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Study of

Water and Land

Resource Issues

Report to the

COLORADO

GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 432
November 1997

RECOMMENDATIONS FOR 1998

**STUDY OF
WATER AND LAND RESOURCE ISSUES**

**Report to the
Colorado General Assembly**

**Research Publication No. 432
November 1997**

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LEGISLATIVE COUNCIL

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November 14, 1997

To Members of the Sixty-first General Assembly:

Submitted herewith is the report of the 1997 Study of Water and Land Resource Issues. An Interim Committee Study Resolution (Senate Joint Resolution 97-33) established the committee to study water and land resource issues and needs with special attention to growth impacts in all areas of Colorado. The Executive Committee of the Legislative Council adopted the resolution at its June 17, 1997, meeting.

At its November 13, 1997, meeting, the Legislative Council reviewed this report and approved a motion to forward four bills with favorable recommendation to the Sixty-first General Assembly.

Respectfully submitted,

/s/ Representative Chuck Berry
Chairman
Legislative Council

CB/NC/pw

TABLE OF CONTENTS

	PAGE
LETTER OF TRANSMITTAL	iii
TABLE OF CONTENTS	v
RECOMMENDED BILLS AND FISCAL NOTES	vii
MEMBERS OF THE COMMITTEE	ix
EXECUTIVE SUMMARY	xi
Committee Charge	xi
Committee Activities	xi
Committee Recommendations	xii
STATUTORY AUTHORITY AND RESPONSIBILITIES	1
COMMITTEE ACTIVITIES	3
Protection of Property Rights	3
Land Use Regulation	4
Surface and Groundwater Issues of the South Platte River Basin	5
Groundwater Issues in the San Luis Valley	7
Swine Confined Feeding Operations	8
Other Issues Considered	8
SUMMARY OF RECOMMENDATIONS	11
Bill A — Standing of Political Subdivisions	11
Bill B — Conservation of Native Species	11
Bill C — Replacement of Groundwater Depletions	12
Bill D — Groundwater Commission Per Diem	12
MATERIALS AVAILABLE	13
Meeting Summaries	13
Memoranda and Reports	13

RECOMMENDED BILLS AND FISCAL NOTES

	PAGE
Bill A — Concerning Standing of Political Subdivisions to Protect Property Interests in Certain Proceedings	15
— Fiscal Note	17
Bill B — Concerning the Establishment of a Fund to Promote the Conservation of Native Species, and Making an Appropriation in Connection Therewith	19
— Fiscal Note	23
Bill C — Concerning the Replacement of Depletions From New Withdrawals of Groundwater in Water Division 3 That Will Affect the Rate or Direction of Movement of Groundwater in the Confined Aquifer, and, in Connection Therewith, Authorizing the State Engineer to Promulgate Rules That Optimize the Use of the Groundwater and Provide Alternative Methods to Prevent Injury.	29
— Fiscal Note	33
Bill D — Concerning the Elimination of the Yearly Limit on the Amount of Per Diems Paid to the Members of the Groundwater Commission	35
— Fiscal Note	37

**STUDY OF
WATER AND LAND RESOURCE ISSUES**

Members of the Committee

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Senator Tilman Bishop
Senator Gigi Dennis
Senator Joan Johnson
Senator Terry Phillips**

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Representative Jeanne Adkins
Representative Steve Johnson
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EXECUTIVE SUMMARY

Committee Charge

The interim committee resolution adopted by the Executive Committee of the Legislative Council at its June 17, 1997, meeting provides for an interim committee to study water and land resource issues and needs with special attention to growth impacts in all areas of Colorado. Pursuant to Senate Joint Resolution 97-33, the committee may consider, but is not limited to, studying the following issues: the management and development of surface and groundwater resources; examining inter- and intra-basin water transfers; the recognition of compensation to the basin of origin; the examination of local land use controls and water development; and the examination of legal remedies for public entities in protecting their water rights and interests in water.

Additionally, the Executive Committee authorized the interim committee to consider two other issues not specified in the resolution: 1) the impact of large-scale hog farming on surface and groundwater; and 2) the replacement of depletions from new withdrawals of groundwater in Water Division 3 (Rio Grande Basin).

Committee Activities

The committee held nine meetings and toured the South Platte River Basin and the San Luis Valley to further study the problems and proposed solutions to Colorado's water supply issues. The committee heard testimony on issues from various public and private water organizations including the State Engineer, the Colorado Water Conservation Board, the Water Quality Control Division, the Water Quality Control Commission, the Northern Colorado Water Conservancy District, the Denver Water Board, the Colorado Farm Bureau, the Groundwater Appropriators of the South Platte Basin, Northwest Colorado Council of Governments, the City of Colorado Springs, the Colorado Water Congress, and various representatives from conservation districts, environmental groups, and industry.

The major activities performed by the committee included: an examination of legal remedies for political subdivisions to protect their water rights; a review of growth-related impacts and the increased need for new sources of water; an examination of inter-basin and intra-basin water transfers and compensation to the basin of origin; a review of House Bill 1041 powers that authorize local governments to regulate water projects; an assessment of impact from the growing hog industry on water quality in Colorado; and a review of the impact of federal water policies on Colorado's water resources.

Committee Recommendations

As a result of committee discussion and deliberations, the committee recommends four bills for consideration in the 1998 legislative session.

Bill A — Standing of political subdivisions. Bill A establishes that political subdivisions of the state have the standing to assert or defend property rights or contract rights in proceedings concerning the enforcement or constitutionality of federal or state laws or other governmental actions.

Bill B — Conservation of native species. Bill B establishes a fund to be administered by the Department of Natural Resources to promote the conservation of native species.

Bill C — Replacement of groundwater depletions. Bill C concerns the replacement of depletions from new withdrawals of groundwater in Water Division 3 that will affect the rate or direction of movement of groundwater in the confined aquifer. The State Engineer is authorized to promulgate rules that optimize the use of the groundwater and provide alternative methods to prevent injury.

Bill D — Groundwater commission per diem. Bill D eliminates the \$1,200 annual cap on per diem for groundwater commissioners.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to Senate Joint Resolution 97-33, the Interim Committee to Study Water and Land Resource Issues was established to review Colorado's water and land resource issues and needs with special attention to growth impacts in all areas of Colorado. The committee is composed of 12 members of the General Assembly (five from the Senate and seven from the House). The resolution directs the committee to consider the following issues:

- the management and development of surface water resources;
- the management and development of groundwater (tributary and non-tributary) resources;
- the role of inter-basin and intra-basin water transfers in meeting Colorado's future water storage needs;
- the recognition of adequate compensation to the basin of origin in the matter of water transfers;
- the examination of local land use controls and water development; and
- the examination of legal remedies for public entities in protecting their water rights and interests in water.

In addition to these responsibilities, the Executive Committee of the Legislative Council authorized the committee to study the impact of large-scale hog farming on surface water and groundwater and also to examine the replacement of depletions from new withdrawals of groundwater in Water Division 3 (Rio Grande Basin).

COMMITTEE ACTIVITIES

Protection of Property Rights

Scope of issue. The committee learned that the property interests of a political subdivision in Colorado can be impacted by the regulatory actions of another political entity, including a local, state, or federal entity. For example, a county may affect the cost of a city's water development project by withholding a construction permit until the city mitigates the project's impacts. Similarly, the federal government can impact a municipality's water right by withholding a dam permit until the city provides a bypass flow for maintaining wildlife habitat. Such actions may greatly diminish or eliminate the value of a municipality's decreed water rights. Pursuant to current law, the state of Colorado and its political subdivisions do not have the authority to assert the taking of their property rights by another public entity in a court of law.

Discussion. The committee heard debate about granting political subdivisions standing to assert the taking of a property right by another public entity in a court of law. Proponents of the issue contended that without standing, Colorado's political subdivisions are unable to defend themselves against the taking of a property right by the other political subdivisions, the state, or the federal government. The Homestake II water development project was cited as an example of such a situation. Representatives from the City of Colorado Springs stated that Colorado Springs' water rights were denied because Eagle County withheld a permit for construction of the Homestake II water project in Eagle County. The city believed that it was unable to protect its water rights in Eagle County because it did not have legal standing to assert the taking of a property interest by the county.

Proponents of granting political subdivisions standing suggested that a legislative response to the takings problem should address the taking of all property interests and not just water rights. The legislative response should also address the taking of publicly owned water rights by the federal government.

Opponents of granting political subdivisions standing noted that public entities do not require standing to assert the takings of a property interest by another government because other legal remedies are available. For example, under Colorado Rules of Civil Procedure 106 (a) (4), a local government's permitting decision can be overruled if the decision was arbitrary and capricious. Additionally, local governments may bring claims for inverse condemnation or claims under the Colorado Constitution.

