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## 0490 Water Legislation Review Committee

Colorado Legislative Council

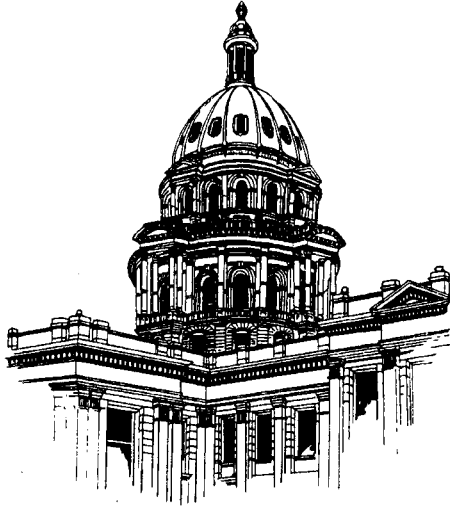
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# **Water Legislation**

## **Review Committee**

**Report to the**  
**COLORADO**  
**GENERAL ASSEMBLY**

**Colorado Legislative Council**  
**Research Publication No. 490**  
**December 2001**

**RECOMMENDATIONS FOR 2002**

**WATER RESOURCES LEGISLATION REVIEW  
COMMITTEE**

**Report to the  
Colorado General Assembly**

**Research Publication No. 490  
December 2001**

# COLORADO GENERAL ASSEMBLY

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## LEGISLATIVE COUNCIL

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December 2001

To Members of the Sixty-third General Assembly:

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

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

Respectfully submitted,

/s/ Senator Stan Matsunaka  
Chairman  
Legislative Council

SM/AP/mm

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# **WATER RESOURCES LEGISLATION REVIEW COMMITTEE**

## **Members of the Committee**

**Representative Diane Hoppe  
Chairman**

**Representative Mary Hodge**

**Representative Gregg Rippy**

**Representative Abel Tapia**

**Representative Al White**

**Senator Jim Isgar**

**Vice-Chairman**

**Senator Lewis Entz**

**Senator Deanna Hanna**

**Senator Terry Phillips**

**Senator Jack Taylor**

## **Legislative Council Staff**

**Allison Pasternak  
Research Associate**

## **Office of Legislative Legal Services**

**Pam Cybyske  
Senior Staff Attorney**

**Tom Morris  
Staff Attorney**

# EXECUTIVE SUMMARY

## **Committee Charge**

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

## **Committee Activities**

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

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



## **Committee Recommendations**

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

**Bill A — Creation of a Permanent Water Resources Review Committee of the Colorado General Assembly.** The bill makes the committee a permanent committee that meets during the legislative interim. It adjusts the committee's bill deadline, increases the number of meetings the committee may hold, and permits the committee to take up to two field trips per year. It also changes the committee's western slope representation.

**Bill B — Reconciliation of Inconsistent Statutory Provisions Regarding the Qualifications of Electors for Irrigation Districts.** The committee heard testimony from the Colorado Water Congress' irrigation district task force regarding inconsistencies in the current irrigation district laws. Bill B changes the qualifications for electors in an irrigation district. The bill lowers the minimum age for irrigation district electors from 21 years to 18 years. It also repeals the provision that allows electors for water conservancy districts to be directors and electors for irrigation districts. Unlike water conservancy districts, irrigation districts are supported by revenues generated by property taxes. Repealing the provision will require irrigation districts directors and electors to own property in the district.

**Bill C — Increase in the Amount of Moneys in the Species Conservation Trust Fund, and Making an Appropriation in Connection Therewith.** In 1998, the General Assembly created the Species Conservation Trust Fund and appropriated \$10 million for species recovery programs in Colorado. In 2000, the General Assembly appropriated \$5 million to the fund for the recovery programs. The programs are recuperating species that are federally listed as threatened or endangered under the Endangered Species Act. The programs are also preventing other species from declining to a point that warrants federal listing. It is estimated that the recovery programs will cost \$25 million. Bill C provides the remainder of the funding necessary for the programs. Specifically, the bill appropriates \$10 million from the state's general fund to the Species Conservation Trust Fund.

# **STATUTORY AUTHORITY AND RESPONSIBILITIES**

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

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

# COMMITTEE ACTIVITIES

## Overview of Federal and State Water Resource Issues

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

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

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

## Water Quality

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

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

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

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

## **Surface Water Use**

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

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

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

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

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

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

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

## **Protection of Rivers and Endangered Species**

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

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

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

## SUMMARY OF RECOMMENDATIONS

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

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

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

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

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

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

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

# RESOURCE MATERIALS

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

[www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/2001/01interim](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2001/01interim).

