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0572 Interim Committee on Water Resources



**Report to the
Colorado General Assembly**

**Interim Committee on
Water Resources**

*The Colorado Legislative Council
Research Publication No. 572
December 2007*

Water Resources Review Committee

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December 2007

To Members of the Sixty-sixth General Assembly:

Submitted herewith is the final report of the Water Resources Review Committee. This committee was created pursuant to Section 37-98-102, C.R.S. The purpose of the committee is to review water issues and propose legislation related to the conservation, use, development, and financing of Colorado's water resources.

At its meeting on November 15, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2008 session was approved.

Respectfully Submitted,

/s/ Senator Peter Groff
Chairman

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This report is also available on line at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/07interim.htm

Executive Summary

Committee Charge

The Water Resources Review Committee was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state (Section 37-98-102, C.R.S.). 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 was authorized to meet eight times in 2007, including two times outside of the interim period, and to take two field trips in connection with its mandate.

Committee Activities

Meetings and tours. The committee met four times during the 2007 interim. It met with a broad range of water users and government officials including local water providers, state water rights administrators, water quality regulators, state water planners, water project developers, and concerned citizens. The committee received briefings on major water issues affecting the state including regulation of groundwater pumping in the South Platte River Basin, proposed water supply projects, interstate water compact litigation, state financing for water projects, and other issues. The committee also took two tours and visited two of the state's eight major river basins — Gunnison and Yampa river basins — to learn about local water resources and supply challenges.

Water supply and project funding needs. Staff of the Interbasin Compact Committee within the Colorado Department of Natural Resources provided an update on the implementation of House Bill 05-1177, commonly known as the Interbasin Compact Committee process. This law created nine basin roundtables covering the state's eight major river basins and the Denver metropolitan area. These roundtables are working to identify water needs and water supply projects within each basin. The staff explained that some basin roundtables have begun meeting with other roundtables to discuss interbasin water issues. Basin roundtables have also begun proposing water storage projects including a proposed high altitude storage project in Clear Creek County, and a proposed reservoir expansion in the Rio Grande Basin.

The committee received testimony from the proponents of three projects to divert water from the Colorado River Basin to the South Platte and Arkansas River basins. The Regional Watershed Supply Project would divert water from the Green River in northwest Colorado and pipe it along I-80 in Wyoming for delivery to eastern Colorado. A project proposed by the Northern Colorado Water Conservancy District would divert water from the Yampa River in northwest Colorado and pipe it over the Continental Divide. The Central Colorado Project near Crested Butte would divert water from the Gunnison River Basin to the South Platte and Arkansas River basins.

Funding for public drinking water and wastewater projects. Funding needs for public drinking water and wastewater projects were highlighted by staff from the Water Quality Control Division in the Colorado Department of Public Health and Environment. An overview of how the state helps pay for mandatory drinking water and wastewater projects for disadvantaged communities was also provided. The committee also heard testimony about loan programs

administered by the Colorado Water Resources and Power Development Authority. Formed in 1981 to fund water development projects, the authority's duties were later expanded to include low-interest loan programs for public wastewater treatment and drinking water projects throughout Colorado. The authority is governed by a nine-member board of directors which represents the eight major drainage basins in the state and the City and County of Denver. At the request of the authority, the committee recommends Bill A to raise the per diem paid to members and to allow board members to participate remotely in board meetings using telecommunication devices.