Recommendation. Based on the testimony received, the committee recommends Bill A, which gives political subdivisions standing to assert or defend property or contract rights in proceedings concerning the enforcement or constitutionality of federal or state laws or other government actions. A review of the provisions of Bill A is provided on page 11.

Land Use Regulation

Scope of issue. The committee discussed the authority of local governments to regulate the impacts of major development projects (e.g., water and sewage treatment facilities). It considered claims that local governments have improperly used their authority under the Areas and Activities of State Interest Act (House Bill 1041 powers) by adopting permit requirements that are so stringent as to effectively prohibit a project. Others claimed that local governments have adopted appropriate guidelines for water development projects that protect local interests and are consistent with state law. The committee considered alternatives for balancing the public's need to secure a stable and inexpensive water supply with a local government's need to mitigate the local impacts of major water development projects.

Discussion. Legislative Council staff explained that the General Assembly adopted House Bill 1041 in 1974 to regulate the development of state interests according to legislatively defined criteria. State interests are areas or activities that can impact people of the state beyond the immediate scope of a development project. The act authorizes local governments to designate site selection, construction, and expansion of major domestic water and sewage treatment systems as an activity of state interest. A local government that chooses to make such a designation must adopt guidelines that are consistent with the state's criteria for permitting water and sewage projects. However, the law also authorizes local governments to adopt more stringent guidelines. Projects that fail to meet the state's or a local government's requirements must be denied a permit.

The committee heard testimony that in 1980, the Eagle County Commissioners designated site selection and construction of major new water and sewage treatment plants in the county as a matter of state interest. The county's guidelines require, in part, that the benefits of a water project outweigh the losses of any natural resources. At the time, the Cities of Aurora and Colorado Springs were in the process of extending their raw water collection facilities in order to utilize water rights held in the Holy Cross Wilderness Area in Eagle County. This project was called Homestake II. Eagle County denied the cities a permit for the transbasin diversion, in part, on the grounds that the project's benefits did not outweigh its impact on natural resources, and the project would harm recreational opportunities. The Colorado Supreme Court later determined in *City of Colorado Springs v. Board of Eagle County Commissioners* that the county's regulations were consistent with state law.

Proponents of House Bill 1041 powers testified that local governments have a legitimate interest in controlling impacts from development in their jurisdiction. They noted that local governments have exercised their House Bill 1041 powers responsibly. As evidence, they described various water projects that were permitted after the impacts were mitigated. A representative from Grand County noted that the county permitted major transbasin diversion projects since House Bill 1041 was enacted and explained that the county has never denied a permit for these or any other major water development projects. Other advocates testified that House Bill 1041 powers allow a local government to address environmental and other impacts that cannot be considered by water courts. A representative from an environmental organization expressed support for House Bill 1041 powers and objected to the suggestion that local governments should be prohibited from adopting criteria for the development of state interests that are more stringent than the criteria specified in statute.

Opponents of House Bill 1041 powers cited *City of Colorado Springs v. Board of Eagle County Commissioners* as an example of local governments and the courts going beyond the legislative intent of the Areas and Activities of State Interest Act. They suggested that water disputes should be limited to water courts and cautioned that municipalities will seek to purchase agricultural water rights if they cannot obtain unappropriated water. Opponents also contended that local governments fail to consider all of the benefits that would result from a water project. Rather, they evaluate a project based primarily on its local impacts.

Recommendation. The committee makes no recommendation about House Bill 1041 powers.

Surface and Groundwater Issues of the South Platte River Basin

Scope of issue. The committee examined the development and management of water resources in the South Platte River Basin. To better understand these issues, the committee toured the South Platte Basin and met with municipal water providers, viewed agricultural operations, examined irrigation methods, and visited reservoirs and other water projects. The committee learned that groundwater from the South Platte River Basin has become an increasingly important resource for agricultural, municipal, and industrial purposes. However, increased use of the basin's waters, including tributary groundwater, may have adverse consequences for the environment.

Discussion. Municipal water providers described population growth in their cities and presented plans for acquiring additional water supplies to meet this new demand. These plans included water exchange projects, underground storage of surplus surface waters, transbasin diversions, and purchase of agricultural water rights. Representatives from the Northern Colorado Water Conservancy District and the Groundwater Appropriators of the South Platte Basin described their efforts to provide water for

agriculture in the basin. They also described efforts by agricultural interests to conserve water by implementing new irrigation practices and recharging alluvial aquifers.

Testimony indicated that use of tributary groundwater and surface water in the South Platte River Basin may reduce surface flows and impact endangered species that are downstream in Nebraska's Platte River. The committee learned that the State of Colorado and groundwater users in the South Platte Basin have implemented programs to conserve the basin's waters and increase state line flows for the preservation of endangered species.

Representatives from the Colorado Department of Natural Resources summarized several options to fund a cooperative agreement between Wyoming, Nebraska, Colorado, and the United States Department of Interior for the recovery of endangered species on the Platte River in Nebraska. They explained that the agreement is a proactive measure that may avoid expensive litigation with the federal government, Wyoming, and Nebraska. The agreement is projected to cost Colorado \$20 million over the lifetime of the program. Representatives of the Colorado Department of Natural Resources described funding options for the recovery program including appropriations from the General Fund, water-use surcharges on municipal customers, development impact fees, ad valorem taxes, and a tax on water right changes or transfers. They also described a proposal to provide water for endangered species in Nebraska by reregulating the flows of the South Platte River. This proposal would pump surplus surface water into recharge ponds near the river. The water would then percolate from the ponds to the water table where it would return to the river later when it is most beneficial to endangered species.

The committee also heard testimony regarding the management of designated groundwater basins of Colorado's eastern plains. A designated groundwater basin is an area where the use of groundwater is assumed by law not to impact the major surface river basin to which the designated basin would otherwise be tributary. The committee learned that the Groundwater Commission regulates the pumping of designated basins. It determined that the Groundwater Commission faces significant policy questions as water levels in the designated basins decline. The committee concluded that the commission must remain active in order to ensure the efficient use of the basins' remaining water.

Recommendations. In response to concerns raised about endangered species, the committee recommends Bill B. The bill declares that the conservation of threatened or endangered species is a matter of statewide concern. It creates the Species Conservation Trust Fund to fund programs for the conservation of threatened or endangered species. The bill prioritizes funding for existing recovery programs and it requires legislative approval of a recovery program. A review of the provisions of Bill B is provided on page 11.

In response to the concerns raised about the management of designated groundwater basins, the committee recommends Bill D. The bill eliminates the \$1,200 annual cap on the per diem paid to members of the Groundwater Commission. A review of Bill D is provided on page 12.

Groundwater Issues in the San Luis Valley

Scope of issue. The Executive Committee of the Legislative Council authorized the committee to study the issues pertaining to new depletions of groundwater from Water Division 3, which includes the San Luis Valley. The committee toured agricultural and water resources of the San Luis Valley and met with water interests from the area. They learned that proposals to export groundwater to Colorado's Front Range may impact groundwater users in the San Luis Valley and prevent Colorado from meeting its interstate compact obligations.

Discussion. Representatives from the Rio Grande Water Conservation District described the surface and groundwater hydrology of the San Luis Valley. They noted that the San Luis Valley is reliant upon a complex system of groundwater aquifers to maintain its agricultural economy. The committee learned that overuse of the Valley's groundwater caused a decline in the Valley's unconfined aquifer and prevented the state from meeting its water delivery obligation according to the Rio Grande Compact. Water users responded to this problem by implementing groundwater management practices that restored levels in the unconfined aquifer and enabled the state to meet its interstate obligations.

The committee heard testimony about a proposal to divert groundwater from the San Luis Valley to the Front Range of Colorado. The committee determined that there is insufficient data on the Valley's aquifers to ascertain whether such proposals will injure other water rights or prevent Colorado from satisfying its compact obligations. The State Engineer described a groundwater model of the San Luis Valley's aquifer that was developed by his office to investigate an earlier proposal to export the Valley's groundwater. The State Engineer suggested that funding for an improved computer model of the aquifers would better enable his office to consider the impact of new proposals to divert water from the San Luis Valley. The model should include more historical information about well pumping and also about the effect of native vegetation on groundwater.

Recommendations. The committee recommends Bill C. The bill declares that the relationship between surface streams and the confined aquifer of Water Division 3 is not understood sufficiently to determine the impact of groundwater withdrawals. Bill C requires judicial approval of augmentation plans for the replacement of new groundwater depletions in the confined aquifer. It instructs the State Engineer to conduct a study of the aquifer and develop rules that optimize the use of the Valley's groundwater. The study will also determine whether there is additional water available for appropriation. A review of the provisions of Bill C is provided on page 12.

Swine Confined Feeding Operations

Scope of issue. The committee heard testimony about hog feeding operations that deal with large volumes of waste. The disposal of this waste may result in adverse effects to groundwater. For example, large amounts of untreated excrement applied to crops may seep into the groundwater supply. The primary issue considered by the committee was the risk of unregulated swine confined feeding operations polluting groundwater sources.