## Meeting Summaries

## Topics Discussed

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

## Memoranda and Reports

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

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

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

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

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

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



**Bill A**

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**HOUSE SPONSORSHIP**

White, Hodge, Hoppe, Rippey, and Tapia

**SENATE SPONSORSHIP**

Taylor, Entz and Isgar

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**A BILL FOR AN ACT**

CONCERNING THE CREATION OF A PERMANENT WATER RESOURCES REVIEW  
COMMITTEE OF THE COLORADO GENERAL ASSEMBLY.

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**Bill Summary**

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

**Water Resources Legislative Review Committee.** Changes the name of the general assembly's water resources legislation review committee to the water resources review committee and makes the committee a permanent committee that meets during the interim between sessions of the general assembly. Adjusts the committee's bill deadline and increases the number of meetings that the committee may hold. Adjusts the committee's western slope representation. Specifies that the committee may take up to 2 field trips per year.

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

**SECTION 1.** 37-98-102 (1), (2) (b), and (6), Colorado Revised Statutes, are amended to read:

**37-98-102. Water resources review committee - creation.** (1) For the purposes of contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and to review and propose water resources legislation, there is hereby created the water resources ~~legislation~~ review committee, referred to in this article as the committee. The committee shall meet at the call of the chair during the interim ~~at least once and as often as deemed necessary~~ SIX TIMES DURING EVEN-NUMBERED YEARS AND EIGHT TIMES DURING ODD-NUMBERED YEARS to review and to propose water resources legislation and matters relating thereto. In connection with such review, the committee MAY TAKE UP TO TWO FIELD TRIPS PER YEAR IN CONNECTION WITH ITS MANDATE AND shall consult with experts in the field of water conservation, quality, use, finance, and development. The department of natural resources, the state engineer, and the attorney general, together with the members and staff of the Colorado water conservation board, the Colorado water resources and power development authority, the Colorado water quality control commission, the department of public health and environment, the department of agriculture, and the great outdoors Colorado program, shall cooperate with the committee and with any persons assisting the committee in pursuing its responsibilities pursuant to this section. Further, the committee may utilize the legislative council staff to assist its members in researching any matters.

(2) (b) At least four members of the committee shall EITHER:

(I) Reside in that portion of the state ~~which~~ THAT is west of the continental divide; OR

(II) REPRESENT A LEGISLATIVE DISTRICT THE MAJORITY OF THE POPULATION OF WHICH LIES WEST OF THE CONTINENTAL DIVIDE.

(6) ~~The committee shall hold no more than four meetings in the interim period:~~

**SECTION 2.** 37-98-103, Colorado Revised Statutes, is amended to read:

**37-98-103. Annual recommendations - bill limitation - deadlines for introduction.** The committee may report no more than three bills or other measures to the legislative council created in section 2-3-301, C.R.S., unless a two-thirds majority of the members of the committee vote to report a greater number. No bill shall be reported to the legislative council unless a two-thirds majority of the appointed members of the committee vote to report such bill to the legislative council. Such greater number shall not exceed one bill or other measure per member. These bills shall be exempt from any applicable bill limit imposed on the individual committee members sponsoring such bills if the bills have been approved by the legislative council no later than October 15 ~~2001~~ IN EVEN-NUMBERED YEARS AND NOVEMBER 15 IN ODD-NUMBERED YEARS.

**SECTION 3. Repeal.** 37-98-104, Colorado Revised Statutes, is repealed as follows:

**37-98-104. Repeal of article.** ~~This article is repealed, effective July 1, 2002.~~

**SECTION 4. 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.

DRAFT

Bill A

Colorado Legislative Council Staff

STATE  
FISCAL IMPACT

**Drafting Number:** LLS 02-0115  
**Prime Sponsor(s):** Rep. White  
Sen. Taylor

**Date:** October 4, 2001  
**Bill Status:** Water Legislation Review  
Committee  
**Fiscal Analyst:** Steve Tammeus (303-866-2756)

**TITLE:** CONCERNING THE CREATION OF A PERMANENT WATER RESOURCES REVIEW COMMITTEE OF THE COLORADO GENERAL ASSEMBLY.

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

**Summary of Legislation**

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

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

**State Expenditures**

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

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

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

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

**State Appropriations**

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

**Departments Contacted**

Legislative Council

Legislative Legal Services

Natural Resources

**Bill B**

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**HOUSE SPONSORSHIP**

Entz, Isgar and Taylor

**SENATE SPONSORSHIP**

Rippy, Hodge, Hoppe, Tapia, and White

---

**A BILL FOR AN ACT**

CONCERNING THE RECONCILIATION OF INCONSISTENT STATUTORY PROVISIONS  
REGARDING THE QUALIFICATIONS OF ELECTORS FOR IRRIGATION  
DISTRICTS.

