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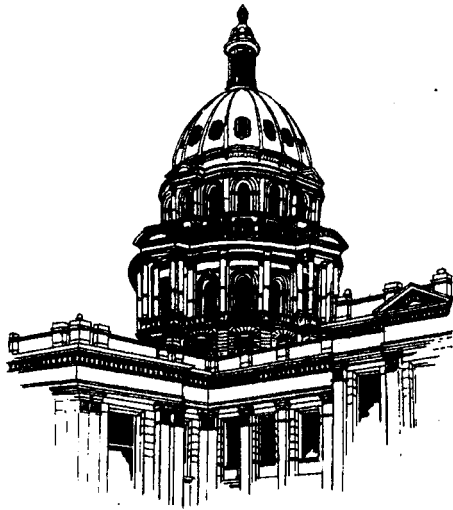
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Water Resources

Review Committee

Report to the
COLORADO
GENERAL ASSEMBLY

Colorado Legislative Council
Research Publication No. 521
December 2003

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December 2003

To Members of the Sixty-fourth General Assembly:

Submitted herewith is the final report of the Water Resources Review Committee. This committee was created pursuant to Article 98 of Title 37, Colorado Revised Statutes. The purpose of the committee is to oversee the conservation, use, development, and financing of Colorado's water resources.

At its meeting on November 17, 2003, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2004 session was approved.

Respectfully submitted,

/s/ Senator John Andrews
Chairman

JA/DB/mg

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WATER RESOURCES REVIEW COMMITTEE

Members of the Committee

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Chairman

Senator Jim Dyer

Senator Jim Isgar

Senator Abel Tapia

Senator Jack Taylor

Representative Diane Hoppe

Vice-Chairman

Representative Carl Miller

Representative Greg Rippey

Representative John Salazar

Representative Al White

Legislative Council Staff

David Beaujon

Research Associate

Scott Grosscup

Research Associate

Office of Legislative Legal Services

Thomas Morris

Senior Staff Attorney

EXECUTIVE SUMMARY

Committee Charge

Section 37-98-102, C.R.S., creates the Water Resources Review Committee for the purposes of contributing to and monitoring the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state. The committee is authorized to review and propose legislation in furtherance of its purposes. In conducting its review, the committee is required to consult with experts in the field of water conservation, quality, use, finance, and development. The committee is authorized to meet up to eight times in 2003, including up to two times outside of the interim period, and take up to two field trips in connection with its mandate.

Committee Activities

Last year's record drought caused many water providers to review the adequacy of water supplies and led the General Assembly to enact several new water laws. The committee focused much of its energy on understanding local water supply challenges and proposed solutions. At the six scheduled meetings, the committee received briefings from state and local government entities. It also received briefings from regional entities including the Northwest Council of Governments, Club 20, Action 22, and Progressive 15.

Water suppliers across the state are considering alternatives to protect against future droughts while providing water to address projected population growth. The committee heard testimony from Denver Water, City of Aurora Utilities, and Colorado Springs Utilities about projected water demand and proposed water supply solutions. The committee also heard from regional entities, such as the Northwest Colorado Council of Governments and the Colorado River Water Conservation District regarding the effect of water exports on Colorado River Basin communities and concerns about additional water exports to satisfy growing front range municipalities.

The Colorado General Assembly enacted several new water laws in 2003 including stricter well regulations in the South Platte River Basin, and new or significantly increased water fees to offset General Fund reductions. It also required two major water supply studies. State officials from the Department of Agriculture, Division of Water Resources, and Colorado Water Conservation Board briefed the committee about the implementation of these laws, the drought situation, and progress on the water supply studies. The committee also received briefings from the Colorado Department of Natural Resources concerning its organizational and budgetary review called the Core Mission Project.

The committee also took two tours. It visited portions of four of the state's seven major river basins to learn about water resources and uses in each basin and to hear about water

supply challenges and concerns. In August, the committee went on a four-day tour of the Upper Gunnison, the Rio Grande, and the Upper and Lower Arkansas River basins. In September, the committee toured the Upper Colorado River Basin for two days and visited major water storage and transport facilities in Summit and Grand counties. The committee then held a public meeting in the town of Winter Park and considered legislative proposals.

In addition to the five bills recommended by the committee, a proposal to increase the state's sales tax for the protection of water and other natural resources was presented to the committee but not acted upon. A similar proposal was considered in 2002 but not recommended by the committee.

