

(3) (a) The association shall not commence underwriting operations for any reservoir owner until the commissioner, after notice and an opportunity for a hearing, finds that reservoir liability insurance is not available or as of a determinable date will not be available for all types or categories of reservoirs in the voluntary market or that the cost of such insurance is so unreasonably expensive as to be practicably unavailable.

(b) If the commissioner determines, after notice and an opportunity for a hearing, that adequate reservoir liability insurance is available in the voluntary market for any specific type or category of reservoir, the association shall thereby cease its underwriting operations for such type or category of reservoir.

(4) (a) The association shall, pursuant to the provisions of this part 11 and the plan of operation with respect to reservoir liability insurance, have the power on behalf of its members:

(I) To issue, or cause to be issued, policies of reservoir liability insurance, including liability coverages normally incidental thereto, to owners of reservoirs in the state, subject to the limits specified in the plan of operation but not to exceed fifty thousand dollars for each claimant under one policy and one million dollars for all claimants under one policy in any one year;

(II) To underwrite such insurance;

(III) To adjust and pay losses with respect thereto; and

(IV) To cede reinsurance.

(b) The association may contract with one or more servicing carriers to perform any or all of the duties of the association.

10-4-1104. Board of directors. (1) The association shall be governed by a board of ten directors, to be selected on or before October 1, 1983, in the following manner:

(a) Five directors shall be elected annually by cumulative voting by the members of the association, whose votes in such election shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. The five directors serving on the board shall be elected at a meeting of the association held at a time and place designated by the commissioner.

(b) One director shall be the state engineer, ex officio.

(c) Four directors shall be appointed annually by the

executive director of the department of natural resources in accordance with the following specifications:

(I) Two directors shall be representatives of reservoir owners in this state.

(II) Two directors who are not representatives of reservoir owners shall be selected from the public at large.

(2) The directors shall receive no compensation but may receive a per diem subsistence allowance pursuant to the provisions of the plan of operation.

10-4-1105. Plan of operation. (1) The board shall, after consultation with the members of the association, representatives of the public, and other affected individuals and organizations, submit to the commissioner a proposed plan of operation consistent with the provisions of this part 11.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of reservoir liability insurance and shall contain other provisions, including, but not limited to, a preliminary uniform assessment of all members (not to exceed two hundred dollars) for the initial expenses necessary to commence operations, the establishment of necessary facilities, the management of the association, a pro rata assessment of members to defray losses and expenses, any reasonable and objective underwriting standards, the cession of reinsurance, any appointments of servicing carriers or other servicing arrangements, and the procedures for

determining the amounts of insurance to be provided by the association.

(3) The plan of operation shall be subject to the approval of the commissioner. If the commissioner disapproves all or any part of the proposed plan of operation, the board shall submit for review, within fifteen days, an appropriate revised plan of operation or part thereof. If the board fails to do so, the commissioner shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the commissioner shall become effective and operational upon order of the commissioner.

(4) Amendments to the plan of operation may be made by the board, subject to the approval of the commissioner.

10-4-1106. Policy forms and rates - nonprofit and self-supporting basis. (1) All policies issued by the association shall be written on an occurrence basis and shall provide for a continuous period of coverage, beginning with their respective effective dates and terminating as provided in the provisions of the policies, and all such policies shall be subject to the provisions of this part 11. Such policies shall be subject to the group retrospective rating plan and the stabilization reserve fund authorized by this part 11. No policy form shall be used by the association unless it has been filed with the commissioner and he has approved it or thirty days have elapsed and he has not disapproved it as

misleading or violative of public policy.

(2) The rates, rating plans, rating rules, and rating classifications applicable to the insurance written by the association and statistics relating thereto shall be subject to part 4 of this article, giving due consideration to the past and prospective loss and expense experience for reservoir liability insurance written and to be written in this state, any trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner may require. The rates, rating plans, rating rules, and rating classifications promulgated by the association shall give as much weight as possible to reservoir liability experience within this state. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The commissioner shall take all appropriate steps to make available to the association the loss and expense experience of insurers previously writing reservoir liability insurance in this state.

(3) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan, to be approved by the commissioner, under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment expenses, and taxes, plus a reasonable allowance for

contingencies and servicing. Policyholders shall be given full credit for all investment income, net expenses, and a reasonable management fee on policyholder-supplied funds. The standard premium (before retrospective adjustment) for each policy issued by the association shall be established for portions of the policy period coinciding with the association's fiscal year on the basis of the association's rates, rating plans, rating rules, and rating classifications then in effect. The maximum final premium for all policyholders of the association, as a group, shall be limited as provided in section 10-4-1107 (4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection (3), there shall be a presumption that the rates filed and premiums for the business of the association are not unreasonable or excessive.

10-4-1107. Stabilization reserve fund. (1) There is hereby created a stabilization reserve fund, to be administered by the board. The board shall not be subject to any personal liability or accountability with respect to the administration of the fund for actions taken in good faith.

