

University of Denver

Digital Commons @ DU

All Publications (Colorado Legislative Council)

Colorado Legislative Council Research
Publications

12-1989

0337 Committee on Water

Colorado Legislative Council

Follow this and additional works at: https://digitalcommons.du.edu/colc_all

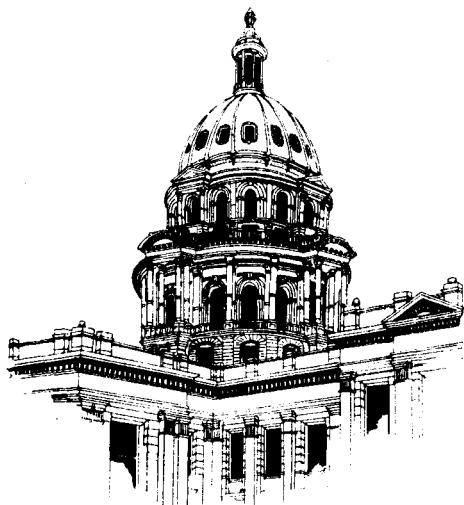
Recommended Citation

Colorado Legislative Council, "0337 Committee on Water" (1989). *All Publications (Colorado Legislative Council)*. 345.

https://digitalcommons.du.edu/colc_all/345

This Article is brought to you for free and open access by the Colorado Legislative Council Research Publications at Digital Commons @ DU. It has been accepted for inclusion in All Publications (Colorado Legislative Council) by an authorized administrator of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

0337 Committee on Water



COLORADO

LEGISLATIVE COUNCIL

Legislative Council
Research Publication No. 337

Committee on
Water

December 1989

**COLORADO LEGISLATIVE COUNCIL
RECOMMENDATIONS FOR 1990**

COMMITTEE ON WATER

**Legislative Council
Report to the
Colorado General Assembly**

**Research Publication No. 337
December, 1989**

COLORADO GENERAL ASSEMBLY

OFFICERS

Rep. Chris Paulson
Chairman
Sen. Ted L. Strickland
Vice Chairman

STAFF

Charles S. Brown
Director
David Hite
Deputy Director
Stan Elofaon
Assistant Director



LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
(303) 866-3521

MEMBERS

Sen. Wayne Allard
Sen. Brian McCauley
Sen. Harold McCormick
Sen. Ray Powers
Sen. Larry Trujillo
Sen. Jeffrey Wells
Rep. Chuck Berry
Rep. Carl "Bev" Bledsoe
Rep. Matt Jones
Rep. Paul Schauer
Rep. Carol Taylor-Little
Rep. Ruth Wright

To Members of the Fifty-Seventh Colorado General Assembly:

Submitted herewith is the final report of the Committee on Water. The committee was appointed by the Legislative Council pursuant to House Joint Resolution No. 1030, 1989 session.

At its meeting on November 9, the Legislative Council reviewed this report. The Chairman of the Legislative Council ruled that one of the proposed bills, which is introduced yearly to approve water resources projects for financial assistance from the Colorado Water Conservation Board Construction Fund, did not fall within the committee's charge and, therefore, was not approved as an interim bill.

A motion to recommend four bills and one resolution to the Fifty-Seventh General Assembly was approved.

Respectfully submitted,

/s/ Representative Chris Paulson
Chairman
Colorado Legislative Council

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	iii
TABLE OF CONTENTS	v
LIST OF BILLS	vii
COMMITTEE ON WATER	
Members of the Committee	1
Committee Charge	3
Committee Recommendations	3
BACKGROUND REPORT	7
APPENDIX A	11
BILLS 1 THROUGH 4	13
SENATE JOINT RESOLUTION	33

LIST OF BILLS

		Page
Bill 1 -	Concerning the Authority of the State Board of Parks and Outdoor Recreation to Establish the Colorado Greenway Trails System, and Making an Appropriation Therefor	13
Bill 2 -	Concerning a Change in the Requirement of a Finding of Reasonable Diligence for Conditional Water Rights to Periodic Intervals not Exceeding Six Years, and, in Connection therewith, Setting Standards for Such a Finding	19
Bill 3 -	Concerning the Creation of the Water Resources Legislation Review Committee	25
Bill 4 -	Concerning the Protection of Water Appropriators in Basins or in Water Conservancy of Water Conservation Districts from the Exportation of Water Authorized After a Certain Date to a Location Outside Such Basin or District	29
Resolution -	Concerning the Preservation of Independent Roles for the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority	33