---

**Bill Summary**

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

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

---

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

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

**37-42-106. Notice of organization meeting and election.** (2) At all elections held under the provisions of this article, every owner of agricultural land within said district ~~over the age of twenty-one~~ WHO IS EIGHTEEN years OF

AGE OR OLDER, ~~who~~ is a citizen of the United States or has declared his OR HER intention to become a citizen of the United States, ~~and~~ is a resident of the state of Colorado, and has paid real property taxes upon the property located within said district on an area in excess of one acre during the year preceding the date of said election if a resident of the district or on an area of forty acres or more if a resident of the state outside the district or who is an entryman upon public lands of the United States and is residing thereon, shall be entitled to vote at such election in the precinct where he OR SHE resides or, if a nonresident of the precinct, in the precinct within which the greater portion of his OR HER land is located. Any person so qualified to vote, and who resides in any county into which said district extends, is eligible for election as a director in and for the division in such district in which he OR SHE is entitled to vote. All lands platted or subdivided into residence or business lots shall not be considered agricultural land.

**SECTION 2.** 37-43-101, Colorado Revised Statutes, is amended to read:

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

United States and is residing thereon. Any landowner shall be eligible to election as a director of the district in which he THE LANDOWNER is entitled to vote.

**SECTION 3. Repeal.** 37-43-104, Colorado Revised Statutes, is repealed as follows:

**37-43-104. Qualifications of directors and electors.** ~~Any provision in articles 41 to 43 of this title to the contrary notwithstanding, and in addition to those persons otherwise qualified to vote and hold office in a district, any elector of the district, as defined in section 37-45-103 (4), shall be eligible to election as a director and shall be entitled to a vote at all elections of the district.~~

**SECTION 4. 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.

DRAFT

Bill B

*Colorado Legislative Council Staff*  
**NO FISCAL IMPACT**

---

**Drafting Number:** LLS 02-0116

**Date:** October 10, 2001

**Prime Sponsor(s):** Sen. Entz  
Rep. Rippy

**Bill Status:** Water Legislation Review  
Committee

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

---

**TITLE:** CONCERNING THE RECONCILIATION OF INCONSISTENT STATUTORY PROVISIONS REGARDING IRRIGATION DISTRICTS.

**Summary of Assessment**

This bill lowers the minimum age for irrigation district electors from 21 years to 18 years and repeals the provision that allows electors under the "Water Conservancy Act" to be eligible to be a director and an elector for irrigation districts. The bill will become effective upon signature of the Governor.

This bill will not affect state or local government revenue or expenditures.

**Departments Contacted**

Local Affairs

**Bill C**

---

**HOUSE SPONSORSHIP**

Rippy, Hodge, Hope, Tapia, and White

**SENATE SPONSORSHIP**

Taylor, Entz, and Isgar

---

**A BILL FOR AN ACT**

CONCERNING AN INCREASE IN THE AMOUNT OF MONEYS IN THE SPECIES  
CONSERVATION TRUST FUND, AND MAKING AN APPROPRIATION IN  
CONNECTION THEREWITH.

---

**Bill Summary**

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

**Water Resources Legislation Review Committee.** Appropriates \$10,000,000 from the general fund to the species conservation trust fund to be used for purposes consistent with the creation of the species conservation trust fund.

---

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

**SECTION 1. 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, 2002, the

sum of ten million dollars (\$10,000,000), or so much thereof as may be necessary, to be used for purposes consistent with the creation of the species conservation trust fund.