(2) Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-third of each premium payment due for insurance through the association. Such charge shall be separately stated in the policy and shall be payable with each premium payment due. The association

shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

(3) The association shall promptly pay to the trustee of the fund selected pursuant to subsection (4) of this section all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by this part 11.

(4) All moneys received by the fund shall be held in trust by a corporate trustee selected by the board. The corporate trustee may invest the moneys held in trust, subject to the approval of the board. All investment income shall be credited to the fund. All the expenses of administration of the fund shall be charged against the fund. Except as provided in this subsection (4), the moneys held in trust shall be used solely for the purpose of discharging, when due, any retrospective premium charges payable by the policyholders of the association under the group retrospective rating plan authorized by this part 11. Payment of retrospective premium charges shall be made by the board upon certification by the association of the amount due. If all moneys accruing to the fund are finally exhausted in payment of retrospective premium charges, all the liabilities and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been discharged. Any

moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to the policyholders under procedures authorized by the board.

10-4-1108. Participation of association members - assessments - methods of recoupment. (1) All members of the association shall contribute to the financial requirements of the association in the proportion that the net direct premiums written by each such member (excluding that portion of premiums attributable to the operation of the association) during the preceding calendar year bear to the aggregate net direct premiums written in this state by all members of the association. Each member's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by such member with the commissioner.

(2) In the event that sufficient funds are not available for the sound financial operation of the association, the board shall determine the amount of additional funds necessary for the sound financial operation of the association and shall assess the members of the association on the basis of their participation in the association as provided in this section. Each member shall be notified of the assessment not later than sixty days before it is due. If the immediate full payment of the assessment would place any member in noncompliance with the financial requirements of this title, such member may

petition the commissioner to defer, in whole or in part, its assessment then due. Any such assessment shall be subject to recoupment by such member, as provided in subsection (3) of this section.

(3) The recoupment of any assessments paid to the association by its members pursuant to the provisions of this section shall be accomplished according to the following procedure:

(a) The association shall certify to the board the amounts of any assessments and shall reimburse each member from the funds received from the stabilization reserve fund on the basis of its participation in the association.

(b) After the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association, as provided in section 10-4-1107 (4), the association shall certify to the commissioner the amount of any assessments, or portions thereof, for which members have not been reimbursed as provided in paragraph (a) of this subsection (3). The association shall amend the amount of its certification of deficit to the commissioner as the values of its incurred losses become finalized and further assessment of members is required. After the certification of deficit has been filed with the commissioner, each member may deduct from the amount of its premium tax attributable to net direct premiums which would otherwise be due under the provisions of section

10-3-209 an amount equal to the assessments paid by it which have not otherwise been recouped as provided in this section. The premium tax deduction provided by this subsection (3) shall not be in any calendar year greater than fifty percent of the premium tax attributable to net direct premiums which would have been due without such deductions. Any portion of any member's assessment or assessments in excess of such deduction for any year may be taken as a deduction in subsequent years.

(4) Any funds remaining in the association upon cessation of the operations of the association, after all losses and expenses of the association have been paid or provided for, shall revert to the state general fund to the extent of any premium tax deductions taken by members, as provided in paragraph (b) of subsection (3) of this section.

10-4-1109. Appeals and judicial review. (1) Any applicant for membership in the association, or its representative, any person insured pursuant to this part 11 or his representative, or any affected insurer may appeal to the commissioner within thirty days after any ruling, action, or decision by or on behalf of the association with respect to those items which the plan of operation defines as appealable matters.

(2) All orders of the commissioner made pursuant to this part 11 shall be subject to judicial review, as provided in section 24-4-106, C.R.S. 1973; except that, notwithstanding

any other provision of law, proceedings for review shall act as a stay of the enforcement of any order or decision of the commissioner disapproving or ordering the withdrawal, adjustment, or termination of the effectiveness of any rate filing made by or on behalf of the association on the ground that the rates or premiums for the business of the association are unreasonable or excessive, and the association may continue to charge rates pursuant to such filing pending the final order of the court.

10-4-1110. Annual statements. The association shall file in the office of the commissioner annually, on or before March 1, a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed by the commissioner and shall be in such form as is approved by the commissioner. The commissioner may, at any time, require the association to furnish additional information with respect to its transactions, its condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

10-4-1111. Examinations. The commissioner shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in section 10-1-110.

10-4-1112. Privileged communications. There shall be no

liability on the part of, and no civil suit for damages shall arise against, the association, the commissioner or any of his authorized representatives, or any other person or organization for any statements made in good faith by any of them during any proceedings or concerning any matters within the scope of this part 11.

10-4-1113. Tax exemption. The association shall be exempt from the payment of all fees and all taxes levied by this state or any of its political subdivisions, except ad valorem taxes levied on real or personal property.

PART 12

RESERVOIR LIABILITY EXTRAORDINARY

LOSS FUND

10-4-1201. Definitions. As used in this part 12, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of insurance.

(2) "Fund" means the reservoir liability extraordinary loss fund created pursuant to this part 12.

(3) "Special committee" means a committee composed of the commissioner, the state auditor, and the executive director of the department of natural resources.