LEGISLATIVE COUNCIL

COMMITTEE ON WATER

Members of the Committee

**Senator Tilman Bishop
Chairman**

Senator Harold McCormick

Senator Tom Norton

Senator James Rizzuto

Senator Larry Trujillo

Senator Dave Wattenberg

**Representative Scott McInnis
Vice Chairman**

Representative Lewis Entz

Representative Faye Fleming

Representative Matt Jones

Representative Margy Masson

Representative Sam Williams

Legislative Council Staff

**Marilyn Salazar
Research Associate**

Office of Legislative Legal Services

**Bart Miller
Senior Staff Attorney**

**Mary Hupp
Staff Attorney**

**Sue Beck-Ferkiss
Staff Attorney**

**Mariann Will
Staff Attorney**

COMMITTEE ON WATER

Committee Charge

House Joint Resolution 1030 (1989 session) directed the Legislative Council to appoint an interim committee to conduct a comprehensive study of water resources, water rights administration, water quality, water quantity, and water conservation measures in Colorado, including, but not limited, to the following:

- 1) the need to conserve the state's water resources, including ground water resources, and to protect Colorado's compact entitlements;
- 2) the lengthy state, local government, and federal review processes for issuing permits for the construction of a water resource project; and the need to provide for mitigating the effects of removing water from one portion of the state to another so that appropriation and diversion of water to beneficial use within the natural basins will not be impaired or increased in cost;
- 3) the feasibility for the Board of Parks and Outdoor Recreation to establish a recreational trails and waters system within the state's water rights laws, without condemnation and with protection for water rights and real property rights owned by others; and
- 4) the facilitation of water lease and exchange projects which benefit various portions of the state.

The committee was also directed to monitor and, if necessary, make recommendations to the General Assembly on the impact of drought conditions throughout the state, and received briefings on pending litigation involving Colorado's interstate water compact agreements.

Committee Recommendations

The committee recommends four bills and one resolution for consideration in the 1990 legislative session.

Establish a Greenway Trails System -- Bill 1

The legislative declaration in Bill 1 states that the purpose of Article 11, Title 33, C.R.S., concerning recreational trails, is to promote the establishment and operation of a statewide network of trails along and between the state's river corridors. The bill creates the Colorado Greenway Trails System with the following objectives: promote recreational opportunities along lakes, streams, or reservoirs; provide access to and to share a part of an integrated trail system of recreational activities; protect water and real property rights; minimize conflicts between recreationalists and other waterway corridor users; and minimize adverse impacts on natural features and sensitive habitats of waterway corridors.

The State Board of Parks and Outdoor Recreation is directed to conduct studies and to establish and manage the Colorado Greenway Trails System with assistance from the Division of Parks and Outdoor Recreation. The board will consult and cooperate with the Wildlife Commission, the Colorado Water Conservation Board, the State Highway Commission, the Colorado Water Resources and Power Development Authority, and other units of government to minimize adverse impacts on activities, natural features, and sensitive habitats adjacent to trails.

The State Board of Parks and Outdoor Recreation is to select potential trail areas near lakes, streams, or reservoirs for study. The division will determine whether such areas are suitable for the establishment of trails. Based on the division's recommendations, the board may incorporate trails into the Colorado Greenway Trails System. The Division of Parks and Outdoor Recreation is to provide technical assistance and information to counties, cities, or other political subdivisions for local planning, financing, construction, operation, and maintenance of recreational trails.

Change in the Requirement of a Finding of Reasonable Diligence for Conditional Water Rights -- Bill 2

Bill 2 changes the period of time for filing an application for a finding of reasonable diligence to maintain a conditional water right. The bill requires that such an application be filed every sixth year (rather than every four years) after the year in which a water right was conditionally decreed, or in which a finding of reasonable diligence was decreed. If an application is not filed, the conditional water right is considered abandoned. This requirement supersedes any contrary provision or requirement of a previous determination of reasonable diligence.

The bill also specifies that reasonable diligence be measured by consistent effort by the appropriator to complete the appropriation in an expedient and efficient manner. Work on one feature of an integrated system may be considered in a finding that reasonable diligence has been shown on the entire system. Present economic circumstances which affect the feasibility of perfecting a conditional water right are

not grounds (in and of themselves) for denying an application based on reasonable diligence. Bill 2 also states that an application may not be denied solely on the grounds that one or more governmental permits or approvals have not been obtained.

Creation of the Water Resources Legislation Review Committee -- Bill 3

Bill 3 creates an eleven-member water resources legislative review committee for overseeing the conservation, use, and development of water resources in Colorado. The committee is required to meet annually to review all water resources legislation and may consult with experts in the field of water conservation, use, and development.

A Requirement for Protection of Appropriators of Water -- Bill 4

Bill 4 requires an appropriator applying for a conditional water right or a change of a water right to provide and implement a plan which:

- protects present and future appropriators of water in the basin of origin from injury and increased costs in developing and utilizing water supplies when such injury or cost results, directly or indirectly, from the export of water out of the basin; and
- provides a mechanism for meeting water shortages which may occur as a result of the decree when such shortages adversely affect the state's ability to comply with Colorado's river compacts.