Committee Recommendations

Bill A — Authorization for Loans of Agricultural Irrigation Water Rights. Bill A authorizes the owner of a decreed agricultural irrigation water right to loan all or part of the water right to another owner of a water right on the same stream or to the Colorado Water Conservation Board for its instream flow program for up to 180 days. Loans may be approved once notice is provided to parties on the substitute water supply plan notification list and the division engineer determines that the loan does not cause material injury to other water rights or affect Colorado's compact entitlements.

Bill B — Senate Confirmation of Membership of Certain Boards Involved with Water Resources. Bill B provides that the term of board members for the Colorado Water Conservation Board (CWCB) and the Colorado Water Resources and Power Development Authority (CWRPDA) continues until a successor is appointed, qualified, and confirmed. It also specifies that when the Senate is in session, no person appointed to either the CWCB or the CWRPDA may take the position until confirmed by the Senate. The bill requires the governor to make vacancy appointments within 30 days of any vacancy, not just in the event of a resignation or death.

Bill C — Voting Rights of Ex Officio Members of the Colorado Water Conservation Board. Bill C changes the Executive Director of the Department of Natural Resources from a voting member of the Colorado Water Conservation Board to a nonvoting member.

Bill D — Mitigate the Effects on the Water Basin of Origin of a Diversion of Water from a Water Basin. Bill D requires a water judge granting a decree to divert water from one basin to another to include in the decree conditions ensuring that the prospective beneficial uses of water in the division exporting the water will not be impaired or increased in cost. Applicants for the transfer must provide a water supply and demand plan that includes reasonable alternatives to the export. Applicants who enter into an enforceable mitigation agreement with the appropriate water conservation district or conservancy district are exempt from the bill's requirements.

Bill E — Proxy Voting by Members of the Colorado Water Conservation Board. Bill E prohibits members of the Colorado Water Conservation Board from voting by proxy.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Section 37-98-102, C.R.S., creates the Water Resources Review Committee. The committee is composed of five members from the House of Representatives and five members from the Senate. Up to eight meetings, two of which may be held during the legislative session, and no more than two field trips are authorized to meet the purposes of the statute.

The committee is charged with contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and reviewing and proposing water resources legislation. The committee is to meet with experts in the field of water conservation, quality, use, finance, and development in furthering its charge.

COMMITTEE ACTIVITIES

Implementation of New Water Laws

In efforts to deal with the drought of 2003, the Colorado General Assembly enacted several water related legislative proposals. To prepare for projected population growth and additional water needs, the state has undertaken several studies to determine the availability of future water supplies.

Implementation of Legislation. Staff from the Colorado Department of Natural Resources and the Division of Water Resources provided updates on the implementation of legislation enacted by the General Assembly in 2003. The State Engineer is in the process of developing rules and regulations for the bills relating to approval of temporary interruptible water supply agreements and well inspectors. Legislation was also enacted in 2003 that allows the State Engineer to approve temporary substitute water supply plans and water transfers pending in water court.

Another bill requires wells without a court-approved augmentation plan to file a plan prior to January 1, 2006 or be curtailed. During the summer of 2003, over 800 wells in the South Platte River Basin were required to stop pumping because they were without approved augmentation plans. To date, a small number of the affected well owners have filed plans with the State Engineer and with the water court. The committee heard testimony on the effects of the new law on water users within the South Platte River Basin and received several recommendations for its modification but none were acted upon.

The committee also heard testimony regarding the Colorado Water Resources and Power Development Authority's (CWRPDA) increased loan capacity and subsidization of issuing bonds for water projects. The CWRPDA is also authorized to enter into agreements with governmental agencies, however, these agencies have generally not sought funding from the CWRPDA for raw water storage projects.

Statewide Water Supply Initiative. Legislation enacted in 2003 authorized the Colorado Water Conservation Board to conduct a statewide study of existing water supplies and future needs in Colorado. On several occasions, staff from the Department of Natural Resources briefed committee members on the status of the study. The Statewide Water Supply Initiative (SWSI) is a series of meetings around the state that brings together members from the public to exchange ideas, review water supply data, and help guide the future development of water in the particular region or river basin. In trying to develop consensus within the state and particular river basins, the SWSI will take inventories of water supplies and needs, identify options to satisfy needs and fill gaps, and will then develop strategies to satisfy the options. The project is expected to be completed in November of 2004.