10-4-1202. Creation of fund upon finding coverage unavailable. (1) The reservoir liability extraordinary loss fund provided for in this part 12 may not be created until the special committee, after notice and an opportunity for a hearing, finds that, in the foreseeable future, the coverage

to be provided by the fund will not be available in the voluntary market or the cost of such coverage will be so unreasonably expensive as to be practicably unavailable.

(2) It is the duty of the commissioner to determine, after consultation with private insurers, whether a meeting of the special committee should be held to determine whether the conditions specified in subsection (1) of this section for the creation of the fund have been met. Nothing in this subsection (2) shall be construed to prohibit the special committee from meeting at the request of any member of the special committee or at the request of any person or group of persons who alleges that the unavailability of reservoir liability insurance coverage to be provided by the fund warrants the creation of the fund.

10-4-1203. Coverage for liability in excess of basic coverage - fund to be created - purpose. (1) Every reservoir owner who elects to be covered by the fund must first obtain reservoir liability insurance in the amount of fifty thousand dollars per occurrence and one million dollars per annual aggregate, known in this part 12 as "basic coverage".

(2) No insurer providing reservoir liability insurance to a reservoir owner who is covered by the fund pursuant to the provisions of subsection (1) of this section shall be liable for payment of any claim against such reservoir owner for any loss or damages awarded in excess of fifty thousand dollars per occurrence and one million dollars per annual

aggregate.

(3) After the special committee makes the findings required by section 10-4-1202, there shall be created a reservoir liability extraordinary loss fund for the purpose of paying that portion of any loss or damages against a participating reservoir owner occurring after the issuance of reservoir liability insurance from the fund and which exceeds the basic coverage insurance but not more than one hundred thousand dollars for each occurrence and ten million dollars per annual aggregate on each policy.

10-4-1204. Annual surcharge to be levied - nonliability of the state. The fund shall be funded by the levying of an annual surcharge on all reservoir owners covered by the fund. The surcharge shall be determined by the commissioner based upon actuarial principles. The fund and all income from the investment of its moneys shall be held in trust, deposited in a separate account, and invested and reinvested by the commissioner and shall not become a part of the general fund of the state. If the total fund exceeds the sum of twenty-five million dollars at the end of any calendar year after the payment of all claims and expenses, including the related expenses of operation of the office of the commissioner, the commissioner shall reduce the surcharge provided in this section in order to maintain the fund at an approximate level of twenty-five million dollars. All claims which become final during the year shall be computed on

December 31 of said year. All such claims shall be paid within two weeks thereafter. If the fund would be exhausted by the payment in full of all claims allowed during any calendar year, the amount paid to each claimant shall be prorated. Any amounts due and unpaid shall be paid in the following calendar year. The annual surcharge and any income realized by investment or reinvestment shall constitute the sole and exclusive sources of funding for the fund. No claims or expenses against the fund shall be deemed to constitute a debt of the state or a charge against the general fund of the state. The commissioner shall promulgate rules and regulations consistent with this section regarding the establishment of the fund and the levying, payment, and collection of the surcharges.

10-4-1205. Commissioner to administer fund - defense and settlement of claims. (1) The fund shall be administered by the commissioner. Upon the acceptance of a reservoir owner for coverage under the fund, the commissioner shall notify the basic coverage insurance carrier that the insured has obtained excess insurance coverage under the fund.

(2) The basic coverage insurance carrier shall promptly notify the commissioner of any case for which it reasonably believes that the value of the claim exceeds the basic insurer's coverage. Failure to so notify the commissioner shall make the basic coverage insurance carrier responsible for the payment of the entire coverage of the fund, if the

fund has been prejudiced by the failure of notice.

(3) The basic coverage insurance carrier shall, at all times, be responsible for providing a defense for the insured reservoir owner. In such instances where the commissioner has been notified in accordance with subsection (2) of this section, the commissioner may, at his option, join in the defense and be represented by counsel.

(4) In the event that the basic coverage insurance carrier enters into a settlement with the claimant to the full extent of its liability as provided in this part 12, it may obtain a release from the claimant to the extent of its payment, which payment shall have no effect upon any excess claim against the fund.

(5) The commissioner is authorized to defend, litigate, settle, or compromise any claim in excess of the basic coverage provided for in this part 12.

(6) Nothing in this part 12 shall preclude the commissioner from adjusting or paying for the adjustment of claims.

(7) The commissioner is authorized to purchase, on behalf of the fund, such insurance or reinsurance as is necessary to preserve the fund.

10-4-1206. Determination of adequacy of surcharge. Determination of the adequacy of the surcharge is to be based on the reasonably anticipated payment of claims and other expenses of the fund during the period for which the surcharge

is made. The surcharge shall be assessed against each reservoir owner participating in the fund at the time the surcharge is made.

10-4-1207. Power to adopt rules and regulations. The commissioner may adopt reasonable and necessary rules and regulations not inconsistent with the intent of this part 12 to carry out the objectives of this part 12.