This plan must be incorporated into the application submitted to the water court and reviewed prior to final approval of the decree. Upon approval, such plan shall be incorporated into the decree.

An appropriator must comply with these requirements when he submits an application to appropriate water or to change water rights to export such water from any basin or from within the boundaries of a water conservancy or water conservation district to a location outside of the basin or district.

Independent Roles for the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority -- Senate Joint Resolution 1

Senate Joint Resolution 1 declares that the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority perform

distinct and separate functions and that the interests of the state are best served by maintaining separate organizational structures. The resolution concludes that there is no need to conduct a study on consolidation of these two entities.

BACKGROUND REPORT

The Establishment of a Trails System in Colorado

The Division of Parks and Outdoor Recreation developed a proposal for a recreational trails and waters system in Colorado pursuant to the committee's study charge. The committee was directed to determine:

whether it would be feasible for the Board of Parks and Outdoor Recreation to establish a recreational trails and waters system within the state's water rights laws, without condemnation and with protection for water rights and real property rights owned by others.

A task force had been formed to develop a recreational trails and waters system with the intent of protecting private property and water rights and prohibiting any agency from condemning such rights. The task force initially determined that a waterway trails system was needed because recreational uses along river corridors had increased significantly. Members of the task force maintained that economic benefits may be derived from a statewide recreational rivers and trails system. The Division of Parks and Outdoor Recreation recommended, during its first presentation, that a recreational trails and waters system be developed.

The division later proposed that a recreational trails system be developed rather than a trails and rivers (waters) system. Currently, no other western state has a combined rivers and trails system and no other western state has a state rivers program.

Committee recommendations. Bill 1, authorizes the State Board of Parks and Outdoor Recreation to establish the Colorado Greenway Trails System. This system will consist of a statewide network of trails along and between the state's lakes, streams, or reservoirs and will link cities, towns, and river basins. The bill also authorizes the State Board of Parks and Outdoor Recreation to conduct studies and promulgate rules and regulations to establish and manage the Colorado Greenway Trails System.

A Finding of Reasonable Diligence for Conditional Water Rights

Under the state's current water rights system, proponents of a water project have the right to appear before a water court to present a plan and an intent to appropriate water. If the project is large, the plan and use of the water may not be immediate, and the water project proponent is required to return every four years to prove diligence in fulfilling the water decree. The concept behind the conditional water rights requirement is to allow water to be developed in the state. However, in proving due

diligence, it is financially difficult for the irrigation and agriculture sectors to construct new irrigation facilities in a four-year period.

Bill 2 changes the period for filing an application for a finding of reasonable diligence to maintain a conditional water right. The bill specifically requires that an application for a finding of reasonable diligence be filed every sixth year.

The Preservation of Independent Roles of the Colorado Water Conservation Board and the Colorado Water Resources and Power Development Authority

The responsibilities of the Colorado Water Conservation Board (CWCB) and the Colorado Water Resources and Power Development Authority (CWRPDA) were reviewed to determine whether duplication of efforts and costs exists. The authority's primary function is to obtain funding for Colorado water projects through the debt market. The CWRPDA is an independent authority that can incur debt and may issue bonds to finance water projects.

The CWCB is responsible for administering six programs: the protection of interstate waters; state financed water projects; water development planning; prevention of flood damages; instream flow program; and hydrologic investigations. The major difference between the authority and the board is that the authority secures financing for projects in public finance markets, and the board receives funding for projects annually as provided by the General Assembly. The authority also issues bonds to raise the state's portion of funding for the Water Pollution Control Revolving Fund.

The authority and the board have overlapping legislative authority. Both entities have the power to plan and develop a project, but the board and the authority do not work on projects simultaneously. Senate Joint Resolution 1 declares that the CWCB and the CWRPDA perform distinct and separate functions and that there is no need to study consolidation of these two entities or to enact legislation concerning their separate roles.

Other Issues Reviewed

Drought conditions in Colorado. The committee was provided an update on drought conditions across the state by several agencies including the Department of Agriculture, several water conservation districts, and the Office of the State Engineer. A summary of drought conditions prepared by the state engineer is included as Appendix A. The committee did not make a recommendation on the impact of drought conditions or consider introducing any legislation on this issue.

Endangered Species Act. Several individuals testified concerning the federal Endangered Species Act and its impact on the State of Colorado. In 1983, the United States Fish and Wildlife Service (USFWS) released a plan for three endangered fish species in the Upper Colorado River Basin. In issuing their biological and ecological opinion, the USFWS assumed that any additional depletion of water in the Colorado River or its tributaries would jeopardize the fish or adversely affect their critical habitat. These fish are Colorado squawfish, the bonytail chub, and the humpback chub. As a direct result of this act, Colorado developed a recovery implementation program for endangered species in the upper Colorado River Basin. This program was developed in a manner that would not conflict with state water rights systems, interstate compacts, and decrees of the United States Supreme Court. A memorandum of understanding was signed between the USFWS, the Bureau of Reclamation, and the States of Colorado, Wyoming, and Utah.