Colorado River Return Reconnaissance Study. Another study authorized by the General Assembly in 2003 was a reconnaissance study for the Colorado River Return Project. The study looked at the feasibility of taking water from the Colorado River near the Utah border and through a system of pumps and reservoirs moving it upstream to where it could be used by west slope interests and front range communities. Using several different routes and pumping scenarios, the study estimates costs for the project to total from \$3 billion to \$15 billion for construction costs with additional yearly operating costs. The study also identified a number of environmental hurdles that would need to be addressed including water quantity for endangered species and quality in those places that would receive the water. The study did not determine the amount of unappropriated water available in the Colorado River Basin.

Drought

A major winter storm in March of 2003 brought relief to parts of the state from its most significant drought in recorded history. Irrigators and communities on the South Platte River system benefitted most from the storm and many of the reservoirs filled to capacity and several front range communities eased or removed water restrictions that were imposed on customers. As of October 1, 2003, statewide reservoir storage was at 74 percent of average, 153 percent higher than last year at the same time. However, several river basins including the Rio Grande, Gunnison, Arkansas, and Dolores were below the statewide average with the Rio Grande Basin having 35 percent of the average storage levels, less than what it was at the same time in the previous year.

The committee toured the Gunnison, Rio Grande, and Arkansas River basins and saw some of the impacts the drought was having on farmers, ranchers, and communities in the river basins. In the San Luis Valley, the committee met with water users to discuss the declining levels in the unconfined aquifer and how farmers are voluntarily drying-up portions of their land to reduce water usage as well as create a new water district to manage ground water resources. In the Arkansas River Valley the committee saw how farmers and ranchers are working with the city of Aurora to transfer water from the Highline Ditch to Aurora and revegetate lands with native grasses. The committee also learned about agreements reached between the federal government and the state to ensure that water continues to flow through the Black Canyon of the Gunnison and that owners of water rights are kept whole in times of shortages.

Recommendation. The committee recommends Bill A which allows owners of decreed agricultural irrigation water rights to loan all or part of the water right to another owner of a water right on the same stream or to the Colorado Water Conservation Board for its instream flow program. Loans may be approved once notice is provided to parties on the substitute water supply plan notification list and the division engineer determines that the loan does not cause material injury to other water rights or affect Colorado's compact entitlements.

Water Supply Issues and Impacts from Out-of-Basin Water Transfers

Approximately 80 percent of the rain and snow falls in Colorado west of the Continental Divide. Water providers have constructed transmountain diversions to move the west's more abundant water supply to more populous east slope communities. For example, the Colorado-Big Thompson Project moves approximately 250,000 acre feet annually from the Upper Colorado River Basin to farms and cities in the South Platte River Basin. The committee heard testimony from Denver Water, the City of Aurora, the Douglas County Water Resource Authority, and other east slope water providers about their growing water demands and potential water supply alternatives including additional transmountain diversions. It also heard testimony from growing west slope communities about their increased need for municipal and recreational water resources and the need for improved drought protections for irrigators.

Communities in the Upper Colorado and Upper Gunnison River basins expressed concern about the impact of additional transmountain diversions. For example, approximately 60 percent of the natural flow in Grand County and 25 percent of the natural flow in Summit County is transferred to the east. Communities in the basins expressed concern that additional transmountain diversions will limit growth in the basin of origin, increase water treatment costs, limit recreational opportunities, and impact the environment. The committee also heard testimony about the impacts of water transfers from farms to municipalities in the Lower Arkansas River Basin including lost economic opportunity, reduced water quality, and the spread of weeds on lands affected by water transfers. The committee toured areas impacted by such transfers and learned about the City of Aurora's program to mitigate impacts to lands and communities affected by water transfers to the city. The committee also learned about the formation of a conservancy district to raise money to purchase agricultural water rights to keep the water in the Lower Arkansas River Basin.

Recommendation. The committee recommends Bill D which would require a water judge granting a decree for a transbasin diversion to include conditions ensuring that the prospective beneficial uses of water in the basin of origin will not be impaired or increased in cost. Applicants for the transfer must provide a water supply and demand plan that includes reasonable alternatives to the export. Applicants who enter into an enforceable mitigation agreement with the appropriate water conservation district or conservancy district are exempt from the bill's requirements.

Overview of State Water Agencies

Water agencies. Water policy, planning, and financing are conducted by several state agencies. Each agency is provided with certain responsibilities in managing Colorado's water resources. For example, the Division of Water Resources administers water rights, the Colorado Water Conservation Board finances certain water projects and conducts water supply planning, and the Colorado Water Resources and Power Development Authority also

provides financing for water projects. The CWCB and the CWRPDA are governed by a board of directors who are appointed by the Governor and approved by the Senate. The committee considered the role of the various agencies in meeting the state's water needs.