Discussion. The Water Quality Control Division of the Colorado Department of Public Health and Environment discussed the history and current status of confined animal feeding operations regulations. The existing regulations, adopted in 1992, are self-implementing and complaint driven. In 1996, the Water Quality Control Commission conducted a series of work sessions to better understand the effectiveness of the current regulations. Based on these meetings, the Division recommended a three-level permitting alternative, consisting of a no-discharge permit, a general-discharge permit, and an individual-discharge permit.

The State Engineer testified that there has been some abuse of groundwater permits by some confined hog facilities. For example, the legislature created special groundwater permits for small capacity wells, and the State Engineer testified that some confined animal operations are over-pumping these wells.

Residents and businesses near large hog facilities expressed concern about the impacts these facilities have on groundwater quality. Neighbors are concerned that these facilities dispose of waste on sandy soil daily, which results in contamination of the aquifer. They recommended that the application of waste water be further regulated.

The Colorado Farm Bureau was opposed to increasing regulations for swine confined feeding operations. They believe that the best way to protect water is through voluntary, incentive-based methods. They suggested increasing funding to the division for enforcement of existing regulations. It was suggested by a local health official that hog facilities should be regulated at a local level through partnerships.

Recommendation. The committee makes no recommendation regarding swine confined feeding operations.

Other Issues Considered

Development of Colorado's water resources. The committee discussed a proposal to direct the Colorado Water Conservation Board, in cooperation and consultation with the State Engineer, to identify and prioritize water projects and water resource zones for the Arkansas, Rio Grande, South Platte, and North Platte Rivers, and the four segments of the Colorado River. The purpose of the proposal is to: increase water resources available to the citizens of Colorado; meet water compact obligations to which Colorado is a party;

meet federally imposed obligations for water; conserve the state's water resources for beneficial use; and evaluate existing capacity in order to maximize efficiency. The committee makes no recommendation regarding this proposal.

Federal water needs and committee concerns. The committee was briefed by representatives of the U.S. Forest Service and the U.S. Fish and Wildlife Service about future federal requirements for Colorado water. A Forest Service representative explained that federal laws permit them to acquire water to maintain the Forest Service's operation, including acquisition of water to maintain instream flows and reservoirs, to protect wildlife habitat, and for recreation and aesthetic purposes. Typically, the Forest Service acquires its water through adjudication or through administrative action. He explained that it is the Forest Service's intent to pursue collaborative approaches to water problems that cross jurisdictional boundaries.

A representative from the U.S. Fish and Wildlife Service explained that the agency requires water to maintain habitat in wetlands and along rivers to help preserve wildlife resources in Colorado. Water is also needed to maintain the fish hatcheries and wildlife refuges in Colorado. The U.S. Fish and Wildlife Service intends to seek new water sources for threatened or endangered species as allowed under the federal Endangered Species Act. The committee was advised that the Endangered Species Act will remain in force and that all parties should learn how to comply with the law.

Members of the committee suggested that the federal government should bear a greater financial responsibility for the protection of endangered species and should stop the practice of withholding permits for local water projects until a water user surrenders water for federal purposes, such as for instream flows. Committee members expressed their concern that the public had lost confidence in federal recovery projects for endangered species. They suggested that public confidence may be restored if the federal government implements an independent review process for recovery programs.

SUMMARY OF RECOMMENDATIONS

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

Bill A — Standing of Political Subdivisions

The committee discussed the need for political subdivisions of the state to have standing to assert the taking of a property right by other governmental entities. It learned that state law determines those property right, which may be protected by the United States Constitution. The committee determined that state law does not grant Colorado's political subdivisions adequate authority to protect their water and other property interests. For example, municipalities may be unable to assert the taking of a property interest when the federal government requires them to provide by-pass flows as a condition for renewing federal permits for a dam or pipeline on federal lands.

Bill A grants political subdivisions of the state a legally protectable interest in their property or contractual rights in legal actions concerning the enforcement or constitutionality of federal, state, or other governmental action. The bill grants standing to a political subdivision to assert or defend a property interest to the same extent as a private citizen. This authority would enable a municipality to assert in federal court that a by-pass flow requirement of the U.S. Forest Service is an illegal taking. A city also would have standing to assert that a county's land use regulations amount to a regulatory taking if the conditions placed upon the development of a water project are too costly. This bill would not have significant impact on any agency of the state. Therefore, this bill is assessed as having no fiscal impact to the state.

Bill B — Conservation of Native Species

The committee considered the need for a state-sponsored program to address the problem of threatened and endangered species. Currently, there are recovery projects for endangered species on the Upper Colorado, the San Juan, and the Platte Rivers. Numerous other species within the state are also in decline and may be listed as endangered in the near future. The committee determined that recovery projects potentially have significant economic impacts on the citizens of Colorado and require long-term financial commitments. The committee concluded that a long-term recovery project should be established within the Colorado Department of Natural Resources.

Bill B declares that the conservation of threatened or endangered species is a matter of statewide concern. It creates the Species Conservation Trust Fund to fund programs for the conservation of threatened or endangered species. The bill authorizes the Colorado Water Conservation Board and its director, in cooperation and consultation with the Colorado Wildlife Commission and the Director of the Colorado Division of Wildlife to

prepare a prioritized list of programs to be funded by the trust fund. The list must be approved by a joint resolution of the General Assembly. The bill does not limit the recovery program to a particular species or region of Colorado. The bill also prioritizes funding for existing recovery obligations. The bill allows the Colorado Water Conservation Board to accept grants and donations to the species conservation trust fund. Bill B may require a General Fund transfer of \$5,851,659 to the Species Conservation Trust Fund for Fiscal Year 1998-99 for appropriation to the Department of Natural Resources and further allocation to the Colorado Water Conservation Board and the Division of Wildlife.

Bill C — Replacement of Groundwater Depletions

The committee considered the use and management of groundwater in Water Division 3 and the San Luis Valley. It learned that the Valley is reliant upon a complex system of groundwater aquifers to maintain its agricultural economy. Overuse of the aquifer can impact senior water rights and prevent Colorado from meeting the state's interstate compact obligations. The committee learned that there are proposals to increase the use of the Valley's aquifer upon approval by the water court. However, the committee concluded that there is insufficient data on the Valley's aquifers to ascertain whether such proposals will injure other water rights or prevent Colorado from satisfying its compact obligations.

Bill C declares that the relationship between surface streams and the confined aquifer of Water Division 3 is not sufficiently known to determine the impact of groundwater withdrawals. The bill requires judicial approval of augmentation plans for the replacement of new groundwater depletions. Depletion is the amount of water that does not return to the aquifer after the water has been beneficially used. Under current law, the State Engineer is authorized to determine whether an augmentation plan is necessary for the replacement of new groundwater depletions. Bill C instructs the State Engineer to conduct a study of the aquifer and develop rules that optimize the use of the Valley's groundwater. This bill will help ensure that Colorado will meet its compact obligations and protect senior water rights. The bill is assessed as having no fiscal impact on any agency of the state, or unit of local government.

Bill D — Groundwater Commission Per Diem

The committee learned that the Groundwater Commission regulates the pumping of designated basins. The committee determined that the Groundwater Commission must remain active to ensure that waters from the designated basins are used most efficiently. Bill D eliminates the \$1,200 annual cap on the per diem paid to members of the Groundwater Commission. This per diem is paid from the Commission's operating budget. Elimination of the cap will help ensure the Groundwater Commission is active in its oversight of the designated groundwater basins. No additional appropriations are required for FY 1998-99 to implement the provisions of this bill.

MATERIALS AVAILABLE

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

Meeting Summaries	Topics Discussed
June 27, 1997	Protection of property rights
July 17, 1997	County 1041 powers
August 27, 1997	Flood control efforts along the South Platte River Basin, and impact of swine confined feeding operations on ground and surface waters
September 11, 1997	Water management and resources of the San Luis Valley; administration of interstate compacts; Groundwater Commission and district issues; Endangered Species Act; and Rio Grande decision support system
October 15, 1997	Basin of Origin issue review; Park County water development projects; heightened efficiency standards for transbasin diversions; federal water needs and acquisition plans; stockman's water proposal for the San Luis Valley
October 16, 1997	Confined Animal Feeding Operations Regulation Review Work Group report; well permits in designated groundwater basins; regulation of hog farms
October 23, 1997	Consideration of proposed legislation including: compensation for Groundwater Commissioners; protection of endangered species; Water Division 3 groundwater regulations; and the protection of property rights.