The federal Endangered Species Act has been viewed as a threat to potential water development on the Colorado River. Representatives of the USFWS explained that the purpose of the act is to provide a means to conserve the ecosystems upon which endangered and threatened species depend and a program for the conservation of such species. Once a species is listed, a recovery plan must be developed unless such action would not promote the conservation of the species. (A recovery plan is a guide that delineates, justifies, and schedules research and management actions necessary to recover a species to a point of no longer needing protection under the act.) The committee makes no recommendations regarding the federal Endangered Species Act.

Additional wilderness designation in Colorado. In 1984, the Sierra Club filed a lawsuit against the United States concerning the 24 existing wilderness areas in Colorado. The Sierra Club attempted to gain a water right by alleging that new federal reserved in-stream flow water rights for wilderness areas were automatically created upon designation. In addition, the Sierra Club maintained that Congress intended water rights be created when the 1964 Wilderness Act was adopted and that the rights be applied to all remaining water flowing within and through the wilderness areas. Wilderness rights had not been previously recognized nor claimed. Consequently, a lawsuit opposing the claims of the Sierra Club was filed. This lawsuit is currently pending in the 10th U.S. Circuit Court of Appeals.

Wilderness areas located at lower elevations farther downstream are of concern to both existing water rights and to potential future water development. New appropriations of water cannot be made at any location within the drainage basin upstream from the wilderness area, nor can any other water right be made that would diminish the flow of water through the wilderness area. The disagreement centers around whether existing wilderness areas have an implied federal reserved water right and whether new wilderness area additions should be granted a water right. No action is recommended regarding additional wilderness designation and water rights in Colorado and the impact such designations may have on the state.

COLORADO DROUGHT CONDITIONS REPORT

July 10, 1989

Prepared by the Office of the State Engineer

Unusually warm and dry weather conditions were prevalent throughout the state for the period April - June. Snowpack statistics on June 1, 1989, were only 32% of average statewide. The lowest measurements were in the Yampa, White, North and South Platte River basins, where the snowpack was less than 25% of average. These low snowpack figures can be attributed to the below normal precipitation amounts received since March across the state. Warm temperatures resulted in an advanced runoff beginning in late April. Precipitation amounts received at lower elevations have been below normal throughout most of the state. The only basin reporting near normal rainfall for the April - June period was the South Platte River basin. The lowest precipitation amounts were in the Rio Grande, San Juan, Dolores, Animas, and San Miguel River basins. These areas received less than 25% of average. Colorado's reservoirs continue to store above normal amounts; however, most reservoirs are storing less than the volumes recorded in June of 1988. The 12 reservoirs in the Arkansas River basin are only storing 54% of last year's volumes. Projected streamflows at key index stations have been lowered for the summer months. Forecasts of less than 65% of normal are projected for the Gunnison, Yampa, White, Arkansas, and North and South Platte River basins.

The current drought conditions are exasperated by the fact that water resource availability statewide was exceedingly above normal from 1982 - 1986, as measured by the Surface Water Supply Index (SWSI) developed by this office in 1981. The index considers reservoir storage, precipitation and streamflow components for each of the seven major basins in Colorado. Each component is weighted based upon its impact on the water supply in the basin. The basins most affected by low streamflow are the Yampa/White and Rio Grande basins where the streamflow component is 90% of the SWSI, followed by the San Juan/Dolores basin (85%), the Colorado Basin (70%), the Gunnison basin (60%), and the Arkansas basin (55%). The South Platte basin is least affected at 25% due to its large reservoir storage capacity. The following SWSI values were computed for each basin on July 1, 1989:

<u>Basin</u>	<u>SWSI Value</u>
South Platte	+2.6
Arkansas	-0.3
Rio Grande	-1.8
Gunnison	-2.1
Colorado	-2.6
Yampa/White	-3.5
San Juan/Dolores	-2.9

SCALE

-4	-3	-2	-1	0	+1	+2	+3	+4
Severe drought	Moderate drought	Below normal	Near normal		Above normal		Abundant supply	

References:

Colorado Water Supply Outlook, June 1, 1989, Prepared by the U.S. Department of Agriculture, Soil Conservation Service

BILL 1

A BILL FOR AN ACT

1 CONCERNING THE AUTHORITY OF THE STATE BOARD OF PARKS AND
2 OUTDOOR RECREATION TO ESTABLISH THE COLORADO GREENWAY
3 TRAILS SYSTEM, 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.)