Core Mission Project. The Department of Natural Resources presented the committee with information regarding its Core Mission Project. The project, undertaken with the assistance of an outside consultant, reviewed the products and services offered by the department with a goal of eliminating duplication and increasing efficiency to address recent state budget cuts. The department hired the consultant on a contingency fee-based contract where the consultant receives a percentage of any savings realized as a result of implementation of any of the recommendations. The department presented the results of the project to the committee.

Recommendation. The committee recommends Bills B, C, and E to provide additional limitations on the membership of the CWCB and the CWRPDA. Bill B provides that no person appointed by the Governor to a vacancy on the CWCB and the CWRPDA while the Senate is in session may take office until confirmed by the Senate. Bill C changes the executive director of the Department of Natural Resources from a voting to a non-voting ex officio member of the CWCB. Bill E prohibits members of the CWCB from voting by proxy.

Water Quality

House Bill 02-1344 required the Water Quality Control Division to conduct a study to determine the need for, and nature of, any modifications of the state's water quality classification system. The study, known as the Section 309 Study, is to examine how Colorado's unique attributes relate to establishing standards for water bodies of the state. The study process identified a wide variety of distinguishing features of Colorado waterbodies, with particular focus upon natural and man-induced variations in the flow regimes, variabilities in habitat and biological diversity, and the impact of effluent returns on otherwise water-short stream systems. An advisory group was formed to develop information and recommendations. The final report was due to the General Assembly on December 1, 2003.

The Water Quality Control Division also provided the committee with an update of the implementation on a new fee-based program and how the division is working with the Environmental Protection Agency on new standards for water quality.

SUMMARY OF RECOMMENDATIONS

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

Bill A — Concerning an Authorization for Loans of Agricultural Irrigation Water Rights

Bill A authorizes the owner of a decreed agricultural irrigation water right to loan all or part of the water right to another owner of a water right on the same stream or to the Colorado Water Conservation Board for its instream flow program for up to 180 days. Loans may be approved once notice is provided to parties on the substitute water supply plan notification list and the division engineer determines that the loan does not cause material injury to other water rights or affect Colorado's compact entitlements. The bill is not anticipated to affect state or local government revenue or expenditures.

Bill B — Concerning Senate Confirmation of Membership of Certain Boards Involved with Water Resources

Bill B provides that the term of board members for the Colorado Water Conservation Board (CWCB) and the Colorado Water Resources and Power Development Authority (CWRPDA) continues until a successor is appointed, qualified, and confirmed. The bill specifies that when the Senate is in session, no person appointed to either the CWCB or the CWRPDA may take office until confirmed by the Senate. It also requires the governor to make vacancy appointments within 30 days of any vacancy, not just in the event of a resignation or death. The bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Bill C — Concerning the Voting Rights of Ex Officio Members of the Colorado Water Conservation Board

Bill C changes the Executive Director of the Department of Natural Resources from a voting member of the Colorado Water Conservation Board to a nonvoting member. The bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Bill D — Concerning the Requirement to Mitigate the Effects on the Water Basin of Origin of a Diversion of Water from a Water Basin

Bill D requires a water judge granting a decree to divert water from one basin to another to include in the decree conditions ensuring that the prospective beneficial uses of water in the division exporting the water will not be impaired or increased in cost. Applicants for the transfer must provide a water supply and demand plan that includes reasonable alternatives to the export. Applicants who enter into an enforceable mitigation agreement with the appropriate water conservation district or conservancy district are exempt from the bill's requirements. The bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Bill E — Concerning a Prohibition on Proxy Voting by Members of the Colorado Water Conservation Board

Bill E prohibits members of the Colorado Water Conservation Board from voting by proxy. The bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

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/2003/03interim.

Meeting Summaries	Topics Discussed
August 7, 2003	Impacts of drought; briefings on new water laws and regional water planning activities.
September 9, 2003	Discussion of ground water and coal bed methane drilling; water supply issues and cooperative agreements for City of Aurora; and uses of the Colorado River.
September 24, 2003	Briefings on <i>Colorado v. Kansas</i> lawsuit; Statewide Water Supply Initiative; Department of Natural Resources' Core Mission project; water quality study; and implementation of SB03-73.
October 8, 2003	Consideration of proposed legislation in Winter Park, Colorado.
October 29, 2003	Update on Department of Natural Resources Core Mission Project and Colorado River Return Project, and finalization of proposed legislation.
November 24, 2003	Discussion of proposed South Metro Conjunctive Use Proposal and implementation of water administration fees program and report on Colorado River Return Study.