South Platte River Basin Task Force. The committee received a briefing on the South Platte River Basin Task Force's ten recommendations pertaining to groundwater use in the basin. The task force was created by Governor Ritter to consider changes to current water law or policy that will provide relief to junior groundwater users in the basin without injuring senior water right holders. The department staff explained that the junior groundwater users rely on wells that pump water that is hydraulically connected to the river, called tributary wells. Colorado Supreme Court decisions and statutes prohibit junior users from pumping unless they have a water court-approved augmentation plan that protects senior water rights. An augmentation plan replaces the water depleted from a stream by an out-of-priority diversion. Depletion is the amount of water that does not return to a stream after it has been used due to evaporation, plant uptake, and other mechanisms. Some junior wells in the basin are located miles from the river. Due to this distance, the effect of groundwater pumping may not reach the South Platte River until years after the pumping occurred. The committee heard testimony that some wells may be required to replace depletions caused by pumping that occurred prior to the State Engineer's rules taking effect in 1974. Because the South Platte well rules did not go into effect until 1974, and well pumping prior to 1974 did not require augmentation, the committee recommends Bill B which provides that augmentation is not required for current depletions caused by pumping prior to 1974.

Committee letters. The committee drafted three letters to Colorado's congressional delegation concerning federal water policy issues affecting Colorado. One letter expressed support for funding for the federal Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentive Program (EQIP) in the 2007 Farm Bill. Another letter urged the delegation to fund a study concerning options for increasing water storage in Chatfield Reservoir that is located on the South Platte River, southwest of Denver. A third letter was drafted to express concern about H.R. 720, the "Water Quality Financing Act of 2007." This act would amend the Federal Pollution Control Act to authorize additional appropriations and make significant program changes to the Clean Water State Revolving Fund (CWSR).

Committee Recommendations

As a result of committee discussion and deliberation, the committee recommends two bills for consideration in the 2008 legislative session.

Bill A — Board of Directors of the Water Resources and Power Development Authority. Bill A raises the per diem paid to members of the board of directors from \$50 to \$100. In addition, it expands the circumstances under which board members may participate in meetings via telecommunications devices, allowing such participation at any meeting of the board.

Bill B — Exemption of Depletions from Pumping that Occurred Prior to 1974. Bill B provides that new augmentation plans and amended plans do not require replacement of out-of-priority depletions caused by pumping that occurred prior to March 15, 1974.

Committee Charge

The Water Resources Review Committee was created pursuant to Section 37-98-102, C.R.S. The committee is composed of five members from the House of Representatives and five members from the Senate. At least four members must reside west of the Continental Divide or their district must have a majority of its population residing west of the Continental Divide. Members should also represent each of the seven water divisions. The committee is authorized to meet eight times during odd-numbered years, two of which may be held during the legislative session. Two field trips are also authorized to meet the purposes of the statute.

The committee is charged with contributing to and monitoring the conservation, use, development, and financing of Colorado's water resources 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

Meetings. The committee met four times during the 2007 interim. At these hearings, the committee received briefings on a broad range of water policy issues from government officials, private water users, and other interested persons. Specifically, it received briefings on groundwater use in the South Platte River Basin, water court procedures, water supply and project funding, state efforts to address water supply challenges, proposed water development projects, alternatives to permanent agricultural water transfers, and water delivery obligations to downstream states. In response to these problems, the committee recommends two bills and drafted three letters to Colorado's congressional delegation.

Tours. The committee took two tours and visited two portions of the state's eight major river basins to learn about local water resources and supply challenges. In June, the committee spent two days touring for in the Gunnison River Basin with representatives from the Colorado Foundation for Water Education. On this tour, the committee visited federal water storage and distribution facilities, irrigation projects, and water treatment facilities. It also toured a proposed water diversion project in the Yampa River Basin and attended the Colorado Water Congress summer convention to hear briefings about interstate compacts, on-going water supply studies, climate change, and other water management issues.

South Platte River Basin Task Force Recommendations to the Committee

Overview. The South Platte River Basin Task Force was created by Governor Ritter on June 8, 2007, to consider changes to current water law or policy that will provide relief to junior groundwater users in the basin without injuring senior water right holders. Five members of the Water Resources Review Committee were also members of the task force including Senators Jim Isgar and Greg Brophy, and Representatives Kathleen Curry, Mary Hodge, and Cory Gardner. The task force issued ten recommendations. Five of these recommendations were acted on by the Water Resources Review Committee including a request for legislation. The following section summarizes the regulation of groundwater pumping in the South Platte River Basin and describes action taken by the Water Resources Review Committee on the task force's recommendations.