10-4-1208. Status of the fund - studies. (1) The status of the fund shall be reported by the commissioner to the general assembly annually, and the report shall include the total amount of surcharges collected, the total amount of claims paid and expenses incurred therewith, the total amount of reserve set aside for future claims, the nature and substance of each claim, the date and place in which each claim arose, the disposition of each claim disposed of by judgment of court, settlement, or any other means, and such additional information as deemed necessary.

(2) The commissioner shall conduct studies and review insureds' records for the purpose of determining the causes of claims and shall make recommendations for legislative, regulatory, and other changes necessary to reduce such claims.

SECTION 14. Part 1 of article 4 of title 10, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

10-4-112. Cancellation of reservoir liability policies. (1) A notice of cancellation of a reservoir liability policy

shall be valid only if it is based on:

(a) Nonpayment of premiums; or

(b) The insured's knowingly making a false statement on the application for insurance.

(2) This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time the notice of cancellation is mailed or delivered by the insurer, unless it is a renewal policy.

(3) This section shall not apply to the nonrenewal of a policy.

10-4-113. Notice of cancellation of reservoir liability policies. (1) No notice of the cancellation of a policy to which section 10-4-112 applies shall be valid unless such notice is mailed or delivered by the insurer to the named insured at least sixty days prior to the effective date of the cancellation; however, where the cancellation is for nonpayment of premium, at least ten days' notice of the cancellation accompanied by the reasons therefor shall be sufficient. Unless the reasons of the company are included in the notice of cancellation, the notice of cancellation shall state or be accompanied by a statement that, upon written request of the named insured mailed or delivered to the insurer not less than fifteen days prior to the effective date of the cancellation, the insurer will specify the reasons for such cancellation. Upon such request, the insurer shall specify in writing the reasons for such cancellation. Such

reasons shall be mailed or delivered to the named insured within five days after the receipt of such request.

(2) This section shall not apply to the nonrenewal of a policy.

10-4-114. Nonrenewal of reservoir liability policies. (1) No insurer shall refuse to renew a policy of reservoir liability insurance unless such insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least sixty days' advance notice of its intention not to renew. This section shall not apply:

(a) If the insurer has already manifested its willingness to renew;

(b) In the case of nonpayment of premium;

(c) If the insured fails to pay any premium deposit required by the insurer for renewal.

(2) Notwithstanding the failure of an insurer to comply with this section, the policy shall terminate on the effective date of any other reservoir liability insurance policy with respect to the particular insured, if such policy has substantially the same limits and provisions of coverage.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.

(4) In the event that an insurer refuses to renew, the insured may, by written request, demand a written statement of the reasons for nonrenewal. Such statement shall be mailed or

delivered to the insured within twenty days after the receipt of such request.

(5) Any statement of the reasons for nonrenewal shall be privileged and shall not constitute grounds for any action against the insurer or its representatives or any person who in good faith furnished to the insurer the information upon which the statement is based.

SECTION 15. Appropriation. There is hereby appropriated, out of any moneys in the reservoir liability extraordinary loss fund created in section 10-4-1203, Colorado Revised Statutes 1973, not otherwise appropriated, to the division of insurance in the department of regulatory agencies, the sum of _____ dollars ($), or so much thereof as may be necessary, for the purpose of implementing the portions of this act relating to the reservoir liability extraordinary loss fund. These moneys shall remain available until expended.

SECTION 16. Effective date. This act shall take effect July 1, 1983.

SECTION 17. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL 2

A BILL FOR AN ACT

CONCERNING SNOWMOBILES.

Bill Summary

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

Increases snowmobile registration fees and applies them to snowmobiles owned for rental purposes, requires dealers to register snowmobiles when sold at retail from their inventories, requires that money generated from the increase in permit fees be used exclusively for direct services, and eliminates the ten-dollar race permit.

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

SECTION 1. 33-7-101 (1), Colorado Revised Statutes 1973, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

33-7-101. Definitions. (1) "Administrative costs" includes, but is not limited to, printing, postage, mailing, and personnel related to registration and permit processing.

SECTION 2. 33-7-101, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

33-7-101. Definitions. (1.5) "Dealer" means a person, partnership, or corporation engaged in the business of selling snowmobiles at wholesale or retail in this state.

(1.8) "Direct services" includes, but is not limited to, the activities and expenses associated with law enforcement, safety certification, capital equipment, rescue and first aid equipment, snowmobile facilities, and division and contract services related to clearing parking lots and providing trail maintenance.

SECTION 3. 33-7-102 (2), Colorado Revised Statutes 1973, as amended, is amended, and the said 33-7-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

33-7-102. Snowmobile registration - fees - applications - requirements - exemptions. (2) The division shall employ licensing agents for snowmobile registration pursuant to the provisions of section 33-4-112, including DEALERS AND licensing agents serving as such for the division of wildlife. Such agents shall take the registration application and issue a temporary registration and shall forward the application to the division, which shall issue the registration. EVERY DEALER SHALL REQUIRE A REGISTRATION APPLICATION FOR EACH NEW OR USED SNOWMOBILE SOLD AT RETAIL FROM HIS INVENTORY, EXCEPT FOR THOSE SNOWMOBILES PURCHASED FOR USE EXCLUSIVELY OUTSIDE OF THE STATE OF COLORADO.