**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.



DRAFT

Bill C

Colorado Legislative Council Staff

STATE  
FISCAL IMPACT

**Drafting Number:** LLS 02-0114  
**Prime Sponsor(s):** Rep. Rippey  
Sen. Taylor

**Date:** November 30, 2001  
**Bill Status:** Water Resources Legislation  
Review Committee  
**Fiscal Analyst:** Steve Tammeus (303-866-2756)

**TITLE:** CONCERNING AN INCREASE IN THE AMOUNT OF MONEYS IN THE SPECIES CONSERVATION TRUST FUND, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2002/2003	FY 2003/2004
<b>State Revenues</b>		
General Fund		
Cash Fund	\$10,000,000	
<b>State Expenditures</b>		
General Fund (Transfer)	\$10,000,000	
<b>FTE Position Change</b>	0.0 FTE	0.0 FTE
<b>Other State Impact:</b> None		
<b>Effective Date:</b> Upon signature of the Governor		
<b>Appropriation Summary for FY 2002/2003:</b> Transfers \$10 million from the state General Fund to the Species Conservation Trust Fund.		
<b>Local Government Impact:</b> None		

**Summary of Legislation**

This bill appropriates \$10,000,000 for FY 2002-03 from the state General Fund to the Species Conservation Trust Fund to be used for purposes consistent with the creation of the trust fund.

**State Expenditures**

House Bill 98-1006 created the Species Conservation Trust Fund and appropriated \$10 million from other state funds to the trust fund for species recovery programs in Colorado. In FY 1999-2000, an additional \$5 million was appropriated to the trust fund. To the maximum extent possible only the investment earnings of the trust fund, may be used for administrative, non-capital,

## **Bill C**

and capital expenditures, including property acquisition and project construction. The trust fund balance on June 30, 2002, is estimated to be \$14,623,974.

Under the supervision of the Department of Natural Resources, the programs are recuperating species that are federally listed as threatened or endangered under the Endangered Species Act. The programs are also preventing other species from declining to a point that warrants federal listing. Current law requires the department to develop an annual listing of eligible programs which must be reviewed and adopted by the General Assembly by joint resolution prior to the expenditure of any funds.

This bill appropriates an additional \$10 million from the state's General Fund to the Species Conservation Trust Fund for FY 2002-03, which will increase the trust fund principal to \$24,623,974 on July 1, 2002. Based upon an average annual investment earnings rate of 4.75 %, a total of \$1,169,639 will be available for annual expenditure.

### **State Appropriations**

This bill will require an appropriation of \$10,000,000 from the state General Fund to the Species Conservation Trust Fund for FY 2002-03.

### **Departments Contacted**

Natural Resources

# APPENDIX A

## LETTERS FROM COMMITTEE

## COLORADO GENERAL ASSEMBLY

EXECUTIVE COMMITTEE  
 Sen. Stan Matsunaka, Chairman  
 Rep. Doug Dean, Vice Chairman  
 Sen. John Andrews  
 Rep. Dan Grossman  
 Rep. Lola Spradley  
 Sen. Bill Thiebaut



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 Rep. Jennifer Veiga

STAFF  
 Charles S. Brown, Director  
 Daniel Chapman, Assistant Director,  
 Administration  
 Deborah Godshall, Assistant Director,  
 Research

## LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL  
 DENVER, COLORADO 80203-1784

E-mail: lcs.ga@state.co.us

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

October 23, 2001

Secretary Gale Norton  
 Department of the Interior  
 1849 C Street, NW  
 Washington, DC 20240

Dear Secretary Norton:

The undersigned members of the Water Legislation Review Committee of the Colorado General Assembly are writing to express our grave concern with the quantification of reserved water rights claims filed by the National Park Service (Park Service) related to the Black Canyon of the Gunnison National Park (Black Canyon). This filing poses a serious threat to Colorado's compact apportioned water and the ability of present and future generations to use it.

In 1978, the Water Court in Division Five decreed a federal reserved right for the Black Canyon of the Gunnison National Monument and directed the National Park Service to quantify that right. Now, nearly a quarter of a century later, the Park Service is pursuing an egregious quantification based, in part, on the premise that trees along the Gunnison River are a blight on the Black Canyon!

This claim, filed in the last days of the previous Administration, would cause severe harm to gold medal trout water, power production, recreation, irrigation and even cause flooding in the towns of Delta and Grand Junction. Some 383 Statements of Opposition to the quantification were filed in water court, including three by State agencies – the Colorado Water Conservation Board, Division of Water Resources, and Division of Wildlife.