Memoranda and Reports

Memoranda from Office of Legislative Legal Services staff and Legislative Council staff:

Basin of Origin Legislation from 1987 to the Present, October 2, 1997

Bonding Requirements for Industries, October 15, 1997

Compensation for Agricultural and Natural Resources Boards and Commissions,
October 21, 1997

House Bill 1041 and Land-Use Regulation by Local Government, June 25, 1997

Platte River Endangered Species Cooperative Agreement, August 19, 1997

Standing of Local Governments to Assert Takings of Property Interests, June 17,
1997

Swine Confined Feeding Operations, October 8, 1997

Reports:

*Briefing Report Platte River Endangered Species Program Agreement Between the
States of Colorado, Nebraska, and Wyoming and the United States Department of
the Interior*, Colorado Department of Natural Resources, September 11, 1997

Funding Options for Platte River Recovery Implementation Program, Colorado
Department of Natural Resources, August 27, 1997

*Water Quality Control Division Strawman Confined Animal Feeding Operation
Proposal (CAFO)*, Colorado Department of Public Health and Environment,
May 1997

Water Rights Administration in Water Division No. 3 State of Colorado, Rio
Grande Water Conservation District, October 14, 1997

BILL A

By Senator Ament

A BILL FOR AN ACT

CONCERNING STANDING OF POLITICAL SUBDIVISIONS TO PROTECT PROPERTY INTERESTS IN CERTAIN PROCEEDINGS.

Bill Summary

"Standing Of Political Subdivisions"

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

Land and Water Resource Issues Committee. Establishes that political subdivisions of the state have standing to assert or defend property rights or contract rights in proceedings concerning the enforcement or constitutionality of federal or state laws or other government actions.

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

SECTION 1. Title 29, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 1.5

Protection of Property Rights

29-1.5-101. Political subdivisions - standing to protect property rights.

IN ADDITION TO ANY OTHER RIGHTS POLITICAL SUBDIVISIONS OTHERWISE HAVE UNDER LAW, POLITICAL SUBDIVISIONS OF THE STATE SHALL HAVE A LEGALLY PROTECTABLE INTEREST IN, AND STANDING TO ASSERT OR DEFEND TO THE SAME EXTENT AS PRIVATE CITIZENS, THEIR PROPERTY RIGHTS OR CONTRACT RIGHTS IN PROCEEDINGS CONCERNING THE ENFORCEMENT OR CONSTITUTIONALITY OF

FEDERAL OR STATE LAWS OR OTHER GOVERNMENT ACTIONS. NOTHING HEREIN SHALL AFFECT THE ABILITY OF THE STATE OR LOCAL GOVERNMENTS TO EXERCISE THEIR LAWFUL POLICE POWERS.

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.

Colorado Legislative Council Staff

**LOCAL
CONDITIONAL FISCAL NOTE**

Revenue and Expenditure Impact

Drafting Number: LLS 98-031
Prime Sponsor(s): Sen. Ament
 Rep. Johnson

Date: November 17, 1997
Bill Status: Interim Committee to Study
 Water and Land Resource
 Issues
Fiscal Analyst: Will Meyer (866-4976)

TITLE: CONCERNING STANDING OF POLITICAL SUBDIVISIONS TO PROTECT PROPERTY INTERESTS IN CERTAIN PROCEEDINGS.

Summary of Legislation

The provisions of this bill would establish that political subdivisions of the state have standing to assert or defend property rights or contract rights in proceedings concerning the enforcement or constitutionality of federal or state laws, or other government actions. The bill would become effective upon signature of the Governor.

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/2000
State Revenues		
General Fund		
Other Fund		
State Expenditures		
General Fund		
Other Fund		
FTE Position Change	None	None
Local Government Impact — Conditional fiscal impact on political subdivisions that utilize the authority granted by this bill.		

The provisions of this bill would grant standing to a political subdivision to assert or defend a property interest to the same extent as a private citizen. These provisions would grant political subdivisions authority to protect their water and other property interests. This authority would enable a municipality to assert in federal court that a by-pass flow requirement of the United States Forest Service is an illegal taking. A city or other political subdivision also would have standing to assert that a county's land use regulations amount to a regulatory taking if the conditions placed upon the development of a water project are too costly.

It is believed that the provisions of this bill would result in an insignificant increase in the number of cases filed with the courts and could be absorbed within current appropriations to the

Bill A

Judicial Branch. This bill would not have any significant impact on any other agency of the state. Therefore, this bill is assessed as having no fiscal impact to the state.

Local Government Impact

The provisions of this bill would have a conditional fiscal impact on the political subdivisions of the state that choose to utilize the authority granted by this bill and bring lawsuits against other units of governments. Costs to political subdivisions are the costs to file a lawsuit, and in some instances the costs to defend against a lawsuit, including staff time, legal time, and potentially the payment of damages. Revenues to local governments could result from both settlements of lawsuits and court awarded payment of damages.

Departments Contacted

Local Affairs Law Judicial Education CCHE Transportation

BILL B

By Representative Adkins

A BILL FOR AN ACT

CONCERNING THE ESTABLISHMENT OF A FUND TO PROMOTE THE CONSERVATION OF NATIVE SPECIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

"Conservation Of Native Species"

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

Water and Land Resource Issues Committee. Declares that the conservation of threatened or endangered species is a matter of statewide concern.

Creates the species conservation trust fund for the purpose of funding programs for the conservation of threatened or endangered species.

Authorizes the Colorado water conservation board and its director, in cooperation and consultation with the Colorado wildlife commission and the director of the division of wildlife, to prepare a prioritized list of programs to be funded by the species conservation trust fund for approval by the general assembly by joint resolution.

Requires the Colorado water conservation board and its director, in cooperation and consultation with the wildlife commission and the director of the division of wildlife, to prioritize funding from the species conservation trust fund as follows:

- The 1988 Cooperative Agreement to implement the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River dated September 29, 1987;
- The 1992 Cooperative Agreement to implement the San Juan River Recovery Implementation Program dated October 21, 1992;

- The Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitats Along the Central Platte River, Nebraska, and any other programs designed to meet state obligations pursuant to the federal "Endangered Species Act of 1973";
- Certain programs established or approved by the division of wildlife.

Allows the Colorado water conservation board to accept grants and donations for the species conservation trust fund.

Appropriates moneys from the general fund to the species conservation trust fund.

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

SECTION 1. Article 33 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-33-111. Conservation of native species - fund created. (1) **Legislative declaration.** THE GENERAL ASSEMBLY HEREBY RECOGNIZES A RESPONSIBILITY ON THE PART OF THE STATE ASSOCIATED WITH THE CONSERVATION OF NATIVE SPECIES THAT HAVE BEEN LISTED AS THREATENED OR ENDANGERED UNDER STATE OR FEDERAL LAW, OR ARE CANDIDATE SPECIES OR ARE LIKELY TO BECOME CANDIDATE SPECIES AS DETERMINED BY THE UNITED STATES FISH AND WILDLIFE SERVICE, AND SPECIES AT RISK AND SPECIES OF SPECIAL CONCERN AS DETERMINED BY THE COLORADO DIVISION OF WILDLIFE, THE DECLINE OR EXTINCTION OF WHICH MAY AFFECT THE WELFARE OF THE CITIZENS OF THE STATE. THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE CONSERVATION OF SUCH SPECIES IS A MATTER OF STATEWIDE CONCERN, AND DETERMINES THAT THE COLORADO DEPARTMENT OF NATURAL RESOURCES AND THE DIVISION OF WILDLIFE ARE RESPONSIBLE FOR THE DEVELOPMENT, IMPLEMENTATION, OR APPROVAL OF APPROPRIATE PROGRAMS TO ADDRESS THE CONSERVATION OF SUCH SPECIES.

(2) **Species conservation trust fund - creation.** THERE IS HEREBY CREATED IN THE STATE TREASURY THE SPECIES CONSERVATION TRUST FUND, WHICH SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO CARRY OUT THE PURPOSES OF THIS SECTION. ALL INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. AT THE END OF ANY FISCAL YEAR, ALL UNEXPENDED MONEYS IN THE FUND SHALL REMAIN THEREIN AND SHALL NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND. NO INVESTMENT EARNINGS OR OTHER MONEYS IN THE SPECIES CONSERVATION TRUST FUND SHALL BE SUBJECT TO ANY MANAGEMENT FEE IMPOSED BY LAW FOR THE BENEFIT OF THE GENERAL FUND. TO THE MAXIMUM EXTENT PRACTICAL, ONLY INTEREST FROM THE FUND SHALL BE EXPENDED FOR ACTIVITIES PURSUANT TO THIS SECTION.