(10) Snowmobile dealers employed as licensing agents for snowmobile registration shall be authorized to issue special

and annual special permits and shall retain a commission of up to one dollar, as authorized by the division, for each permit or registration issued.

SECTION 4. 33-7-102 (4), (5), and (8), Colorado Revised Statutes 1973, as amended, are REPEALED AND REENACTED, WITH AMENDMENTS, to read:

33-7-102. Snowmobile registration - fees - applications - requirements - exemptions. (4) Fees for registration of snowmobiles by owners, to be collected by the division under this article, are as follows:

(a) For each original and renewal registration by an owner, for all or any part of a year beginning October 1 and ending September 30:

(I) A fee of five dollars for the year beginning October 1, 1982, and ending September 30, 1983;

(II) A fee of eight dollars for the year beginning October 1, 1983, and ending September 30, 1984; and

(III) A fee of ten dollars for every year thereafter;

(b) A fee of two dollars and fifty cents for replacement of a lost, mutilated, or destroyed certificate or validating date tag.

(5) (a) Fees for registration by dealers and manufacturers are as follows:

(I) For each year beginning October 1 and ending September 30 or portion thereof for which such registration is made, the total registration fee for all snowmobiles owned by

a dealer which are operated for demonstration or testing purposes only is twenty-five dollars per year for dealers selling twenty-five snowmobiles or less within the prior year and fifty dollars per year for dealers selling more than twenty-five snowmobiles.

(II) For each year beginning October 1 and ending September 30 or portion thereof for which such registration is made, the total registration fee for all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes is twenty-five dollars per year.

(b) Dealer and manufacturer registrations are not transferable and shall be distinguished by appropriate means by the division from the registration required for owners other than dealers and manufacturers.

(c) Each snowmobile owned for rental purposes shall be registered pursuant to this section upon payment of the fee prescribed in subsection (4) of this section.

(8) One of the following special permits is required for Colorado operation of snowmobiles owned by persons from a state or country where registration is not required; application for such a permit shall contain such information as the division shall prescribe and shall be accompanied by the appropriate fee:

(a) The fee for a special permit to operate in Colorado for a period of time not to exceed ten days shall be as

prescribed in subsection (4) of this section for an original or renewal registration.

(b) The fee for an annual special permit to operate in Colorado for all or any part of a year beginning October 1 and ending September 30 shall be as follows:

(I) A fee of fifteen dollars for the year beginning October 1, 1982, and ending September 30, 1983;

(II) A fee of twenty-two dollars for the year beginning October 1, 1983, and ending September 30, 1984; and

(III) A fee of thirty dollars for every year thereafter.

SECTION 5. 33-7-104 (1) (b), Colorado Revised Statutes 1973, is amended to read:

33-7-104. Transfer or other termination of ownership. (1) (b) If there is a change of ownership of a snowmobile for which a registration certificate has previously been issued, the new owner shall apply for a new certificate FROM A SNOWMOBILE DEALER EMPLOYED AS A LICENSING AGENT OR FROM THE DIVISION. Such application shall set forth the original number issued and SHALL be accompanied by the old registration certificate properly signed by the previous owner and ~~with~~ BY the required fee ~~of--five--dollars~~ for registration AS PRESCRIBED IN SECTION 33-7-102 (4).

SECTION 6. 33-7-105 (1), Colorado Revised Statutes 1973, as amended, is amended to read:

33-7-105. Creation of fund - disposition of receipts. (1) Fees from registration of snowmobiles shall be credited

to the snowmobile recreation fund, which is hereby created, and shall be used for the administration of this article and for the establishment and maintenance of snowmobile trails; HOWEVER, ANY MONEYS COLLECTED IN EXCESS OF FIVE DOLLARS PER ORIGINAL OR RENEWAL REGISTRATION SHALL BE USED EXCLUSIVELY FOR DIRECT SERVICES AND NOT ADMINISTRATIVE COSTS.

SECTION 7. 33-7-118, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

33-7-118. Penalties - enforcement - disposition of fines collected. (4) All moneys collected for fines under this article shall be immediately paid over by the judge or clerk collecting the same, as follows: One-half to the state treasurer, who shall credit the same to the state general fund; and one-half to the snowmobile recreation fund.

SECTION 8. Repeal. 33-7-102 (7) (c) and 33-7-119, Colorado Revised Statutes 1973, are repealed.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL 3

A BILL FOR AN ACT

CONCERNING THE DETERMINATION OF DISCHARGE PERMIT FEES UNDER THE "COLORADO WATER QUALITY CONTROL ACT".

Bill Summary

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

Creates the committee on budget and program planning for discharge permits which consists of legislative, local government, and industry representatives and the executive directors of the department of health and the department of local affairs. Provides that the committee, with the cooperation of the division of water quality, determine which program and administrative expenses shall be funded by annual permit fees imposed upon dischargers.