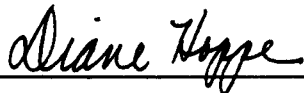
The Water Legislation Review Committee supports full resolution of these issues within the next two and one-half years. The Bureau of Reclamation, to our disappointment, estimates it will take eighteen months to complete new modeling of the Aspinall Unit. The Colorado Water Conservation Board has undertaken similar modeling efforts that will be completed in a much shorter time. We urge you to see that the Department of Interior works closely with the State on modeling and information sharing so that this process may come to a successful conclusion for all parties. To do this, it is imperative that the Park Service share all technical information upon which their claims are based with the State of Colorado.

We encourage the U.S. Department of Interior and the Colorado Department of Natural Resources to pursue coordinated settlement negotiations as soon as possible. We expect nothing less than all of Colorado's compact water to be protected. After waiting 23 years to quantify this reserved right, we question the importance of these claims to the Department of Interior. Had a Colorado water user acted similarly, many would argue for a priority date equal to the filing for quantification. We encourage the State of Colorado to take a similar position in this case. Such a position will protect existing and conditional water rights of vital importance to the future of this State.

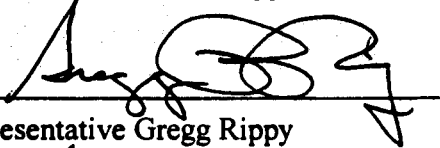
The Aspinall Unit presents a singular opportunity to meet the water, power and environmental needs of Coloradans and the National Park Service. This innovative combination of three reservoirs can provide this effective balance. We urge the U.S. Department of Interior to work with State of Colorado to do just that.

Thank you for your careful consideration of this important issue. We look forward to working with you and your staff.

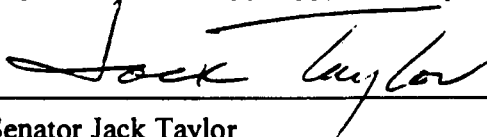
Sincerely,



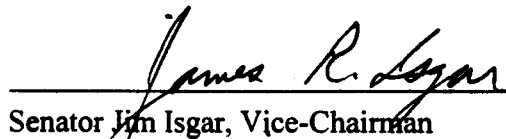
Representative Diane Hoppe, Chairman



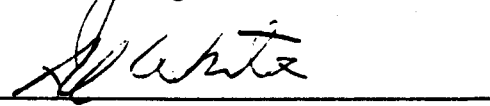
Representative Gregg Rippy



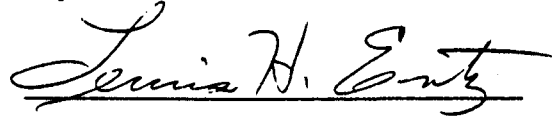
Senator Jack Taylor



Senator Jim Isgar, Vice-Chairman



Representative Al White



Senator Lewis Entz

c: Mr. Bennett Raley, Assistant Secretary for Water and Science

# COLORADO GENERAL ASSEMBLY

**EXECUTIVE COMMITTEE**  
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Sen. John Andrews  
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Rep. Lola Spradley  
Sen. Bill Thiebaut



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Daniel Chapman, Assistant Director,  
Administration  
Deborah Godshall, Assistant Director,  
Research

## LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL  
DENVER, COLORADO 80203-1784  
E-mail: [lcs.ga@state.co.us](mailto:lcs.ga@state.co.us)

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

September 6, 2001

Ms. Gail Kimbell  
Forest Supervisor, U.S. Forest Service  
Pike/San Isabel National Forests  
1920 Valley Drive  
Pueblo, CO 81002

Dear Ms. Kimbell:

The Water Legislation Review Committee of the Colorado General Assembly has reviewed the ongoing process of Wild and Scenic designation of the South Platte River and its North Fork. The Committee is concerned that a federal designation may have the effect of usurping invaluable existing uses on the river and local land use decisions adjacent to it. Therefore, the Committee opposes a Wild and Scenic designation on this stretch of the river and urges the U.S. Forest Service to accept the South Platte Protection Plan as a locally crafted and more protective alternative to federal designation.

As you know, it is vital to the interests of Colorado to maintain flexibility in water operations along the South Platte River and its tributaries to meet all existing and future needs, including those of recreation and municipal water supply. Interested parties have developed a South Platte Protection Plan that is calculated to meet resource protection concerns raised during the Wild and Scenic River Study. Parties to this cooperative effort have pledged continuing support, including monetary support, to assure the identified use and habitat issues are addressed, as well as making certain private property participation occurs on a voluntary basis.