Committee Tours	Areas Visited
August 26-29, 2003	Gunnison, Rio Grande, and Arkansas River Valleys
October 7-8, 2003	Upper Colorado River Basin and Summit and Grand Counties

Memoranda and Reports

Colorado River Return Reconnaissance Study Summary Report, Boyle Engineering Corp., November, 2003

Department of Natural Resources Core Mission Project Recommendations, October, 2003

2003 Water Related Legislation, Legislative Council Staff, 2003

Water Rights and Beneficial Use of Coal Bed Methane Produced Water in Colorado, Colorado Division of Water Resources, October 2002

Bill A

SENATE SPONSORSHIP

Isgar, Taylor, and Entz

HOUSE SPONSORSHIP

Salazar, Hoppe, Miller, and Rippy

A BILL FOR AN ACT

**CONCERNING AN AUTHORIZATION FOR LOANS OF AGRICULTURAL
IRRIGATION WATER RIGHTS.**

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 Review Committee. Authorizes an owner of an agricultural irrigation water right to loan such right for up to 180 days to another owner on the same stream, subject to approval by the division engineer and a finding of a lack of material injury to other decreed water rights.

Makes conforming amendments.

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

SECTION 1. 37-83-105 (1), the introductory portion to 37-83-105 (2) (b), and 37-83-105 (2) (b) (III), (2) (b) (V), (2) (b) (VI), and (2) (b) (VII), Colorado Revised Statutes, are amended to read:

37-83-105. Owner may loan water right - agricultural loans - drought loans to Colorado water conservation board for instream flows.

(1) It is lawful for the owners of ditches and water rights taking water from the same stream to exchange with, and loan to, each other, for a limited time, the water to which each may be entitled, for the purpose of saving crops or using the water in a more economical manner, except that the owners making such loan or exchange shall give notice in writing, signed by all the owners participating in said loan or exchange, stating that such loan or exchange has been made and for what length of time the same shall continue, whereupon said division engineer shall recognize the same in his or her distribution of water. SUBJECT TO THE LIMITATIONS OF THIS SUBSECTION (1) AND PURSUANT TO THE PROCEDURES SET FORTH IN PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION, THE OWNER OF A WATER RIGHT DECREED AND USED SOLELY FOR AGRICULTURAL IRRIGATION PURPOSES MAY LOAN ALL OR A PORTION OF THE WATER RIGHT TO ANOTHER OWNER OF A DECREED WATER RIGHT ON THE SAME STREAM SYSTEM AND THAT IS USED SOLELY FOR AGRICULTURAL IRRIGATION PURPOSES FOR NO MORE THAN ONE HUNDRED EIGHTY DAYS DURING ANY ONE CALENDAR YEAR IF THE DIVISION ENGINEER APPROVES SUCH LOAN IN ADVANCE AND THE LOAN DOES NOT CAUSE MATERIAL INJURY TO OTHER DECREED WATER RIGHTS.

(2) (b) In determining whether ~~or not~~ MATERIAL injury will occur, the division engineer shall ensure THAT the following conditions are met:

(III) The proposed use of the loaned water right is for AGRICULTURAL IRRIGATION PURPOSES OR FOR instream flow purposes BY THE COLORADO WATER CONSERVATION BOARD;

(V) The division engineer has given the owners of water rights and decreed conditional water rights fifteen days after the date of mailing of notice under subparagraph (II) of this paragraph (b) to file comments on the proposed loan; except that the division engineer may act on the application immediately after the applicant provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application. Such comments shall include any claim of MATERIAL injury or any terms and conditions that should be imposed upon the proposed loan to prevent MATERIAL injury to a party's water right and any other information the commenting party wishes the division engineer to consider in reviewing the proposed loan.

(VI) The division engineer, after consideration of any comments received, has determined that the operation and administration of the proposed loan will not cause material injury to other DECREED water rights ~~or impact~~ AND FOR LOANS MADE PURSUANT TO SUBSECTION (1) OF THIS SECTION, WILL NOT AFFECT Colorado's compact entitlements. The division engineer shall impose such terms and conditions as are necessary to ensure that these standards are met. In making the determinations specified in this subparagraph (VI), the division engineer shall not be required to hold any formal hearings or conduct any other formal proceedings, but may conduct a

hearing or formal proceeding if the division engineer finds it necessary to address the issues.