Repeals and rewrites the existing provision on permit fees.

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

SECTION 1. 25-8-502, Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

25-8-502. Application - definitions - fees - discharge - permit system fund - public participation. (7) (a) For the

purpose of determining the reasonable cost to the division of administering the discharge permit system, there is hereby created the committee on budget and program planning for discharge permits, referred to as the "committee". The committee shall exercise its powers and perform its duties and functions under the department of the treasury as if it were transferred to the department by a type 1 transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. 1973. The committee shall be composed of eleven members as follows:

(I) The executive director or his designee;

(II) The executive director of the department of local affairs or his designee;

(III) Three representatives of local government;

(IV) Three members of the general assembly, one of whom is the chairman of the joint budget committee and two of whom are the respective chairmen of the committees on local government in the house of representatives and the senate;

(V) Three members of various industries which are required to operate under a discharge permit.

(b) The local government and industry representatives shall be appointed as follows: Two of such representatives, one representing each segment, by the governor, two by the president of the senate, and two by the speaker of the house of representatives. No member shall receive any compensation for his service on the committee but shall be reimbursed for

all necessary expenses incurred in the performance of his duties. Terms of the local government and industry representatives shall be for three years each; except that the initial appointments shall be staggered as follows: The persons appointed by the president of the senate shall be for terms of two years each and the persons appointed by the speaker of the house of representatives shall be for a term of one year each. The committee shall elect its own chairman and shall meet as often as necessary to perform its duties.

(c) The division and commission shall cooperate with the committee in the annual determination of programs and administrative expenses of the division which directly or indirectly relate to the discharge permit system. This determination shall be made by the committee and shall be the basis of the permit fees collected by the division under paragraph (d) of this subsection (7), and in no event shall such permit fees be increased to fund other expenses of the division. Any unexpended balance remaining in the discharge permit system fund, created in paragraph (d) of this subsection (7), at the end of any fiscal year shall be retained in such fund to defray expenses payable therefrom in the subsequent fiscal year. If a supplemental appropriation is made to the division for expenses determined by the committee to be directly or indirectly related to the discharge permit system program, the permit fees for the next fiscal year shall be adjusted by an amount which is sufficient

to compensate for such supplemental appropriation, and such additional amount shall be credited to the general fund or other fund from which the supplemental appropriation was made.

(d) (I) Based upon the determinations of the committee as to expenses and programs directly or indirectly related to the discharge permit system, the commission shall establish and may revise, as necessary, a schedule of nonrefundable fees for the processing of applications for the issuance of discharge permits under this section sufficient to cover the reasonable costs of processing and administering such permits, but in no event shall a fee exceed twenty-five thousand dollars for a new permit or five thousand dollars for a renewal permit for any and all permits required for an entire contiguous plant site. An application shall be considered a renewal if it is based on the same facility, process, and flow upon which the current permit is based, including any application for expansion or change which has been granted.

(II) All fees collected pursuant to this paragraph (d) shall be transmitted to the state treasurer who shall credit the same to the discharge permit system fund which fund is hereby created. The moneys in such fund shall be appropriated annually to the department of health by the general assembly which shall review expenditures of such moneys to assure that they are used to accomplish the purposes of this subsection (7).

SECTION 2. 24-1-112, Colorado Revised Statutes 1973,

1982 Rep. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-1-112. Department of the treasury - creation. (3) The department of the treasury shall include the committee on budget and program planning, created in section 25-8-502 (7), C.R.S. 1973, which shall exercise its powers and perform its duties and function under the department as if it were transferred by a type 1 transfer.

SECTION 3. 25-8-308 (2), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended to read:

25-8-308. Additional authority and duties of the division. (2) All fees and penalties collected by the division, EXCEPT DISCHARGE PERMIT FEES COLLECTED PURSUANT TO SECTION 25-8-502, shall be transmitted to the state treasurer for deposit to the credit of the water quality control fund created by section ~~25-8-502~~ 25-8-309 and shall be subject to appropriation by the general assembly.

SECTION 4. Part 3 of article 8 of title 25, Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW SECTION to read:

25-8-309. Water quality control fund. All fees and penalties collected by the division, except discharge permit fees collected pursuant to section 25-8-502, shall be transmitted to the state treasurer who shall credit the same to the water quality control fund which fund is hereby created. The moneys in such fund shall be appropriated

annually to the department of health by the general assembly which shall review expenditures of such moneys to assure that they are used to accomplish the purposes of this article.

SECTION 5. 25-8-601 (3), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended to read:

25-8-601. Division to be notified of suspected violations and accidental discharges - penalty. (3) Any penalty collected under this section shall be credited to the water quality control fund created by section ~~25-8-502~~ 25-8-309.

SECTION 6. 25-8-608 (1), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended to read:

25-8-608. Civil penalties. (1) Any person who violates any provision of this article, or of any permit issued under this article, or of any final cease and desist order or clean-up order shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Any civil penalty collected under this section shall be credited to the water quality control fund created by section ~~25-8-502~~ 25-8-309.