Authorizes the state board of parks and outdoor recreation to establish the Colorado greenway trails system, a statewide network of trails along and between the state's, lakes, streams, or reservoirs linking cities, towns, communities, and river basins.

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

5 SECTION 1. 33-11-102, Colorado Revised Statutes, 1984
6 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
7 read:

8 33-11-102. Legislative declaration. (3) (a) A further
9 purpose of this article is to promote the establishment and
10 operation of a statewide network of trails, to be known as the
11 "Colorado greenway trails system", along and between the

1 state's lakes, streams, or reservoirs linking cities, towns,
2 communities, and river basins. The Colorado greenway trails
3 system shall be established and operated in a manner that
4 promotes recreational opportunities along lakes, streams, or
5 reservoirs, that provides access to and is a part of an
6 integrated trail system, that protects water and real property
7 rights, that minimizes conflicts between recreationists and
8 other waterway corridor users, and that minimizes adverse
9 impacts on natural features and sensitive habitats of waterway
10 corridors.

11 SECTION 2. 33-11-104, Colorado Revised Statutes, 1984
12 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
13 read:

14 33-11-104. Acquisition. (5) Nothing in this section
15 shall alter, impair, supercede, or change the authority of the
16 board or the ability of the division to acquire any interest
17 in water or water rights, pursuant to section 33-10-107 (1)
18 (a).

19 SECTION 3. 33-11-108, Colorado Revised Statutes, 1984
20 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
21 read:

22 33-11-108. State trails system. (5) The establishment
23 of trails to or along lakes, streams, or reservoirs shall not
24 constitute any determination relative to the suitability of
25 the river segment for designation as a wild, scenic, or
26 recreational river under the federal "Wild and Scenic Rivers
27 Act".

1 SECTION 4. 33-11-109, Colorado Revised Statutes, 1984
2 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to
3 read:

4 33-11-109. Trail categories. (3) The board, assisted
5 by the division, is authorized to conduct studies, and to
6 promulgate such rules and regulations as may be necessary for
7 establishing and managing the Colorado greenway trails system.
8 The board shall consult and cooperate with the commission,
9 Colorado water conservation board, state highway commission,
10 Colorado water resources and power development authority, and
11 all other appropriate units of state government and political
12 subdivisions of the state, including, but not limited to, any
13 county, city, city and county, and water conservation and
14 conservancy district; any other public and private persons;
15 and any appropriate federal agencies to establish a Colorado
16 greenway trails system which minimizes adverse impacts on
17 activities, natural features, and sensitive habitats adjacent
18 to trails.

19 SECTION 5. 33-10-106 (1), Colorado Revised Statutes,
20 1984 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH
21 to read:

22 33-10-106. Duties of the board - rules. (1) (h) Select
23 areas in close proximity to lakes, streams, or reservoirs to
24 be studied by the division for purposes of determining their
25 suitability for the establishment of trails under article 11
26 of this title;

27 (i) Designate trails to be part of the Colorado greenway

1 trails system based on recommendations of the division
2 pursuant to section 33-10-108 (1) (h).

3 SECTION 6. 33-10-108 (1), Colorado Revised Statutes,
4 1984 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING
5 NEW PARAGRAPHS to read:

6 33-10-108. Duties of the division of parks and outdoor
7 recreation. (1) (g) To provide technical assistance and
8 information to counties, cities, or other political
9 subdivisions of the state for local planning, financing,
10 construction, operation, and maintenance of recreational
11 trails, including trails along lakes, streams, or reservoirs,
12 in accordance with article 11 of this title;

13 (h) To study the availability of areas selected by the
14 board pursuant to section 33-10-106 (1) (h) for the
15 establishment of trails under article 11 of this title and to
16 recommend trails to be included in the Colorado greenway
17 trails system.

18 SECTION 7. Appropriation. In addition to any other
19 appropriation, there is hereby appropriated, out of any moneys
20 in the general fund not otherwise appropriated, to the
21 department of natural resources for allocation to the division
22 of parks and outdoor recreation, for the fiscal year beginning
23 July 1, 1991, the sum of _____ dollars (\$)
24 and ____ FTE, or so much thereof as may be necessary, for the
25 implementation of this act.

26 SECTION 8. Safety clause. The general assembly hereby
27 finds, determines, and declares that this act is necessary

1 for the immediate preservation of the public peace, health,
2 and safety.

BILL 2

A BILL FOR AN ACT

1 CONCERNING A CHANGE IN THE REQUIREMENT OF A FINDING OF
2 REASONABLE DILIGENCE FOR CONDITIONAL WATER RIGHTS TO
3 PERIODIC INTERVALS NOT EXCEEDING SIX YEARS, AND, IN
4 CONNECTION THEREWITH, SETTING STANDARDS FOR SUCH A
5 FINDING.