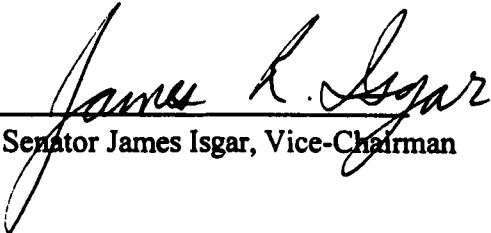
The Committee also urges the Forest Service to end its "suitability" portion of the Wild and Scenic River Study. It does not appear as if a Wild and Scenic designation is a viable alternative to the South Platte Protection Plan that enjoys widespread support. The Forest Service should welcome the Protection Plan as a template for future federal concerns involving public-private stewardship of shared resources.

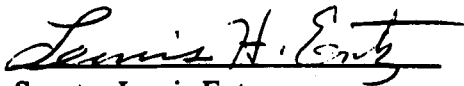
For the many reasons we have listed, the Committee asks the Forest Service to enter into the Protection Plan partnership to ensure a successful response to the identified needs of the South Platte River and to the citizens who use and respect this critical waterway.

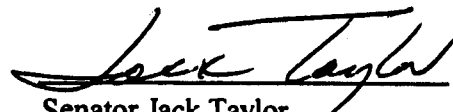
Ms. Gail Kimbell  
Page 2

Sincerely,

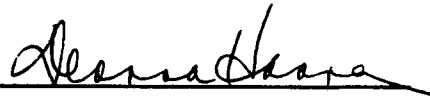
  
\_\_\_\_\_  
Representative Diane Hoppe, Chairman

  
\_\_\_\_\_  
Senator James Isgar, Vice-Chairman

  
\_\_\_\_\_  
Senator Lewis Entz

  
\_\_\_\_\_  
Senator Jack Taylor

  
\_\_\_\_\_  
Representative Mary Hodge

  
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Senator Deanna Hanna

  
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Representative Gregg Rippe

  
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Representative Abel Tapia

  
\_\_\_\_\_  
Representative Al White

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# COLORADO GENERAL ASSEMBLY

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

September 21, 2001

Ms. Christy Todd-Whitman, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Ms. Gale Norton, Secretary  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Ms. Ann Veneman, Secretary  
Department of Agriculture  
14<sup>th</sup> Street and Independence Ave., S.W.  
Washington, D.C. 20250

Dear Mmes. Todd-Whitman, Norton and Veneman:

The Water Legislation Review Committee of the Colorado State Legislature is holding a number of public hearings this summer and fall in an attempt to gain a better understanding of issues related to the protection, development and use of water resources within the state. As you are undoubtedly aware, Colorado is primarily an arid environment, especially with reference to our major population centers. Hence, the diversion and storage of water in times of abundance is necessary to meet demands throughout the year.

It appears from our discussions to date and a review of published material that the U.S. Environmental Protection Agency, along with other federal agencies, such as the U.S. Forest Service and the U.S. Fish and Wildlife Service, are advocates of a "watershed approach" to water quality protection. Hopefully, this approach would allow entities within the state to meet water quality standards and maintain designated beneficial uses, while continuing to supply water for traditional agricultural, industrial and municipal demands. However, some recent agency initiatives, most notably those begun under the Clinton Administration, though well-intentioned may prove counter-productive if implemented as proposed. In any event, their implementation will certainly strain already limited state resources. These initiatives include the Total Maximum Daily Load (TMDL) program, nutrient criteria, and biocriteria. In addition, the Committee is concerned about the Forest Service instream flow protection strategy document published late last year, as well as the future operation of both private and federal (Bureau of Reclamation) water projects in light



Ms. Christy Todd-Whitman  
Ms. Gale Norton  
Ms. Ann Veneman  
September 21, 2001  
Page 2

of federal Endangered Species Act consultation requirements. A brief description of our concerns follows.

1. **TMDLs:** The Committee is pleased that EPA has decided to propose an 18-month delay in implementing the rules adopted in July, 2000, and it welcomes the anticipated dialogue amongst interested stakeholders prior to publication for comment of a new proposed rule. We hope that your discussions will include the following topics, as they bear upon our continued ability to maintain our existing water supply infrastructure and to build new needed water delivery and reuse systems.