SECTION 7. 25-8-609 (3) (d), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended to read:

25-8-609. Criminal pollution of state waters - penalties. (3) (d) Any criminal penalty collected under this section shall be credited to the water quality control fund created by section ~~25-8-502~~ 25-8-309.

SECTION 8. 25-8-610 (2), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended to read:

25-8-610. Falsification and tampering. (2) Any penalty collected under this section shall be credited to the water quality control fund created by section ~~25-8-502~~ 25-8-309.

SECTION 9. Repeal. 25-8-502 (1) (b) and (1) (c) and 25-8-503 (7), Colorado Revised Statutes 1973, 1982 Repl. Vol., are repealed.

SECTION 10. Effective date - applicability. This act shall take effect July 1, 1983, and shall apply to all discharge permit fees imposed on or after said date.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL 4

A BILL FOR AN ACT

CONCERNING THE AUTHORIZATION OF THE DEPARTMENT OF LOCAL AFFAIRS TO AWARD GRANTS FOR WATER AND SEWER EMERGENCIES OF LOCAL GOVERNMENTS.

Bill Summary

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

Empowers the director of the division of local government in the department of local affairs to award grants for water and sewer emergencies of local governments based upon financial need.

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

SECTION 1. 24-32-106 (1), Colorado Revised Statutes 1973, 1982 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-32-106. Powers of the director. (1) (g) To award grants for water and sewer emergencies of local governments. Such grants shall be made based upon financial need as determined by the director.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

BILL 5

A BILL FOR AN ACT

CONCERNING AUTHORIZATION BY THE GENERAL ASSEMBLY TO DIVERT GROUND WATER OUTSIDE THE STATE.

Bill Summary

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

States that the general assembly may authorize the diversion of ground water outside Colorado under conditions similar to those for granting authorization to divert surface waters outside the state.

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

SECTION 1. 37-81-101 (1), Colorado Revised Statutes 1973, as amended, is amended to read:

37-81-101. Unlawful to divert water for application outside of state. (1) the general assembly hereby finds and declares that the location and availability of water in this state varies greatly from place to place and that such variation precludes the reasonable application of general law to situations and regions of such diversity. Accordingly, the

general assembly hereby determines that, for the purpose of aiding and preserving unto the state of Colorado and all its citizens the use of all the GROUND WATERS AND waters of the springs, lakes, ponds, creeks, rivers, streams, and watercourses of this state, which waters do not increase with the growth of population and which are necessary for the health and prosperity of all the citizens of the state of Colorado, and for the growth, maintenance, and general welfare of the state, it is unlawful for any person, corporation, or association to divert, carry, or transport by ditches, canals, pipes, conduits, natural streams, or watercourses the GROUND WATERS OR waters of any spring, reservoir, lake, pond, creek, river, stream, or watercourse of this state into any other state for use therein. Where the same owner of agricultural land in Colorado owns agricultural land in the adjacent state that is contiguous with the agricultural land in Colorado, specific authorization of the General Assembly, on the advice of the state engineer, is required to enable the water to be used in the adjacent state for agricultural purposes only. In deciding whether or not to authorize the diversion of water from Colorado into another state, the general assembly shall consider the willingness of said state to allow diversions of its water for use in Colorado.

SECTION 2. 37-90-136, Colorado Revised Statutes 1973, is amended to read:

37-90-136. <u>Unlawful to divert water for application</u>

outside of state. For the purpose of aiding and preserving unto the state of Colorado and all its citizens the use of all ground waters of this state, whether tributary or nontributary to a natural stream, which waters are necessary for the health and prosperity of all the citizens of the state of Colorado, and for the growth, maintenance, and general welfare of the state, it is unlawful for any person to divert, carry, or transport by ditches, canals, pipelines, conduits, or any other manner any of the ground waters of this state, as said waters are in this section defined, into any other state for use therein EXCEPT AS PROVIDED IN SECTION 37-81-101.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

APPENDIX A

SUMMARY - US EPA POTABLE WATER AND DOMESTIC WASTEWATER PROGRAMS IN COLORADO - (JULY 1982)