Bill Summary

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

Changes the period of time for filing an application for a finding of reasonable diligence to maintain a conditional water right. Sets standards for the determination of reasonable diligence. Makes conforming amendments.

6 Be it enacted by the General Assembly of the State of Colorado:
7 SECTION 1. 37-92-301 (4), Colorado Revised Statutes, as
8 amended, is amended to read:
9 37-92-301. Administration and distribution of waters.
10 (4) (a) In every ~~fourth~~ SIXTH calendar year after the
11 calendar year in which a water right is conditionally decreed,
12 OR IN WHICH A FINDING OF REASONABLE DILIGENCE HAS BEEN

1 DECREEED, the owner or user thereof, if he desires to maintain
2 the same, shall file an application for a ~~quadrennia~~ finding
3 of reasonable diligence, or said conditional water right shall
4 be considered abandoned. The judgment and decree of the court
5 shall specify the month and calendar year in which A
6 SUBSEQUENT application for a ~~quadrennia~~ finding of reasonable
7 diligence shall be filed with the water clerk pursuant to
8 section 37-92-302 (1). A SUBSEQUENT ~~and-such~~ application
9 shall be filed during the same month AS THE PREVIOUS DECREE
10 WAS ENTERED every ~~four~~ SIX years ~~thereafter~~ AFTER SUCH ENTRY
11 OF THE DECREE until the right is made absolute or otherwise
12 disposed of. THE PROVISIONS OF THIS PARAGRAPH (a) SHALL
13 SUPERSEDE ANY CONTRARY PROVISION OR REQUIREMENT OF A PREVIOUS
14 DETERMINATION OF REASONABLE DILIGENCE.

15 (b) THE MEASURE OF REASONABLE DILIGENCE IS THE STEADY
16 APPLICATION OF EFFORT TO COMPLETE THE APPROPRIATION IN AN
17 EXPEDIENT AND EFFICIENT MANNER UNDER ALL THE FACTS AND
18 CIRCUMSTANCES. WHEN AN INTEGRATED SYSTEM HAS SPECIFIC
19 FEATURES HOLDING SEPARATE WATER RIGHTS, WORK ON ONE FEATURE OF
20 THE SYSTEM SHALL BE CONSIDERED IN FINDING THAT REASONABLE
21 DILIGENCE HAS BEEN SHOWN ON THE ENTIRE PROJECT. CURRENT
22 ECONOMIC CIRCUMSTANCES AFFECTING THE FEASIBILITY OF PERFECTING
23 A CONDITIONAL WATER RIGHT OR THE PROPOSED USE OF WATER FROM A
24 CONDITIONAL WATER RIGHT SHALL NOT BE GROUNDS IN AND OF ITSELF
25 FOR DENYING AN APPLICATION FOR A FINDING OF REASONABLE
26 DILIGENCE, NOR SHALL THE APPLICATION FOR A FINDING OF
27 REASONABLE DILIGENCE BE DENIED SOLELY ON THE GROUNDS THAT ONE

1 OR MORE GOVERNMENTAL PERMITS OR APPROVALS HAVE NOT BEEN
2 OBTAINED.

3 SECTION 2. 37-92-302 (1) (a), Colorado Revised Statutes,
4 as amended, is amended to read:

5 37-92-302. Applications for water rights or changes of
6 such rights - plans for augmentation. (1) (a) Any person who
7 desires a determination of a water right or a conditional
8 water right and the amount and priority thereof, including a
9 determination that a conditional water right has become a
10 water right by reason of the completion of the appropriation,
11 a determination with respect to a change of a water right,
12 approval of a plan for augmentation, ~~quadruplicate~~ finding of
13 reasonable diligence, approval of a proposed or existing
14 exchange of water under section 37-80-120 or 37-83-104, or
15 approval to use water outside the state pursuant to section
16 37-81-101 shall file with the water clerk in quadruplicate a
17 verified application setting forth facts supporting the ruling
18 sought, a copy of which shall be sent by the water clerk to
19 the state engineer and the division engineer. The term
20 "determination of a water right or conditional water right"
21 includes any plan or change in plan under the provisions of
22 section 37-45-118 (1) (b) (IV) which is or has been
23 incorporated into a decree.