(3) **Species conservation program eligibility list and annual report.**

(a) THE COLORADO WATER CONSERVATION BOARD AND ITS DIRECTOR, IN COOPERATION AND CONSULTATION WITH THE COLORADO WILDLIFE COMMISSION AND THE DIRECTOR OF THE DIVISION OF WILDLIFE, SHALL ANNUALLY PREPARE A SPECIES CONSERVATION LIST DESCRIBING PROGRAMS AND ASSOCIATED COSTS THAT ARE ELIGIBLE TO RECEIVE FUNDING PURSUANT TO THIS SECTION. THE ELIGIBILITY LIST SHALL BE SUBJECT TO MODIFICATION AND ADOPTION THROUGH PASSAGE OF A JOINT RESOLUTION THAT IS APPROVED BY A MAJORITY VOTE OF BOTH HOUSES OF THE GENERAL ASSEMBLY. AT THE SAME TIME AS THE SPECIES CONSERVATION LIST IS SUBMITTED, THE COLORADO WATER CONSERVATION BOARD AND ITS DIRECTOR, IN COOPERATION AND CONSULTATION WITH THE WILDLIFE COMMISSION AND THE DIRECTOR OF THE DIVISION OF WILDLIFE, SHALL ALSO PROVIDE A DETAILED REPORT TO THE GENERAL ASSEMBLY ON THE PROGRESS AND

STATUS OF ACTIVITIES TO DATE AND THEIR EFFECTIVENESS IN THE RECOVERY OF THE SPECIES AND IDENTIFY PROPOSED FUTURE ACTIVITIES.

(b) FUNDING SHALL BE DISTRIBUTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES FOR PURPOSES ENUMERATED BELOW IN THE FOLLOWING ORDER OF PRIORITY:

(I) THE 1988 COOPERATIVE AGREEMENT TO IMPLEMENT THE RECOVERY IMPLEMENTATION PROGRAM FOR THE ENDANGERED FISH SPECIES IN THE UPPER COLORADO RIVER DATED SEPTEMBER 29, 1987; THE 1992 COOPERATIVE AGREEMENT TO IMPLEMENT THE SAN JUAN RIVER RECOVERY IMPLEMENTATION PROGRAM DATED OCTOBER 21, 1992; THE COOPERATIVE AGREEMENT FOR PLATTE RIVER RESEARCH AND OTHER EFFORTS RELATING TO ENDANGERED SPECIES HABITATS ALONG THE CENTRAL PLATTE RIVER, NEBRASKA; AND ANY OTHER PROGRAMS DESIGNED TO MEET STATE OBLIGATIONS PURSUANT TO THE FEDERAL "ENDANGERED SPECIES ACT OF 1973", 16 U.S.C. 1531, ET SEQ.;

(II) PROGRAMS ESTABLISHED OR APPROVED BY THE DIVISION OF WILDLIFE REGARDING:

(A) SPECIES PLACED ON THE STATE ENDANGERED OR THREATENED LIST IN ACCORDANCE WITH SECTION 33-2-105, C.R.S.; OR

(B) CANDIDATE SPECIES OR SPECIES LIKELY TO BECOME CANDIDATE SPECIES, SPECIES AT RISK, AND SPECIES OF SPECIAL CONCERN IN ORDER TO ASSIST IN REMOVING THE NEED TO PLACE THE SPECIES ON EITHER THE STATE OR FEDERAL ENDANGERED OR THREATENED SPECIES LISTS. EVALUATION OF SPECIES PURSUANT TO THIS SUB-SUBPARAGRAPH (B) SHALL INCLUDE AN ASSESSMENT OF ECOLOGICALLY EQUIVALENT SPECIES IN THE SAME ECOSYSTEM.

(c) FINANCIAL ASSISTANCE FOR A PROJECT OR PROGRAM PURSUANT TO THIS SECTION MAY BE PROVIDED REGARDLESS OF THE RANK, IF ANY, OF THE PROJECT ON THE ELIGIBILITY LIST EXCEPT FOR THE PRIORITIES ESTABLISHED UNDER PARAGRAPH (b) OF THIS SUBSECTION (3).

(4) **Agreement requirements.** IN ORDER TO BE ELIGIBLE FOR FUNDING UNDER SUBSECTION (3) OF THIS SECTION, AGREEMENTS ENTERED INTO BY OR ON BEHALF OF THE STATE WITH ANY PERSON, ENTITY, ORGANIZATION, POLITICAL SUBDIVISION, STATE, OR THE FEDERAL GOVERNMENT RELATING TO THE CONSERVATION OF NATIVE SPECIES THAT HAVE BEEN LISTED AS THREATENED OR ENDANGERED UNDER FEDERAL OR STATE LAW OR THAT ARE CANDIDATE SPECIES OR ARE LIKELY TO BECOME CANDIDATE SPECIES, SPECIES AT RISK AND SPECIES OF SPECIAL CONCERN, OR SPECIES THE DECLINE OR EXTINCTION OF WHICH MAY AFFECT THE WELFARE OF THE CITIZENS OF THE STATE, MUST BE VOLUNTARY, SHALL RECOGNIZE AND RESPECT THE PRIVATE PROPERTY RIGHTS OF INDIVIDUAL PROPERTY OWNERS, AND SHALL ASSIST IN MEETING THE REGULATORY REQUIREMENTS PERTAINING TO THE CONSERVATION OF SPECIES. FUNDS ALLOCATED FOR THE PURPOSE OF IMPLEMENTING SUCH AGREEMENTS THROUGH THE SPECIES CONSERVATION LIST PROCESS SHALL BE UTILIZED, TO THE MAXIMUM EXTENT POSSIBLE, FOR THE PURCHASE OR CONSTRUCTION OF CAPITAL ASSETS THAT SHALL BE OWNED BY THE STATE AND THAT MAY BE SOLD OR UTILIZED FOR OTHER PURPOSES IN THE EVENT THAT THE AGREEMENT IS TERMINATED UNLESS THE STATE ELECTS NOT TO OWN SUCH ASSETS AND FOR THE IMPLEMENTATION OF ACTIVITIES THE DIVISION OF WILDLIFE HAS DETERMINED MAY NEGATE THE NEED TO LIST A SPECIES AS THREATENED OR ENDANGERED OR, IN THE CASE OF PREVIOUSLY LISTED SPECIES, MAY HASTEN ITS REMOVAL FROM THE LIST.

(5) **Maximization of funds.** THE COLORADO WATER CONSERVATION BOARD AND THE WILDLIFE COMMISSION SHALL MAXIMIZE FUNDS APPROPRIATED FROM THE SPECIES CONSERVATION TRUST FUND BY APPLYING FOR AVAILABLE GRANTS. FEDERAL GRANTS AND VOLUNTARY CONTRIBUTIONS MAY BE ACCEPTED BY THE COLORADO WATER CONSERVATION BOARD TO CARRY OUT THE PURPOSES OF THIS SECTION. SUCH GRANTS AND CONTRIBUTIONS SHALL BE PLACED IN THE SPECIES CONSERVATION TRUST FUND CREATED IN SUBSECTION (2) OF THIS SECTION. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE AUTHORITY OF THE COLORADO DIVISION OF WILDLIFE TO MANAGE OR REGULATE GAME, NONGAME, OR THREATENED OR ENDANGERED SPECIES. NOTHING IN THIS SECTION IS INTENDED TO BE CONSTRUED AS A MECHANISM TO SUBSTITUTE FUNDING THAT WOULD OTHERWISE BE AVAILABLE FOR EXPENDITURE BY THE DIVISION OR TO REPLACE OR REDUCE THE OBLIGATION OF THE DIVISION TO CARRY OUT NONGAME PROGRAMS UNDER TITLE 33, C.R.S.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the species conservation trust fund, created in section 24-33-111 (2), Colorado Revised Statutes, for the fiscal year beginning July 1, 1998, the sum of ____ dollars (\$), or so much thereof as may be necessary, for the implementation of this act.

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.

Colorado Legislative Council Staff

**STATE
FISCAL NOTE**

*Cash Fund Revenue Impact
General Fund and Cash Fund Expenditure Impact*

Drafting Number: LLS 98-215
Prime Sponsor(s): Rep. Adkins

Date: December 22, 1997
Bill Status: Interim Committee to Study
Water and Land Resource
Issues

Fiscal Analyst: Steve Tammeus (866-2756)

TITLE: CONCERNING THE ESTABLISHMENT OF A FUND TO PROMOTE THE CONSERVATION OF NATIVE SPECIES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Summary of Legislation

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/00
State Revenues		
General Fund		
Species Conservation Trust Fund	Grants/Donations	Grants/Donations
State Expenditures		
General Fund - transfer to Trust Fund*	\$5,851,659	\$5,851,659
Species Conservation Trust Fund*	\$5,851,659	\$5,851,659
FTE Position Change	Contract	Contract
Local Government Impact — None		

** Please refer to the "State Expenditures - Alternatives" on page 6 of this fiscal note.*

This bill specifies the Department of Natural Resources (DNR), Division of Wildlife (DOW), as responsible for the development, implementation, or approval of appropriate programs to address the conservation of the following native species:

- threatened or endangered, as listed under state or federal law;
- candidate species or species likely to become candidates as threatened or endangered,
- species at risk; and
- species of special concern.