(VII) The division engineer shall approve or deny the proposed loan within twenty days after the date of mailing of notice under subparagraph (II) of this paragraph (b), or within five days after the applicant provides evidence that all persons entitled to notice of the application under subparagraph (II) of this paragraph (b) have either consented to or commented on the application, WHICHEVER IS EARLIER.

SECTION 2. Applicability. This act shall apply to loans of agricultural water rights occurring on or after the effective date 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.

DRAFT

Bill A

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 04-0166

Date: November 3, 2003

Prime Sponsor(s): Sen. Isgar
Rep. Salazar

Bill Status: Water Resources Review Committee
Fiscal Analyst: Steve Tammeus (303-866-2756)

TITLE: CONCERNING AN AUTHORIZATION FOR LOANS OF AGRICULTURAL IRRIGATION WATER RIGHTS.

Summary of Assessment

This bill authorizes an owner of an agricultural irrigation water right to loan such right for up to 180 days during any one calendar year to another owner on the same stream, subject to approval by the Division Engineer and a finding of a lack of material injury to other decreed water rights. The bill will become effective upon signature of the Governor.

This bill is not anticipated to affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Departments Contacted

Natural Resources Judicial

Bill B

SENATE SPONSORSHIP

Entz, and Taylor

HOUSE SPONSORSHIP

Hoppe, Miller, Rippy, Salazar and White

A BILL FOR AN ACT

**CONCERNING SENATE CONFIRMATION OF MEMBERSHIP OF CERTAIN
BOARDS INVOLVED WITH WATER RESOURCES.**

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 Review Committee. Requires the governor to make an appointment to the Colorado water conservation board within 30 days after any vacancy. Specifies that no person appointed by the governor to a vacancy on the Colorado water conservation board or the water resources and power development authority occurring while the senate is in session may take office until confirmed by the senate.

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

SECTION 1. 37-60-104 (1), Colorado Revised Statutes, is amended to read:

37-60-104. Personnel. (1) The board shall consist of fifteen members. The executive director of the department of natural resources,

shall be a voting member ex officio. The attorney general, state engineer, director of the division of wildlife, commissioner of agriculture or designee, and director of said board shall be nonvoting members ex officio. The nine remaining members shall be qualified electors of the state, well versed in water matters, and shall be appointed by the governor, BY AND with the consent of the senate, for terms of three years, except that no appointment shall be made that does not conform to the requirements of subsections (3) and (4) of this section. PURSUANT TO SECTION 1 OF ARTICLE XII OF THE STATE CONSTITUTION, UNLESS REMOVED ACCORDING TO LAW, MEMBERS OF THE BOARD SHALL EXERCISE THE DUTIES OF THEIR OFFICE UNTIL A SUCCESSOR IS DULY APPOINTED, QUALIFIED, AND CONFIRMED. PURSUANT TO SECTION 6 (1) OF ARTICLE IV OF THE STATE CONSTITUTION, NO PERSON APPOINTED BY THE GOVERNOR PURSUANT TO THIS SECTION TO A VACANCY OCCURRING WHILE THE SENATE IS IN SESSION MAY TAKE OFFICE UNTIL CONFIRMED BY THE SENATE. The appointments shall be made in such a manner that the terms of three members shall expire on February 12 of each year. In case a ANY vacancy occurs in the appointed membership of the board, ~~by death or resignation~~, the governor shall appoint a successor to serve the unexpired term of any member of the board within thirty days after the creation of such vacancy.

SECTION 2. The introductory portion to 37-95-104 (2) (a) and 37-95-104 (3), Colorado Revised Statutes, are amended to read:

37-95-104. Establishment of authority - board of directors - removal - organization - compensation - dissolution. (2) (a) The powers

of the authority shall be vested in the governing body of the authority which shall be a board of directors consisting of nine members who shall be appointed by the governor, BY AND with the consent of the senate, as follows:

(3) Members of the board shall be appointed for terms of four years; except that, of the original terms commencing October 1, 1981, three members shall be appointed for terms of one year, two members shall be appointed for terms of two years, two members for terms of three years, and two members for terms of four years, at the governor's discretion.