FEDERAL STATUTORY REFERENCE	RESULTING PROGRAM ACTIVITY	IMPLEMENTING AGENCY	FUNDING AND PURPOSE	MAJOR LIMITATIONS	OTHER FEDERAL PROGRAMS
Safe Drinking Water Act (P.L. 93-523, as amended)					
Section 1412	Development and amendment of regulations. The National Interim Primary Drinking Water Regulations are in effect. The National Secondary Drinking Water Regulations are also in effect.	EPA, and subsequently Colorado Health Department	N/A	Apply to public water systems serving 25 or more persons, or 15 or more connections per day for 60 or more days per year.	None
Section 1413	Provides for state primary enforcement authority. Activities include surveillance of drinking water quality, inspection of water works facilities, review of plans for proposed facilities, system operator training, technical assistance and enforcement. There are no provisions for facilities construction grants although other federal agencies have such authority (see column on far right).	Colorado Health Department	$445,000 in FY 82 to support state program.	Eligible activities as defined by EPA and described in primacy application.	Farmers Home Administration Department of Houseing and Urban Development
Section 1442	Research into health considerations for contaminants and treatment techniques are conducted by EPA at agency facilities or through grants/contracts. Also, the National Rural Water Association is funded for training of rural water system operators.	EPA	Colorado Rural Water Association receives grant monies through a contract with NRWA.	Priorities require that most widespread problems addressed first, so is not usually aimed at correcting a site specific problem.	None
Section 1444	Special studies and demonstration projects conducted under EPA oversight. The Denver water reuse project has received assistance through this provision.	EPA	Heavy competition for the small amount available.	Funds very limited.	None
Section 4	Amends the Federal Food, Drug and Cosmetic Act to include consideration of the impact that primary drinking water regulations have on bottled water quality.	EPA	N/A	Applies only to bottled water shipped across state boundaries.	Federal Drug Administration
Clean Water Act (P.L. 92-500, as amended)					
Title I	Provides for general implementation including wastewater facility operator training and NPDES permitting and compliance activities.	Colorado Health Department	FY 82 = $480,000	None	None
Title II	Establishes the construction grants program and the "208" statewide and areawide water quality management programs.	EPA delegating to Colorado Health Department 10/1/82.	FY 82 = $21,699,500 FY 83 Proposed = $19,600,000	FY 82 is 75% Federal; 25% Local Split. FY 83 and Beyond is 50-50 Split.	Farmers Home Administration Department of Housing and Urban Development
Title III	Prohibits discharge of pollutants from a point source unless a NPDES permit is issued. Requires establishment of State water quality standards and classification of surface waters (streams and lakes). Sets pretreatment standards for users of public owned treatment works (POTW's). These activities form the effluent requirement basis for municipal facilities construction grants program.	Colorado Health Department	Funded as part of Title I, Section 106, but can be supplemented by Title II, Section 205j.	205g allows maximum of four percent to be used primarily for construction grants management. Funds not needed for this purpose can be applied to Title IV programs. 205j funds not to exceed one percent of this total can be used for statewide and areawide planning.	None
Title IV	Establishes the National Pollutant Discharge Elimination System (NPDES) permit program. Provides for delegation of NPDES authority to states. Impacts POTW's by providing for enforcement including sewer moratoriums, on non-complying systems.	Colorado Health Department	Funded as part of Title I, Section 106, and can be supplemented by Title II, Section 205g monies.		None
	Establishes a permit program to control the discharge of dredged or fill material. Provides for delegation to the states.	U.S. Army Corps of Engineers and EPA.			

APPENDIX B

Inventory

Program	Authority	Regulations	Financing
Establish use classifications and water quality standards for State waters and determine effluent limitations and wasteload allocations	CRS 25-8-202 (a)-(d), 203, 204, 205 Sections 301, 302, 303 Federal Clean Water Act (CWA)	5 CCR 1002-8 5 CCR 1002-10 (Salinity Colorado River) Consolidated Permit Regulations	Federal and cash funds with minor general fund support
Promulgate regulations and policies governing water pollution control (covers Commission Activities)	CRS 25-8-201 to -206		Federal and general funds in relatively equal proportions
Develop regional wastewater management plans	CRS 25-8-105 Sections 208, 205(j) CWA	Consolidated Permit Regulations	Federal funds with minor general fund support
Issue wastewater discharge permits	CRS 25-8-501 to -505 Sections 318, 402, 405(a) CWA	5 CCR 1002-2 40 CFR 124.1 to 124.94	Cash funds, very minor amount of general funds
Approve site locations, plans and specifications for wastewater treatment plants prior to construction	CRS 25-8-702	5 CCR 1002-12	Federal funds, very minor amount of general funds

Program	Authority	Regulations	Financing
Administer construction grants program - state and federal Note: State construction grant award for FY 83 is $1,000,000 Federal construction grant award is $21,699,000	CRS 25-8-703 Title II, CWA	5 CCR 1002-6 5 CCR 1002-15 40 CFR Part 35, 900	Federal funds and to a significantly lesser degree, general funds
Monitor wastewater discharges into state surface and groundwaters	CRS 25-8-303, 304 Section 308, CWA	Article 7 Article 8 40 CFR Part 35, 900	General, cash and federal funds in relatively equal proportions
Enforce against violations of state water quality laws	CRS 25-8-601 to 612 Section 309, CWA	Division and Commission policies Consolidated Permit Regulations	General and federal funds
Respond to emergencies	CRS 25-8-307		General funds
Assure a safe public drinking water supply	CRS 25-1-107 (25-1-108 to -109, 25-1-114)** Federal Safe Drinking WaterAct 95-10	Colorado Primary Drinking Water Regulations Federal Interim Primary Drinking Water Regulations	Federal and general funds

** These are the "general" powers of the Department, Board of Health, Division of Administration and the penalties for violation.