The bill creates the Species Conservation Trust Fund in the State Treasury. The fund shall be subject to annual appropriation by the General Assembly. All income derived from the deposit and investment of moneys in the fund shall be credited to the fund, and all unexpended moneys at the end of each fiscal year shall remain within the fund. The bill limits, to the maximum extent

Bill B

practical, the amount of fund expenditures to the amount of interest earned by the moneys in the fund. No moneys in the fund shall be subject to any management fee.

The bill requires the Colorado Water Conservation Board (CWCB), in cooperation with the Colorado Wildlife Commission and the Director of the DOW, to annually prepare a species conservation list describing eligible programs and associated costs. The eligibility list shall be subject to modification and adoption through passage of a joint resolution. The CWCB shall also provide a detailed report to the General Assembly on the status of activities, their effectiveness on the recovery of such species, and any proposed future activities.

The bill requires the Executive Director of the DNR to distribute funding for the following purposes, in order of priority:

- 1) certain cooperative agreements for recovery programs for endangered species in the upper Colorado River, the San Juan River, the central Platte River, Nebraska; and other programs designed to meet state obligations pursuant to the federal "Endangered Species Act of 1973";
- 2) programs established by the DOW regarding species: a) placed on the state endangered or threatened list, and b) candidate species or species likely to become candidate species, species at risk, and species of special concern. The evaluation of candidate species, species at risk, and species of special concern shall include an assessment of ecologically equivalent species in the same ecosystem.

The bill specifies eligibility requirements for any agreement the state enters into to support the provisions of the bill. The bill requires funding to support these agreements to be utilized, to the maximum extent possible, for the purchase or construction of capital assets that may be sold or utilized for other purposes in the event the agreement is terminated. The bill authorizes certain exemptions to this requirement.

The bill requires the CWCB and the Wildlife Commission to apply for any available grants. Federal grants and voluntary contributions may be accepted by the CWCB for deposit in the Species Conservation Trust Fund. The bill appropriates an unspecified amount from the General Fund to the Species Conservation Trust Fund for FY 1998-99.

The provisions of this bill will affect state General Fund and cash fund expenditures. Therefore, the bill is assessed as having a fiscal impact. The bill will become effective upon the signature of the Governor.

State Revenues

The bill requires the CWCB and the Wildlife Commission to maximize funds by applying for available grants and accepting voluntary contributions. These moneys would be credited to the Species Conservation Trust Fund. The amounts of these grants and donations have not been estimated.

State Expenditures

Eligibility list and annual report. The bill will require the CWCB and the Wildlife Commission to expend approximately 320 hours of personal services annually to prepare and finalize a list of eligible programs and to prepare the final report. The bill will require the board and the commission to also expend an additional \$1,700 annually to conduct public hearings. The DNR believes the CWCB and the Wildlife Commission will be able to absorb these costs within existing resources.

Existing cooperative agreements. The State of Colorado has entered into cooperative agreements with the federal government and neighboring states of the region to implement specific species recovery programs for the Colorado River, the San Juan River, and Platte River. The total cost of these programs is estimated to be approximately \$29 million through FY 2015-16, as explained in the following paragraphs.

The recovery programs for the Colorado and San Juan rivers are scheduled to commence in FY 1998-99 and are anticipated to require nine years for completion. The annual cost of these programs is estimated to be approximately \$1 million, therefore, the total cost for the Colorado and San Juan river species recovery programs is estimated to be approximately \$9 million for FY 1998-99 through FY 2006-07.

The recovery program for the Platte River is scheduled to commence in FY 2001-02 and is anticipated to require 15 years for completion. The annual cost of the program for existing permitted facilities is estimated to be approximately \$1 million. The program will require an additional \$333,333 per year for yet-to-be permitted facilities on the South Platte River. Therefore, the total cost of the Platte River species recovery programs are estimated to be approximately \$20 million for FY 2001-02 through FY 2015-16.

Other programs approved by the DOW. This bill requires that any agreement to conserve threatened or endangered species, or candidate species, must assist in meeting the regulatory requirements pertaining to the conservation of species. The bill requires the funds to be utilized, to the maximum extent possible, for the purchase or construction of capital assets that shall be initially owned by the state then sold or used for other purposes when the agreement is terminated.

The DOW has developed a strategic plan to address the state-wide issue of conserving all native species, and has subsequently developed a five-year plan, including cost estimates, to accomplish the tasks of the strategic plan. Table 1 provides a summary of the annual expenditures for capital assets and operating expenses that will be required for the DOW to accomplish each species conservation program for FY 1998-99 through FY 2002-03.

Capital assets are generally comprised of fencing, habitat enhancements, conservation easements, fish passage structures, water management retention ponds, real property, and equipment. Operating expenses include personal services, travel expenses, operating supplies, leases, and rentals. The DNR estimates that up to approximately 60.0 additional FTE will be required to support the requirements of these programs. The DNR will attempt to utilize contracted or

Bill B

temporary personal services in all practical applications, however, the total personal services costs have not been fully defined and are not included in this fiscal analysis.

Table 1 - Other Program Annual Expenditures FY 1998-99 through FY 2002-03	Capital Costs	Operating Costs	Total Annual Costs
Aquatic Programs Greenback Cutthroat; Colorado River Cutthroat; Rio Grande Cutthroat; Boreal Toad/Wood Frog; South Platte Native Fishes; Arkansas/Rio Grande Native Fishes; Amphibians, Reptiles, Crustaceans, and Mollusks; and Native Aquatic Programs	\$1,150,000	\$1,692,160	\$2,842,160
Terrestrial Programs Peregrine Falcon; Bald Eagle; Least Turn and Piping Plover; Black Footed Ferret; Prebles Meadow Jumping Mouse; Prairie Grouse, Lynx and Wolverine; Burrowing Owl; Kit Fox; and other species	\$951,200	\$3,477,320	\$4,428,520
Total Annual Program Costs	\$2,101,200	\$5,169,480	\$7,270,680

At the conclusion of this first five-year period, the DNR estimates that \$10.0 million will be required to support the continuing longer-term requirements (for these and other yet-to-be-identified species) as they are more fully defined during the successive phases of the department's five-year plan.

Summary. The DNR is currently authorized \$2,419,021 and 29.5 FTE (Wildlife Cash Fund) by the annual Long Bill for FY 1997-98 to support non-game and endangered species conservation programs. Table 2 provides a summary of the total annual species conservation program expenditures to support the provisions of this bill, the amount supported by the Wildlife Cash Fund, and the amount to be supported by the Species Conservation Trust Fund.

Table 2 - Total Annual Program Expenditures	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02
Eligibility list development and annual report	\$0	\$0	\$0	\$0
Colorado/San Juan Rivers through FY 2006-07	1,000,000	1,000,000	1,000,000	1,000,000
Platte River through FY 2015-16	0	0	0	1,333,333
Aquatic programs through FY 2002-03	2,842,160	2,842,160	2,842,160	2,842,160
Terrestrial programs through FY 2002-03	4,428,520	4,428,520	4,428,520	4,428,520
Total Annual Expenditures	\$8,270,680	\$8,270,680	\$8,270,680	\$9,604,013
Wildlife Cash Fund	(\$2,419,021)	(\$2,419,021)	(\$2,419,021)	(\$2,419,021)
Species Conservation Trust Fund	\$5,851,659	\$5,851,659	\$5,851,659	\$7,184,992

Expenditures Not Included

Pursuant to the Joint Budget Committee's budget policies, the following expenditures have not been included in this fiscal note:

- health and life insurance costs;
- short-term disability costs;
- inflationary cost factors;
- leased space; and
- indirect costs.

Spending Authority

This fiscal note would imply that a General Fund transfer of \$5,851,659 to the Species Conservation Trust Fund would be required for FY 1998-99 for appropriation to the Department of Natural Resources and further allocation to the Colorado Water Conservation Board and the Division of Wildlife.

Departments Contacted

Law Treasury Natural Resources

Omissions and Technical or Mechanical Defects

This bill requires the Department of Natural Resources to annually prepare a species conservation list describing programs and associated costs that are eligible to receive funding. The bill also requires the list to be subject to modification and adoption through passage of a joint resolution. The bill creates the Species Conservation Trust Fund and states that monies in the fund are subject to annual appropriation by the General Assembly. The bill requires the Executive Director of the Department of Natural Resources to distribute the funding according to law. The bill then provides an unspecified appropriation from the General Fund to the Species Conservation Trust Fund. This language implies the Department of Natural Resources will be required to rely on annual funding legislation to support anticipated, or planned, species conservation program expenditures.

The bill also requires, to the maximum extent practical, that only interest earned by the fund shall be expended from the fund. This requirement, when associated with the requirements above, is unclear whether the legislative intent is to annually appropriate the amount of moneys to be annually expended for the program, or to make a one-time appropriation of an amount sufficient to generate investment earnings that will support annual program expenditures as explained in the following alternatives.