Regulation of groundwater pumping. Many wells in the South Platte River Basin pump groundwater that is connected to a nearby river, called *tributary* groundwater. Use of tributary groundwater is regulated according to the *doctrine of prior appropriation* which also regulates the use of stream water. Under the doctrine of prior appropriation, the earlier the date of an initial appropriation from a stream, the more "senior" the water right, making it more valuable. Colorado's most senior water rights have been granted for surface water diversions, some of which started diverting in the 1860s. Court recognition of a water right enables the owner to make an enforceable "call" during water shortages. Once a valid call has been made, water use by junior water rights must be reduced or curtailed until senior water rights have been satisfied. Most well users along the South Platte River are junior to surface water rights because the wells started pumping after 1950 when improvements in pumping technology and lack of surface water led to a significant increase in groundwater use.

In 1969, the General Assembly enacted a law that authorizes groundwater users to pump *out-of-priority* if they operate according to a water court adjudicated augmentation plan, or a State Engineer approved substitute supply plan. Such plans replace depletions to the water supply that prevent injury to decreed water rights. Depletion is the amount of water that does not return to a stream after it has been used due to evaporation, plant uptake, and other mechanisms. Injury occurs when water that would otherwise be available for use by a water right operating in priority is intercepted by someone whose decreed appropriation is junior in priority or by someone who is diverting without a decree.

In 2001, the Colorado Supreme Court ruled that the State Engineer did not have the authority to approve substitute water supply plans for out-of-priority users and that all such plans must be approved by the water court before out-of-priority pumping may occur.¹ In 2003, the General Assembly enacted a law which provided affected wells additional time to acquire augmentation water and to obtain water court approval.² However, many wells could not obtain affordable augmentation water and were forced to shut down in May of 2006. Ultimately, 445 wells were required to cease pumping which led to the drying up of 30,000 irrigated acres in the South Platte River Basin.

Committee recommendation. The task force issued ten recommendations to help junior groundwater users in the South Platte River Basin. Three of these recommendations were endorsed by the Water Resources Review Committee including a request for legislation. Two other recommendations were considered but not acted on by the committee. Bill B seeks to help some junior wells in the South Platte River Basin that are located miles from the river. Due to this distance, the effect of groundwater pumping may not reach the river until years after the pumping occurred. The committee heard testimony that some wells may be required to replace depletions caused by pumping that occurred prior to the State Engineer's rules taking effect in 1974. Because well pumping prior to 1974 did not require augmentation, the committee recommends Bill B which provides that augmentation is not required for current depletions caused by pumping prior to 1974.

Committee letters. The task force recommended that the legislature support funding for the federal Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentive Program (EQIP). CREP is a voluntary program that provides agricultural landowners or operators annual rental payments and cost-share assistance. The purpose of CREP is to help agricultural producers safeguard environmentally sensitive lands by planting long-term,

¹*Empire Lodge Homeowner's Association v. Moyer*, 39 P.2d 1139 (Colo. 2001).

²Senate Bill 03-73

resource-conserving covers to control soil erosion, improve water and air quality, and enhance wildlife habitat. EQIP is a federal program that provides technical, financial, and educational assistance to farmers and ranchers to reduce soil erosion and water quality problems associated with agricultural operations, and to enhance wildlife habitat. The committee drafted a letter to Colorado's congressional delegation urging them to support funding for CREP and EQIP in the 2007 Farm Bill. Also at the request of the task force, the committee drafted another letter to Colorado's congressional delegation urging them to fund a study concerning options for increasing water storage in Chatfield Reservoir that is located on the South Platte River, southwest of Denver.

Other recommendations considered by the committee. The task force recommended another bill to allow the use of excess augmentation credits to replace current year depletions caused by past pumping. This task force also recommended requiring such loans to follow the existing procedures for the loan of agricultural water rights to other agricultural uses on the same stream. The committee considered a draft bill making such changes, but did not take final action on the bill.