PURSUANT TO SECTION 1 OF ARTICLE XII OF THE STATE CONSTITUTION, UNLESS REMOVED ACCORDING TO LAW, each member shall hold office for the term of his OR HER appointment and until his OR HER successor has been appointed, ~~and has~~ qualified, AND CONFIRMED. PURSUANT TO SECTION 6 (1) OF ARTICLE IV OF THE STATE CONSTITUTION, NO PERSON APPOINTED BY THE GOVERNOR PURSUANT TO THIS SECTION TO A VACANCY OCCURRING WHILE THE SENATE IS IN SESSION MAY TAKE OFFICE UNTIL CONFIRMED BY THE SENATE. A member shall be eligible for reappointment. Any vacancy in the membership occurring other than by expiration of term shall be filled in the same manner as the original appointment but for the unexpired term only.

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.

DRAFT

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 04-0168

Date: November 24, 2003

Prime Sponsor(s): Sen. Entz
Rep. Hoppe

Bill Status: Water Resources Review Committee
Fiscal Analyst: Steve Tammeus (303-866-2756)

TITLE: CONCERNING SENATE CONFIRMATION OF MEMBERSHIP OF CERTAIN BOARDS INVOLVED WITH WATER RESOURCES.

Summary of Assessment

This bill amends the law governing membership of the Colorado Water Conservation Board and the Water Resources and Power Development Authority by:

- requiring the Governor to make an appointment to the Board within 30 days after any vacancy; and
- specifying that no person appointed to a vacancy on the Board or the Authority occurring while the Senate is in session may take office until confirmed by the Senate.

The bill will become effective upon signature of the Governor. This bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Departments Contacted

Natural Resources

Water Resources and Power Development Authority

Bill C

SENATE SPONSORSHIP

Taylor, Entz and Isgar

HOUSE SPONSORSHIP

White, Hoppe and Salazar

A BILL FOR AN ACT

**CONCERNING THE VOTING RIGHTS OF EX OFFICIO MEMBERS OF THE
COLORADO WATER CONSERVATION BOARD.**

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 Review Committee. Changes the executive director of the department of natural resources from a voting to a non-voting ex officio member of the Colorado water conservation board.

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

SECTION 1. 37-60-104 (1), Colorado Revised Statutes, is amended to read:

37-60-104. Personnel. (1) The board shall consist of fifteen members. The executive director of the department of natural resources,

~~shall be a voting member ex officio.~~ The attorney general, state engineer, director of the division of wildlife, commissioner of agriculture or designee, and director of said board shall be nonvoting members ex officio. The nine remaining members shall be qualified electors of the state, well versed in water matters, and shall be appointed by the governor, with the consent of the senate, for terms of three years; except that no appointment shall be made that does not conform to the requirements of subsections (3) and (4) of this section. The appointments shall be made in such a manner that the terms of three members shall expire on February 12 of each year. In case a vacancy occurs in the appointed membership of the board by death or resignation, the governor shall appoint a successor to serve the unexpired term of any member of the board within thirty days after the creation of such vacancy.

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
NO FISCAL IMPACT

Drafting Number: LLS 04-0222

Date: November 3, 2003

Prime Sponsor(s): Sen. Taylor
Rep. White

Bill Status: Water Resources Review Committee
Fiscal Analyst: Steve Tammcus (303-866-2756)

TITLE: CONCERNING THE VOTING RIGHTS OF EX OFFICIO MEMBERS OF THE COLORADO WATER CONSERVATION BOARD.

Summary of Assessment

This bill changes the executive director of the Department of Natural Resources from a voting member to a non-voting ex officio member of the Colorado Water Conservation Board. The bill will become effective upon the signature of the Governor.

This bill will not affect state or local government revenues or expenditures, and is assessed as having no fiscal impact.

Departments Contacted

Natural Resources

Bill D

HOUSE SPONSORSHIP

Salazar, Miller, Rippey and White

SENATE SPONSORSHIP

Taylor, Entz and Isgar

A BILL FOR AN ACT

**CONCERNING THE REQUIREMENT TO MITIGATE THE EFFECTS ON THE
WATER BASIN OF ORIGIN OF A DIVERSION OF WATER FROM A
WATER BASIN.**

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 Review Committee. Requires that a water judge include, in each decree for a water right that diverts water from one water division into another, conditions to ensure that the present appropriation of water and prospective beneficial uses of water within the water division from which the water is exported will not be impaired or increased in cost at the expense of the water users in that division. Requires the applicant for the decree to show that such exportation is needed after the preparation of an integrated water supply and demand plan and after an analysis of reasonable alternatives to such export. Specifies that these requirements do not apply if the applicant has reached an enforceable mitigation agreement with a water conservation or conservancy district from within whose boundaries the waters are proposed for diversion.