- There should not be a requirement to “list” waterbodies impaired solely by “pollution,” which would allegedly encompass hydrologic modifications, as compared to “pollutants.”
- A waterbody should not be listed as impaired where there has been a change in use since November, 1975 as a consequence of the lawful diversion/storage of water and its placement to beneficial use.
- TMDLs should not be implemented through the use of biocriteria or biological assessments which fail to take into account and accommodate the impacts of the beneficial diversion and storage of water resources.
- TMDLs should not result in mandated minimum stream flows or lake levels, even when such flow regimes are related to “pollutant” concentrations, such as those for sediment or heat.
- EPA should heed the recent National Academy of Sciences admonition that reservoirs and other waterbodies created by human action cannot be assessed using a “pristine” or “minimally disturbed” reference site concept and that the restoration of waterbodies lacking integrity is not, in all instances, “either possible or desirable.” In fact:

A waterbody that is described as lacking “biological integrity” should not be assumed to be in a less-than-desirable state. Rather, when a bioassessment finds that a waterbody diverges from integrity, there must be a social decision about whether that diversion is acceptable.

2. **Nutrient Criteria:** While acknowledging that there may be a need, in certain circumstances, for the regulation of nutrients such as phosphorous and nitrogen, the Committee is disappointed that EPA felt it necessary to issue “criteria” and indicate a deadline for state adoption thereof, rather than technical “guidance” for states to utilize as they deem fit. Significant shortcomings in the nutrient criteria, as previously pointed out by others, including the Association of Metropolitan Sewerage Agencies (AMSA) had the Western Coalition of Arid States (WESTCAS), include:

- EPA acknowledges in its criteria document that “a comprehensive understanding of nutrient and algal dynamics within all types of stream systems is beyond the current state of scientific knowledge,” yet it proceeded to finalize the document.

- There does not appear to be any attempt to correlate the numeric indicator measurements with the designated uses, e.g., does nitrogen level x actually harm (or help) the existing fishery.
- Use of the “reference stream” concept in conjunction with a “percentile method” for determining impairment will inevitably lead to a finding of water quality degradation, even where it may not truly exist. Parenthetically, it should be noted that it is extremely difficult to find appropriate “reference streams” in states where water flows have been manipulated by man for over 100 years.
- The suggested narrative criteria are extremely stringent when compared to background levels in many geographic locations, especially with reference to reservoirs found in the “plains” environment of the West. The criteria are also much more stringent than typical effluent limits.

**3. Talent Irrigation District Decision:** Colorado has many irrigation canals and ditches which, of necessity, must be periodically treated for weed control if they are to continue to serve their intended function. We also have lakes and reservoirs that are used as drinking water supplies and may be periodically treated to control algae growth. Point source discharge permits have not generally been sought prior to such applications. Thus, we are quite disturbed by the potential implications of the recent Ninth Circuit ruling in the Talent Irrigation District case. EPA’s decision to refrain from enforcement in such instances until the end of this year as it attempts to fashion a workable solution was a welcome step in the right direction. However, this does not insulate entities from third party actions. The Committee would like to see a determination that such “beneficial” uses of herbicides and pesticides in accordance with label directions does not constitute the point source discharge of a pollutant for which a permit would be necessary. If EPA, nevertheless, decides that some type of permit is required, the Committee believes that a “general permit” which acknowledges that compliance with label application requirements is an appropriate BMP is the only reasonable option. In any event, states must be given flexibility to address site-specific situations as they believe appropriate.

**4. Biological Criteria:** The majority of technical documents and rule proposals emanating from the EPA in the last few years, including the ANPRM proposal of a few years ago and EPA’s: *Water Quality Standards-Priorities for the Future* document, have stressed the need for the development and use of biological metrics both as independent water quality standards and as tools for the measurement of compliance with “use protection” goals. While such an approach has merit in the context of watershed protection, this approach must acknowledge: (i) the “man-made” nature of many Western ecosystems; (ii) the unavoidable impacts associated with water delivery and storage activities; and (iii) rights to water as granted under state law. Once again, it is imperative that federal

Ms. Christy Todd-Whitman  
Ms. Gale Norton  
Ms. Ann Veneman  
September 21, 2001  
Page 4

agencies defer to state implementation decisions. On a related note, to the extent biological criteria are employed by a state, EPA should reconsider its policy of independent applicability and acknowledge that a healthy ecosystem is the best measure of water quality compliance.