Review of Water Court Procedures

Water courts have exclusive jurisdiction over the determination of new water rights, changes of water rights, approval of augmentation plans, findings of reasonable progress on water construction projects, water exchanges, and the use of water outside the state. The committee heard testimony from a former Colorado Supreme Court justice that water courts are overburdened and understaffed, often leading to extended periods of time for a proceeding to take place. The justice summarized the recommendations from the Denver University Water Futures Panel concerning water court procedures that were endorsed by the South Platte River Basin Task Force. The panel recommended that the Governor or the General Assembly request the Colorado Supreme Court to undertake a study of the water courts and to identify possible ways to achieve efficiencies while protecting the quality of outcomes. Specifically, it recommended that the study consider the appointment of senior judges as alternate water judges and the appointment of special masters in water court proceedings. The study should also consider requiring that water court referees be professional engineers and that they receive annual training in water law and engineering, and technological and scientific advancements, in cooperation with the law schools, the Water Bar, and the State Engineer's Office. A proposal was made that a task force be commissioned to study these recommendations concerning water court proceedings. The task force would include a Colorado Supreme Court justice, water court judges and referees, attorneys, and water users. The committee discussed drafting a letter or requesting a joint resolution urging the Colorado Supreme Court to conduct the review of water court procedures; however no recommendation was made by the committee.

Funding for Public Drinking Water and Wastewater Projects

Funding needs for public drinking water and wastewater projects were highlighted by staff from the Water Quality Control Division in the Colorado Department of Public Health and Environment and the Colorado Department of Local Affairs. An overview of how the state helps pay for mandatory drinking water and wastewater projects for disadvantaged communities was also provided.

Water quality loan programs. The committee heard testimony about loan programs administered by the Colorado Water Resources and Power Development Authority. The authority is governed by a nine-member board of directors which represents the eight major drainage basins in the state and the City and County of Denver. Formed in 1981 to fund water development projects, the authority's duties were later expanded to include low-interest loan programs for public wastewater treatment and drinking water projects throughout Colorado. The authority is authorized to issue revenue bonds that are the indebtedness of the authority and do not obligate the state or any political subdivision. As of October 2007, the authority had issued over \$1.54 billion in loans, mostly for public water pollution control and drinking water projects. In 1989, the authority was charged with issuing loans for water pollution control programs. The authority has provided approximately \$42 million to match over \$211 million in federal grants since that time. The subsidized loans help finance public wastewater treatment facilities and other pollution abatement projects. Through the end of FY 2006-07, the authority had issued 144 loans for water pollution control projects. In 1995, the authority was charged with issuing loans for public drinking water programs. It has provided over \$25 million to match over \$125 million in federal grants for water treatment and other related infrastructure needed to comply with the federal Safe Drinking Water Act. Through the end of FY 2006-07, the authority has issued 90 loans for public drinking water programs.

Committee recommendation. At the request of the Colorado Water Resources and Power Development Authority, the committee recommends Bill A to raise the per diem paid to board members of the authority and to allow members to participate remotely in board meetings using telecommunication devices.

Committee letter. The committee drafted a letter to Colorado's Congressional Delegation to voice concerns about H.R. 720, the "Water Quality Financing Act of 2007." This act would amend the Federal Pollution Control Act to authorize additional appropriations and make significant program changes to the Clean Water State Revolving Fund (CWSR). Specifically, the committee believes that these changes would prohibit the use of administrative fees to provide the state's match for federal moneys and apply the federal Davis-Bacon Act to projects funded by the revolving loan. The Davis-Bacon Act requires the payment of prevailing wages on federally funded projects. These changes would increase the cost of constructing public wastewater treatment and nonpoint source projects by significantly impacting the flexibility of the Colorado Water Resources and Power Development Authority to provide the state match. These new requirements, the letter noted, would also increase the administrative and financial burden to the borrowers of the program, and diminish the use of the CWSRF.