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

SECTION 1. 37-92-305 (9). Colorado Revised Statutes. is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (9) (d) NO CLAIM FOR A WATER RIGHT DIVERTING WATER FROM ONE WATER DIVISION TO ANOTHER MAY BE RECOGNIZED OR A DECREE THEREFOR GRANTED UNLESS THE WATER JUDGE INCLUDES IN THE DECREE SUCH TERMS AND CONDITIONS AS ARE REQUIRED TO ENSURE THAT THE PRESENT APPROPRIATION OF WATER AND PROSPECTIVE BENEFICIAL USES OF WATER WITHIN THE WATER DIVISION IN COLORADO FROM WHICH THE WATER IS EXPORTED WILL NOT BE IMPAIRED OR INCREASED IN COST AT THE EXPENSE OF THE WATER USERS IN THAT DIVISION. THE FACILITIES AND OTHER MEANS FOR ACCOMPLISHMENT OF SUCH PURPOSE SHALL BE INCORPORATED IN AND MADE A PART OF ANY DECREE FOR THE EXPORTATION OF WATER FROM THE DIVISION. SUCH EXPORTATION SHALL BE SHOWN TO BE NEEDED AFTER THE PREPARATION OF AN INTEGRATED WATER SUPPLY AND DEMAND PLAN AND AFTER AN ANALYSIS OF REASONABLE ALTERNATIVES TO SUCH EXPORT. THIS PARAGRAPH (d) SHALL NOT APPLY IF THE APPLICANT DEMONSTRATES THAT IT HAS ENTERED INTO AN ENFORCEABLE MITIGATION AGREEMENT WITH THE WATER CONSERVATION DISTRICT FROM WITHIN WHOSE BOUNDARIES THE WATERS ARE PROPOSED FOR DIVERSION OR, IN THE ABSENCE OF SUCH AN AGREEMENT, AN ENFORCEABLE MITIGATION AGREEMENT WITH THE WATER

CONSERVANCY DISTRICT FROM WITHIN WHOSE BOUNDARIES THE WATERS
ARE PROPOSED FOR DIVERSION.

SECTION 2. Applicability. This act shall apply to applications
for water right decrees filed on or after the effective date 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.

Bill E

HOUSE SPONSORSHIP

Hoppe, Miller, Rippey, Salazar and White

SENATE SPONSORSHIP

Entz, and Taylor

A BILL FOR AN ACT

**CONCERNING A PROHIBITION ON PROXY VOTING BY MEMBERS OF THE
COLORADO WATER CONSERVATION BOARD.**

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 Review Committee. Prohibits members of the Colorado water conservation board from voting by proxy.

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

SECTION 1. 37-60-104 (1), Colorado Revised Statutes, is amended to read:

37-60-104. Personnel. (1) The board shall consist of fifteen members. The executive director of the department of natural resources

shall be a voting member ex officio. The attorney general, state engineer, director of the division of wildlife, commissioner of agriculture or designee, and director of said board shall be nonvoting members ex officio. The nine remaining members shall be qualified electors of the state, well versed in water matters, and shall be appointed by the governor, with the consent of the senate, for terms of three years: except that no appointment shall be made that does not conform to the requirements of subsections (3) and (4) of this section. MEMBERS OF THE BOARD MAY NOT VOTE BY PROXY. The appointments shall be made in such a manner that the terms of three members shall expire on February 12 of each year. In case a vacancy occurs in the appointed membership of the board, by death or resignation, the governor shall appoint a successor to serve the unexpired term of any member of the board within thirty days after the creation of such vacancy.

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 E

Colorado Legislative Council Staff
NO FISCAL IMPACT

Drafting Number: LLS 04-0440

Date: November 24, 2003

Prime Sponsor(s): Rep. Hoppe
Sen. Entz

Bill Status: Water Resources Review Committee
Fiscal Analyst: Steve Tammeus (303-866-2756)

TITLE: CONCERNING A PROHIBITION ON MEMBERS OF THE COLORADO WATER CONSERVATION BOARD VOTING BY PROXY.

Summary of Assessment

This bill prohibits members of the Colorado Water Conservation Board from voting by proxy. The bill will become effective upon signature of the Governor.

This bill will not affect state or local government revenue or expenditures, and is assessed as having no fiscal impact.

Departments Contacted

Natural Resources