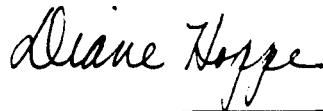
**5. Forest Service Instream Flow Protection Strategy:** In November of last year, the USFS issued a memorandum addressing "Water for the National Forests and Grasslands." This document emphasized a watershed approach and spoke in terms of protecting "valuable aquatic habitat and public uses of the waterbody." Forest plans are to reflect "instream flow" needs, with the Forest Service exploring ways in which to exercise control over flow regimes so as to acquire water rights under state law for what amounts to "instream flow" purposes. Once again, while the Committee is not opposed to the protection and wise use of our national resources as found on public lands, this objective cannot and should not be a basis to employ existing permit authorities to impose "bypass flows" on permittees, thereby undermining state water law and rights obtained thereunder. The only workable approach is one which respects state water law, including an acknowledgment that only the Colorado Water Conservation Board can hold instream flows within Colorado, while working toward a cooperative approach to resource management.

**6. ESA Consultation Requirements:** It should go without saying that the recent "train wreck" in the Klamath River Basin over water for fish versus water for farmers is something which needs to be avoided at all costs in the future. In Colorado, we have worked cooperatively with all interested parties in fashioning a Colorado River Recovery Program and accompanying Biological Opinion which hopefully meets the needs of all involved. Our experience on the South Platte River has not been as fruitful to date. In any event, the Committee is concerned over our citizen's continued ability to meet even existing water delivery obligations in river reaches where threatened or endangered species may be found. This is especially true in view of recent court pronouncements that annual operating plans on Bureau facilities may be subject to consultation requirements. Though there has also been a judicial decision indicating that if such consultations result in a "taking" of water due contract beneficiaries, just compensation must be paid, in reality there is often no substitute for the "wet water" that municipal and agricultural interests are depending upon to meet their needs. Our concerns are deepened when we review the recent MOA between EPA, USFWS and NMFS (66 Fed. Reg. 11201) which calls for a "national rulemaking" to address the relationship between water quality standards, species and species habitat. This document also references the development of "biocriteria" and other new national criteria including "wildlife criteria." If such initiatives do not afford due deference to site-specific conditions, competing water demands, and state water laws, another train wreck could be on the way.

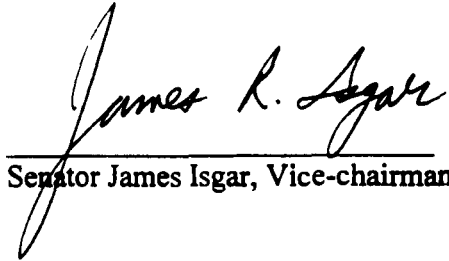
The Committee appreciates your attention to these matters. We hope that you keep us, our state regulators, and our regulated community in mind as you proceed forward. We stand ready to assist in fashioning workable solutions to these difficult problems.

Ms. Christy Todd-Whitman  
Ms. Gale Norton  
Ms. Ann Veneman  
September 21, 2001  
Page 5

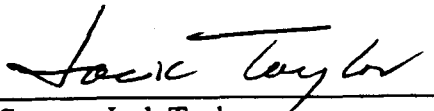
Sincerely,



Representative Diane Hoppe, Chairman



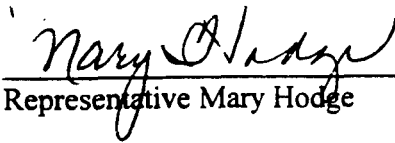
Senator James Isgar, Vice-chairman



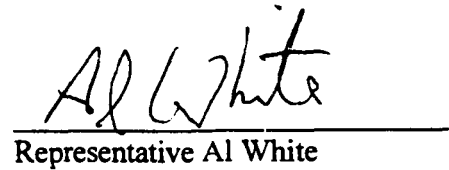
Senator Jack Taylor



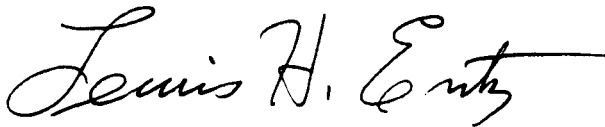
Representative Gregg Rippe



Representative Mary Hodge



Representative Al White



Senator Lewis Entz

cc: Governor Bill Owens  
Senator Wayne Allard  
Senator Ben Nighthorse Campbell  
Congresswoman Diana DeGette  
Congressman Joel Hefley  
Congressman Scott McInnis  
Congressman Bob Schaffer  
Congressman Tom Tancredo  
Congressman Mark Udall