Water Supply and Project Funding

Interbasin Compact Committee Process. In 2005, the General Assembly enacted the Colorado Water for the 21st Century Act that establishes a process to address the state's growing water demand. This law created nine basin roundtables covering the Denver metropolitan area and eight river basins:

- ✓ South Platte;
- ✓ Arkansas;
- ✓ Rio Grande;
- ✓ Gunnison;
- ✓ Colorado;
- ✓ Yampa-White;
- ✓ Dolores-San Miguel-San Juan; and
- ✓ North Platte.

These roundtables are charged with identifying water needs within each basin and conducting discussions with other basins to address interbasin water issues. The law also created a 27-member Interbasin Compact Committee (IBCC) to facilitate negotiations between the roundtables. Staff of the IBCC in the Colorado Department of Natural Resources provided an update on the implementation of Colorado Water for the 21st Century Act, commonly known as the Interbasin Compact Committee process. It was explained that some basin roundtables have begun meeting with other roundtables to discuss interbasin water issues. Basin roundtables have also begun proposing water storage projects including a proposed high altitude storage project in Clear Creek County, and a proposed reservoir expansion in the Rio Grande Basin.

Proposed Colorado River Basin projects. The committee heard testimony from the proponents of three projects to divert water from the Colorado River Basin to the South Platte and Arkansas River basins. The Regional Watershed Supply Project seeks to divert 165,000 acre-feet of water annually from the Green River in northwest Colorado and pipe it along I-80 in Wyoming for delivery to eastern Colorado. One acre foot of water is the amount of water needed to flood an acre of land to a depth of one foot, or 325,851 gallons. A project proposed by the Northern Colorado Water Conservancy District seeks to divert up to 300,000 acre-feet of water annually from the Yampa River in northwest Colorado and pipe it over the Continental Divide for use by eastern cities, farmers, and other users. The Central Colorado Project near Crested Butte would divert up to 300,000 acre-feet of water annually from the Gunnison River Basin to the South Platte and Arkansas River basins. The proponents of these projects described the potential benefits of their projects, project costs, the effect on water rights in the Colorado River basin, and the effect on Colorado's ability to meet its water delivery obligations to downstream states. The proponents also discussed potential regulatory hurdles and efforts to acquire water rights for their projects.

Colorado Water Conservation Board Construction Fund. The Colorado Water Conservation Board (CWCB) in the Department of Natural Resources is the state's primary water policy and planning agency. Its major programs include water supply protection, flood protection, conservation and drought planning, stream and lake protection (instream flow program), and water supply planning and finance. Staff for the CWCB described the board's process to determine which projects are included in the annual Colorado Water Conservation Board Construction Fund bill. This revolving loan program funds projects that increase the consumption of Colorado's undeveloped river entitlement and projects that repair and rehabilitate existing water storage and delivery facilities. The CWCB may also provide grants for feasibility studies and water supply investigations up to 50 percent of their cost. Loans may not be used for domestic water treatment

and distribution systems. Money in the fund is received from the repayment of loans, interest on the fund in the State Treasury, and federal mineral royalty distributions. CWCB policies guide the fund's administration including a policy that sets a target growth rate for the equity of the CWCB Construction Fund and the Severance Tax Trust Fund Perpetual Base Account. The target is at least equal to the long-term inflation rate plus 0.5 percent. Another policy determines how applications for non-reimbursable projects are approved and prioritized.

CWCB staff summarized the provisions of the draft Colorado Water Conservation Board Construction Fund bill that includes a \$40.4 million loan from the Perpetual Base Account of the Severance Tax Trust Fund to the Republican River Water Conservation District. This loan would be used to pay for a pipeline that will help Colorado comply with its water delivery obligations to Kansas under the Republican River Compact. The bill also includes appropriations for drought mitigation and response planning, a study of water availability in the Colorado River Basin, and a study on the effects of climate change on Colorado water resources.