24 SECTION 3. 37-92-601, Colorado Revised Statutes, is
25 amended to read:

26 37-92-601. Disposition of pending proceedings - showings
27 of reasonable diligence. All proceedings pending on June 7,

1 1969, for the adjudication of water rights, for a change of
2 water rights, or for the disposition of other matters which
3 are of the type to be handled by proceedings provided for in
4 this article shall be concluded by June 1, 1972, in accordance
5 with the provisions of the statute under which they are
6 instituted, and priorities and changes of water rights which
7 are determined in such pending proceedings shall be integrated
8 by the various division engineers in their current records and
9 shall be included in tabulations prepared by the division
10 engineers pursuant to the provisions of this article. Any
11 such proceedings which are not concluded by June 1, 1972,
12 shall be heard from that time on to completion by the water
13 judge for the division in which the proceedings are pending,
14 under procedures provided for in this article; except that the
15 chief justice of the supreme court may provide that a judge,
16 other than the water judge, shall complete proceedings in
17 specific cases. Persons who have filed statements of claim in
18 such pending proceedings may withdraw therefrom at any time
19 and file applications or otherwise proceed in accordance with
20 this article. Showings of reasonable diligence under existing
21 conditional decrees or conditional decrees entered in such
22 pending proceedings shall be made in accordance with the
23 provisions of this article, ~~in the year 1972 and every fourth~~
24 ~~year thereafter in even-numbered years,~~ but the time shall be
25 tolled during any period in which the water judge finds the
26 applicant was prevented from filing by reason of conditions
27 beyond his control. Applications for ~~quadrennial~~ findings of

1 reasonable diligence shall be filed with the water clerk
2 pursuant to ~~section--37-92-302--(1)-not-later-than-June-1-of~~
3 ~~each-such-years~~ THE TERMS OF THIS ARTICLE. When and if a
4 conditional water right awarded in any such conditional decree
5 becomes a water right pursuant to the procedures in this
6 article, the priority awarded such water right shall be the
7 same as if the proceedings in which the conditional decree was
8 entered had remained open until the final determination with
9 respect to such water right.

10 SECTION 4. Safety clause. The general assembly hereby
11 finds, determines, and declares that this act is necessary
12 for the immediate preservation of the public peace, health,
13 and safety.

BILL 3

A BILL FOR AN ACT

1 CONCERNING THE CREATION OF THE WATER RESOURCES LEGISLATION
2 REVIEW COMMITTEE.

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 water resources legislation review committee and sets forth the purpose for the creation of such committee. Specifies the membership of the committee. Requires that the committee meet annually.

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

4 SECTION 1. Title 37, Colorado Revised Statutes, as
5 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

6 ARTICLE 97

7 Water Resources Review Committee

8 37-97-101. Water resources review - committee. (1) For
9 the purpose of contributing to and overseeing the
10 conservation, use, and development of the water resources of
11 Colorado for the general welfare of its inhabitants, there is

1 hereby created the water resources legislation review
2 committee. The committee shall meet at least once annually
3 and as often as deemed necessary to review all water resources
4 legislation, and in connection with such review, may consult
5 with experts in the field of water conservation, use, and
6 development. The department of natural resources and the
7 members and staff of the Colorado water conservation board,
8 the irrigation district commission, and the Colorado water
9 resources and power development authority shall cooperate with
10 the committee and with any persons assisting the committee in
11 pursuing its responsibilities pursuant to this section.
12 Further, the committee may utilize the legislative council
13 staff to assist its members in researching any matters.

14 (2) The committee shall be comprised of eleven members
15 to be selected as follows:

16 (a) Three members of the senate appointed by the
17 president of the senate, no more than two of whom shall be
18 from the same political party;

19 (b) Three members of the house of representatives
20 appointed by the speaker of the house of representatives, no
21 more than two of whom shall be from the same political party;

22 (c) Three members appointed by the governor from such
23 water advisory groups as the governor shall select, which
24 members shall be determined by him to adequately represent the
25 entire state, no more than two of whom shall be from the same
26 political party;

27 (d) The state engineer or his designee; and

1 (e) The director of the Colorado water conservation
2 board or his designee.

3 (3) The term of office of each member of the committee
4 shall be two years.

5 (4) Members of the committee shall serve without
6 compensation; except that members of the general assembly
7 serving on the committee shall receive the sum specified in
8 section 2-2-307 (9) (a), C.R.S., for attendance at meetings of
9 the committee when the general assembly is in recess for more
10 than three days or is not in session. All other members of
11 the committee shall be reimbursed for all necessary expenses
12 incurred in the performance of their duties. In addition, the
13 members of the committee appointed by the governor pursuant to
14 paragraph (a) of subsection (2) of this section shall receive
15 fifty dollars per diem for each day spent in attendance at
16 meetings of the committee.

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

BILL 4

A BILL FOR AN ACT

1 CONCERNING THE PROTECTION OF WATER APPROPRIATORS IN BASINS OR
2 IN WATER CONSERVANCY OR WATER CONSERVATION DISTRICTS FROM
3 THE EXPORTATION OF WATER AUTHORIZED AFTER A CERTAIN DATE
4 TO A LOCATION OUTSIDE SUCH BASIN OR DISTRICT.