State Expenditures - Alternatives

This bill limits, to the extent practical, the amount of annual Species Conservation Trust Fund expenditures to the amount of interest earned by the moneys in the fund. The State Treasury indicates the average annual rate of investment earnings is 6.0 percent. As a result, based upon the expenditure estimates in Table 2, the principle of the fund would have to be maintained at approximately \$100 to 120 million to support an annual expenditure of approximately \$6.0 to 7.2 million.

As a practical alternative, an initial Species Conservation Trust Fund principle of \$45,584,012 would be required for FY 1998-99, based upon the following assumptions:

- that the Trust Fund annual rate of earnings will be 6.0 percent;
- that the entirety of the annual investment earnings and a portion of the Trust Fund principle will be annually expended;
- that the Wildlife Cash Fund will continue to support annual expenditures at a level of \$2,419,021;
- that no grants or donations will be received;
- that the annual Colorado and San Juan River expenditures of \$1.0 million will commence in FY 1998-99 and will continue through FY 2006-07;
- that the annual Platte River expenditures of \$1,333,000 will commence in FY 2001-02 and will continue through FY 2015-16;
- that the annual capital expenditures for other programs of \$2,101,200 (Table 1) will commence in FY 1998-99 and will continue through FY 2001-03;
- that the annual operating expenditures for other programs of \$5,169,480 (Table 1) will commence in FY 1998-99 and will continue through FY 2001-02;
- that an amount of \$10.0 million will remain available in the Trust Fund in FY 2002-03 for allocation to other species programs in successive years; and
- that the entirety of the Trust Fund principle will be depleted in FY 2015-16.

This alternative would imply that a General Fund transfer of \$45,584,012 to the Species Conservation Trust Fund would be required for FY 1998-99. Of this amount, the Department of Natural Resources would require an appropriation of \$5,851,659 for further allocation to the Colorado Water Conservation Board and/or the Division of Wildlife for FY 1998-99 to support the provisions of this bill. A summary of the fiscal impact is provided in Table 3.

Table 3 - Alternative SUMMARY	FY 1998/99	FY 1999/00
State Revenues		
General Fund - investment earnings	(\$2,735,041)	(2,899,143)
Species Conservation Trust Fund - Transfer from GF	\$45,584,012	
Species Conservation Trust Fund - investment earnings	2,735,041	2,548,044
State Expenditures		
General Fund - transfer to Trust Fund	\$45,584,012	
Species Conservation Trust Fund	\$5,851,659	\$5,851,659
FTE Position Change	Contract	Contract

BILL C

By Representative Entz

A BILL FOR AN ACT

CONCERNING THE REPLACEMENT OF DEPLETIONS FROM NEW WITHDRAWALS OF GROUNDWATER IN WATER DIVISION 3 THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF GROUNDWATER IN THE CONFINED AQUIFER, AND, IN CONNECTION THEREWITH, AUTHORIZING THE STATE ENGINEER TO PROMULGATE RULES THAT OPTIMIZE THE USE OF THE GROUNDWATER AND PROVIDE ALTERNATIVE METHODS TO PREVENT INJURY.

Bill Summary

"Replacement Of Groundwater Depletions"

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

Water and Land Resource Issues Committee. Requires judicial approval of a plan for augmentation that replaces new groundwater depletions in water division 3 that affect the rate or direction of movement of water in the confined aquifer.

Authorizes the state engineer to promulgate rules that optimize ground water use including, if appropriate, a different methodology to prevent injury.

Requires the court to apply this standard or any different methodology adopted by the state engineer to prevent injury in any plan for augmentation.

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

SECTION 1. 37-90-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-90-102. Legislative declaration. (3) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IN WATER DIVISION 3, ESTABLISHED PURSUANT TO SECTION 37-92-201 (1) (c), THERE EXISTS A CONFINED AQUIFER SYSTEM UNDERLYING PORTIONS OF THE SAN LUIS VALLEY. THERE IS CURRENTLY INSUFFICIENT COMPREHENSIVE DATA AND KNOWLEDGE OF THE RELATIONSHIP BETWEEN THE SURFACE STREAMS AND THE CONFINED AQUIFER SYSTEM TO PERMIT A FULL UNDERSTANDING OF THE EFFECT OF GROUNDWATER WITHDRAWALS, AFFECTING THE CONFINED AQUIFER, UPON THE NATURAL STREAM AND AQUIFER SYSTEMS IN WATER DIVISION 3.

(b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 2. 37-90-137 (2) (b) (II), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUB-SUBPARAGRAPHS to read:

37-90-137. Permits to construct wells outside designated basins - fees - permit no ground water right - evidence - time limitation - well permits. (2)

(b) (II) (C) ANY WELL PERMIT APPLICATION IN WATER DIVISION 3 THAT INVOLVES A NEW WITHDRAWAL OF GROUNDWATER THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF WATER IN THE CONFINED AQUIFER SYSTEM REFERRED TO IN SECTION 37-90-102 (3) SHALL BE PERMITTED PURSUANT TO A JUDICIALLY APPROVED PLAN FOR AUGMENTATION THAT IN ADDITION TO ALL OTHER LAWFUL REQUIREMENTS FOR SUCH PLANS, WILL EFFECT REPLACEMENT OF ALL DEPLETIONS, RESULTING FROM THE USE OF SUCH GROUNDWATER, TO THE AQUIFER FROM WHICH THE GROUNDWATER IS WITHDRAWN. BASED UPON SPECIFIC STUDY OF THE CONFINED AQUIFER SYSTEM, THE STATE ENGINEER SHALL PROMULGATE RULES, PURSUANT TO THE PROCEDURES OF SECTION 37-92-501 (2), AND, IF APPROPRIATE,

MAY ADOPT A DIFFERENT METHODOLOGY AS PART OF SUCH RULES TO ALLOW SUCH WITHDRAWALS CONSISTENT WITH PREVENTION OF INJURY TO THE VESTED ABSOLUTE WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS OF OTHERS. IN THE PROMULGATION OF SUCH RULES FOR WATER DIVISION 3, THE STATE ENGINEER SHALL RECOGNIZE THAT UNAPPROPRIATED WATER MAY NOT BE MADE AVAILABLE AS A RESULT OF THE REDUCTION OF WATER CONSUMPTION BY NONIRRIGATED NATIVE VEGETATION. SUCH RULES SHALL ALSO ENSURE THAT THE WATER RESOURCES OF WATER DIVISION 3 SHALL NOT BE DEVELOPED IN A MANNER THAT WILL PREVENT THE WATER RESOURCES FROM BEING RECHARGED OR REPLENISHED UNDER ALL PREDICTABLE CIRCUMSTANCES TO THE EXTENT NECESSARY TO PROTECT COLORADO'S ABILITY TO MEET ITS INTERSTATE COMPACT OBLIGATIONS AND TO PREVENT INJURY TO SENIOR APPROPRIATORS IN THE ORDER OF THEIR PRIORITIES, AND WITH DUE REGARD FOR DAILY, SEASONAL, AND LONGER DEMANDS ON THE WATER SUPPLY. THE STATE ENGINEER AND THE COLORADO WATER CONSERVATION BOARD SHALL COMMENCE A SCOPING STUDY IN 1998. SUCH SCOPING STUDY SHALL BE FUNDED OUT OF REVENUES RECEIVED FROM THE SEVERANCE TAX TRUST FUND PURSUANT TO SECTION 39-29-109, C.R.S., AND SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS. THE STATE ENGINEER AND THE COLORADO WATER CONSERVATION BOARD SHALL PROCEED WITH DILIGENCE TO COMPLETE NEEDED STUDIES SO THAT THE STATE ENGINEER CAN PREPARE AND PROMULGATE SUCH RULES.

(D) SUB-SUBPARAGRAPH (C) OF THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 3. 37-92-305 (6), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (6) (c) ANY APPLICATION IN WATER DIVISION 3 THAT INVOLVES NEW WITHDRAWALS OF GROUNDWATER THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF WATER IN THE CONFINED AQUIFER SYSTEM REFERRED TO IN SECTION 37-90-102 (3) SHALL BE PERMITTED PURSUANT TO A PLAN OF AUGMENTATION THAT IN ADDITION TO ALL OTHER LAWFUL REQUIREMENTS FOR SUCH PLANS, WILL EFFECT REPLACEMENT OF ALL DEPLETIONS, RESULTING FROM THE USE OF SUCH GROUNDWATER, TO THE AQUIFER FROM WHICH THE WATER IS WITHDRAWN. IF A DIFFERENT METHODOLOGY FOR PREVENTION OF INJURY HAS BEEN ADOPTED BY THE STATE ENGINEER PURSUANT TO THE REQUIREMENTS OF SECTIONS 37-90-137 (2) (b) (II) (C) AND 37-92-501 (2), THEN THE COURT SHALL APPLY THAT METHODOLOGY.

(d) PARAGRAPH (c) OF THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2001.

SECTION 4. Effective date - applicability - saving clause. (1) This act shall take effect upon passage and shall apply to all new and pending applications for well permits, except applications for those wells defined in section 37-90-103 (1), (13), and (17), Colorado Revised Statutes, and in section 37-92-602, Colorado Revised Statutes, filed with the division of water resources in the department of natural resources for wells to be located in water division 3, and shall apply to all new or pending applications concerning water rights filed with the water clerk for water division 3.

(2) Nothing in this act shall be construed to prevent the sale of vested absolute water rights or decreed conditional water rights or prevent their change in place, time, or type of use, including use in another water division.

SECTION 5. 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.

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 98-244
Prime Sponsor(s): Rep. Entz
Sen. Dennis

Date: November 17, 1997
Bill Status: Interim Committee to Study
Water and Land Resource
Issues
Fiscal Analyst: Will Meyer (866-4976)

TITLE: CONCERNING THE REPLACEMENT OF DEPLETIONS FROM NEW WITHDRAWALS OF GROUNDWATER IN WATER DIVISION 3 THAT WILL AFFECT THE RATE OR DIRECTION OF MOVEMENT OF GROUNDWATER IN THE CONFINED AQUIFER, AND, IN CONNECTION THEREWITH, AUTHORIZING THE STATE ENGINEER TO PROMULGATE RULES THAT OPTIMIZE THE USE OF THE GROUNDWATER AND PROVIDE ALTERNATIVE METHODS TO PREVENT INJURY.

Summary of Legislation

The provisions of this bill would require any well permit application in Water Division 3 (Rio Grande Basin) that affects the rate or direction of movement of water be permitted pursuant to a judicially approved plan for augmentation. The plan, in addition to all other lawful requirements for such, would be required to effect replacement of all depletions, resulting from the use of such groundwater, to the aquifer from which the groundwater is withdrawn. Based upon specific study of the confined aquifer system, the bill would require the State Engineer to promulgate necessary rules, and if appropriate, would allow the State Engineer to adopt a different methodology as part of such rules, to prevent any injury to vested absolute water rights or decreed conditional water rights of others. The bill also would require the Water Court to apply such different methodology in approving any plan for augmentation.

The bill would require the State Engineer, in promulgating rules, to recognize that unappropriated water may not be made available as a result of the reduction of water consumption by nonirrigated native vegetation. It also would require that the rules ensure that the water resources of Water Division 3 not be developed in a manner that would prevent the water resources from being recharged or replenished under all predictable circumstances to the extent necessary to protect Colorado's ability to meet interstate compact obligations and to prevent injury to senior appropriators.

The bill would require the State Engineer and the Colorado Water Conservation Board (CWCB) to commence a scoping study in 1998. The bill would become effective upon signature of the Governor and would apply to all new and pending applications for applicable well permits.

Background Information

Scoping study. The CWCB during FY 1997/98 entered into a contract for \$55,000 for the purpose of conducting a scoping study as the initial phase of the DSS study of the Rio

Grande Basin. A draft of this scoping study is anticipated to be completed by January 16, 1998, with the final scoping study to be completed by January 31, 1998. The scoping study will identify the necessary data, the related data acquisition costs, and the costs to develop the necessary components of the DSS study. Upon completion of the DSS study, the State Engineer would proceed with diligence to prepare and promulgate the necessary rules.

Background of Decision Support System (DSS) study. As part of the CWCB's Long Range Plan adopted in 1994 to develop and implement a statewide water information system, the CWCB has planned for the development of a DSS study for the Rio Grande Basin, beginning with the scoping study. Based on the outcome of the soon-to-be-completed scoping study, the CWCB, in coordination with the State Engineer, will request funding for FY 1998/99 to contract for a DSS study for the Rio Grande Basin. The actual cost of the DSS for the Rio Grande Basin will not be known until the completion of the scoping study. However, it is estimated that the DSS study could cost as much as \$3,000,000 and require at least two years to complete.

The DSS study of the Rio Grande Basin would be funded either from funds from the CWCB Construction Cash Fund, or the Severance Tax Trust Fund, Operational Account, or from General Funds. Based on the board's support for funding the Colorado River DSS study with construction fund cash funds, it is assumed that cash funds would be requested to support this DSS.

Assumption. Any rules which the State Engineer would adopt pursuant to this bill would be required to be based on the DSS study of the affected aquifers. It is assumed that this bill would not require the State Engineer to develop an additional DSS study of the Rio Grande Basin and its affected aquifers in order to promulgate necessary rules for the basin.

Assuming that the DSS study for the Rio Grande Basin is implemented, it would result in data and models upon which the State Engineer could make a decision as to whether there is a sufficient basis for promulgating rules as authorized by this bill. The State Engineer would promulgate rules beginning in **FY 2000/01**. The Office of State Engineer regularly promulgates rules and has commonly been able to develop and promulgate rules within their existing resources. The actual costs of the rule making process is dependent on the outcome of the study, the complexity of the rules, and the number of the objections to the rules. The State Engineer believes that the costs of rule making, including attorney costs, could be absorbed within their available appropriations. If the rules resulted in extraordinary objections, the State Engineer may require additional legal services from the Department of Law.

The provisions of the bill will not have a significant impact on the workload of the Division of Water Resources or Colorado Water Conservation Board, Department of Law, or the Water Court. Therefore, the bill is assessed as having no fiscal impact on any agency of the state, or unit of local government.

Departments Contacted

Natural Resources Judicial Law

BILL D

By Senator Bishop

A BILL FOR AN ACT

CONCERNING THE ELIMINATION OF THE YEARLY LIMIT ON THE AMOUNT OF PER
DIEMS PAID TO THE MEMBERS OF THE GROUND WATER COMMISSION.

Bill Summary

"Ground Water Commission Per Diem"

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

Land and Water Resource Issues Committee. Removes the \$1200 yearly limit on per diems paid to the members of the ground water commission.

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

SECTION 1. 37-90-104 (5), Colorado Revised Statutes, is amended to read:

37-90-104. Commission - organization - expenses. (5) Members of the commission shall be paid no compensation but shall be paid actual necessary expenses incurred by them in the performance of their duties as members thereof and a per diem of twenty-five dollars per day while performing official duties. ~~not to exceed one thousand two hundred dollars in any year.~~

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.

Colorado Legislative Council Staff
STATE
CONDITIONAL FISCAL NOTE
General Fund Expenditure Impact

Drafting Number: LLS 98-245	Date: November 13, 1997
Prime Sponsor(s): Sen. Bishop Rep. Entz	Bill Status: Land and Water Resource Issues Committee
	Fiscal Analyst: Steve Tammeus (866-2756)

TITLE: CONCERNING THE ELIMINATION OF THE YEARLY LIMIT ON THE AMOUNT OF PER DIEMS PAID TO THE MEMBERS OF THE GROUND WATER COMMISSION

Summary of Legislation

STATE FISCAL IMPACT SUMMARY	FY 1998/99	FY 1999/2000
State Revenues		
General Fund		
Other Fund		
State Expenditures		
General Fund	Potential Increase	Potential Increase
Other Fund		
FTE Position Change	None	None
Local Government Impact — None		

The Ground Water Commission under the Department of Natural Resources is comprised of 12 members; nine appointed by the Governor, plus the Executive Director of the Department of Natural Resources, the State Engineer, and the Director of the Colorado Water Conservation Board. The commission is required to conduct at least four meetings per year.

Under current law, members may be paid for actual and necessary expenses and a per diem of \$25 per day. Current law does not limit the total amount of annual actual and necessary expenses but does limit the total amount of annual per diem to not exceed \$1,200. If all 12 members attend four one-day meetings per year, the total annual per diem liability (General Fund) would be \$1,200. Therefore, the existing per diem limit essentially restricts the commission to meeting four days per year.

This bill eliminates the \$1,200 annual per diem cap and allows the department to pay per diem to all commission members for all commission meetings attended. This bill may increase state General Fund expenditures (commission expenses and per diem) if the commission elects to meet more often during any year. Therefore, the bill is assessed as having a conditional fiscal impact. This bill would become effective upon the signature of the Governor.

State Expenditures

Under current law, all members of the Ground Water Commission are eligible to be reimbursed for all actual and necessary expenses, and be paid per diem at a rate of \$25 per day for all commission meetings attended.

In actuality, the Executive Director of the Department of Natural Resources, the State Engineer, and the Director of the Colorado Water Conservation Board are currently not being paid expenses or per diem. The remaining members were paid reimbursable expenses in the amount of \$5,158 and per diem in the amount of \$1,000 during FY 1996-97.

The State Engineer does not anticipate any increase in the number of commission meeting days per year. However, if the commission elects to meet more often during the year, General Fund expenditures for commission expenses and per diem will increase.

Spending Authority

This fiscal note would imply that no additional appropriations are required for FY 1998-99 to implement the provisions of this bill.

Departments Contacted

Natural Resources