Bill Summary

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

Requires certain persons who submit an application for a conditional water right, a water right, or a change in water right to submit a plan fully protecting present and future appropriators in a basin or water conservancy or water conservation district when such appropriators intend to export water from said basin or district to another basin or district, respectively. Requires that such plan shall also provide a mechanism for meeting shortages of water which may occur due to the right for which a decree is being sought, when such shortages adversely affect the state's compliance with certain water compacts. Provides that such plan must be submitted to the water court as a part of the application and must be approved by the court and incorporated into the decree.

5 Be it enacted by the General Assembly of the State of Colorado:
6 SECTION 1. Article 82 of title 37, Colorado Revised
7 Statutes, as amended, is amended BY THE ADDITION OF A NEW

1 SECTION to read:

2 37-82-107. Protection requirement for basin or district
3 of origin. (1) This section shall apply whenever any person
4 seeks to appropriate water or to change water rights for the
5 purpose of exporting such water:

6 (a) From any natural river basin, including its
7 tributaries, to any other river basin; or

8 (b) From within the boundaries of a water conservancy or
9 water conservation district to a location outside such
10 district, unless the water is exported to a larger district
11 which comprises the smaller district.

12 (2) This section shall not apply to the owner or
13 purchaser of a conditional water right or a water right which
14 was decreed on or before the effective date of this section
15 where such decree authorized the export of water from any
16 natural river basin, including its tributaries, to any other
17 river basin or from within the boundaries of a water
18 conservancy or water conservation district to a location
19 outside such district. This section shall not apply to the
20 owner or purchaser of a conditional water right which meets
21 the qualifications of this subsection (2) when the owner or
22 purchaser seeks a determination that such conditional water
23 right has become a water right.

24 (3) Whenever any person applies for a conditional water
25 right, a water right, or a change of water right, he shall
26 provide and implement a plan which:

27 (a) Fully protects present and future appropriators of

1 water in the basin of origin from injury to their water rights
2 and from increased costs in developing and utilizing water
3 supplies when such injury or costs will result, directly or
4 indirectly, from the export of water contemplated in the
5 proposed application; and

6 (b) Provides a mechanism for meeting shortages of water
7 which may occur as a result of the right for which a decree is
8 being sought when such shortages adversely affect the state's
9 compliance with the Colorado river compact, the upper Colorado
10 river basin compact, the South Platte river compact, the
11 Arkansas river compact, or the Rio Grande river compact or the
12 state's obligation to deliver water out of the North Platte
13 river pursuant to the decree entered in the case of Nebraska
14 v. Wyoming, 325 U.S. 589 (1945), as amended by 345 U.S. 981
15 (1953), and to deliver water out of the Laramie river pursuant
16 to the decree entered in Wyoming v. Colorado, 353 U.S. 953
17 (1957).

18 (4) Such plan shall be submitted to the water court as a
19 part of the application for the right and must be approved by
20 the court prior to the approval of the decree sought. Such
21 plan shall be incorporated in the decree. Plans agreed to or
22 approved under section 37-45-118 (1) (b) (IV) shall be deemed
23 to have complied with this section.

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

SENATE JOINT RESOLUTION 1

1 CONCERNING THE PRESERVATION OF INDEPENDENT ROLES FOR THE
2 COLORADO WATER CONSERVATION BOARD AND THE COLORADO WATER
3 RESOURCES AND POWER DEVELOPMENT AUTHORITY.

4 WHEREAS, The Colorado Water Conservation Board has been
5 established as an agency of the State of Colorado; and

6 WHEREAS, The Colorado Water Resources and Power
7 Development Authority has been established as an independent
8 authority to aid in financing water development by issuing
9 tax-exempt bonds and other debt instruments; and

10 WHEREAS, The 1989 Interim Water Committee, and, during
11 the 1989 legislative session, the House Agriculture, Natural
12 Resources, and Energy Committee conducted extensive hearings
13 on the respective responsibilities of the two entities and
14 considered the functions and duties of each; and

15 WHEREAS, The 1989 Interim Water Committee concluded that
16 current statutory provisions achieved an appropriate division
17 of responsibilities between the two entities; now, therefore,

18 Be It Resolved by the Senate of the Fifty-seventh General
19 Assembly of the State of Colorado, the House of
20 Representatives concurring herein:

21 (1) That the Colorado Water Conservation Board and the
22 Colorado Water Resources and Power Development Authority
23 perform distinct and separate functions;

24 (2) That the interests of the people of the state are
25 best served by maintaining separate organizational structures
26 for each;

27 (3) That each entity is encouraged to proceed with its
28 own distinct mission; and

29 (4) That no need exists for a study regarding a

1 consolidation or a legislative enactment regarding their
2 separate roles.