Alternatives to Permanent Agricultural Water Transfers

Overview. A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, the market value of this water is steadily increasing as demand for municipal water increases. Selling a water right to a municipality may be the most profitable way for a farmer to benefit from a water right. Large tracts of agricultural lands have been taken out of production to provide water to Colorado's growing municipalities, especially in the lower Arkansas River basin. The committee received briefings on several programs to address the need for water by municipalities and efforts to mitigate the impact of transfers of agricultural water rights.

State grants for alternatives to permanent transfers. Staff from the CWCB testified that the legislature appropriated \$1.5 million from the CWCB Construction Fund for a competitive grant program to advance various agricultural transfer methods as alternatives to permanent agricultural dry-up in the South Platte and Arkansas river basins. Eligible projects include:

- ✓ interruptible water supply agreements;
- ✓ long-term agricultural land fallowing;
- ✓ water banks;
- ✓ reduced consumptive use through efficiency or cropping while maintaining historic return flows; and
- ✓ purchase by end users with a leaseback option under defined conditions.

The CWCB staff explained that a committee will be formed to evaluate grant applications which will include water users and other affected interests. Proposed criteria for evaluating grants include feasibility, applicability to other areas of the state, and the quantity of water that is made available.

Study on cropping system alternatives. The committee was briefed about a study being conducted by Colorado State University with the Parker Water and Sanitation District on ways to sustain irrigated agriculture while meeting the state's increasing water demands. The three-year study is expected to provide information that can be used to develop water policy for both agricultural and urban water users. The study will develop cropping system options — techniques in crop planting and watering — to determine the amount of water that can be saved. The water

saved can be made available for possible urban use while at the same time sustaining viable economic returns to the agricultural and rural communities. Cropping system options include:

- ✓ rotational cropping (fallowing of a portion of the land);
- ✓ deficit and partial season irrigation (applying less water, but gaining maximum yield from the water applied);
- ✓ water conserving practices and drought-tolerant crop varieties;
- ✓ adoption of optimal irrigation technology; and
- ✓ alternative farming practices, crops, and markets.

Proposed "super ditch" company. The committee was informed that approximately 60,000 acre-feet of agricultural water rights have been permanently transferred from irrigators in the Arkansas River Valley to municipalities including the cities of Aurora and Colorado Springs. It was explained by the Chairman of the Lower Arkansas Valley Water Conservancy District that the district is developing a land fallowing-water leasing program, also called the "super ditch company," to provide cities with a reliable, cost-competitive water supply alternative and provide irrigators with an economically attractive alternative to farming or selling their water rights. Irrigators will temporarily cease irrigation and lease the water to municipalities. The super ditch company will be managed by a board of directors who will be elected by participating irrigators. The company will negotiate with cities and be responsible for leasing the water, obtaining water court approval, and getting local government permits. The program was estimated to provide cities with approximately 14,000 acre-feet of reliable water supply during dry years and up to 45,000 acre-feet during wet years. This estimate assumes that 65 percent of ditch owners will participate in the program and 25 percent of the land irrigated by a ditch will be fallowed.

Water Delivery Obligations to Downstream States

Approximately 10.2 million acre-feet of river water flows across Colorado's borders annually. Almost all of this water is legally obligated to 18 downstream states and Mexico by interstate compacts and federal court decisions. A compact is an agreement between two or more states that is approved by Congress. The committee was briefed on state programs designed to satisfy interstate water delivery obligations in the Republican River Basin in northeastern Colorado and the Arkansas River Basin in southeastern Colorado.

Republican River Basin issues. In 2002, Colorado settled a dispute with Kansas and Nebraska concerning the use of the water in the Republican River that is shared by the three states. The settlement agreement requires Colorado to limit its river consumption to the amounts allowed by the Republican River Compact, beginning in 2008, based on a five-year running average. It also placed a moratorium on new groundwater development in the basin. Most of the water used in Colorado's portion of the basin is used by irrigators who pump groundwater that is connected to the Republican River. The Republican River Water Conservation District was created by law in 2004 to address water supply challenges in the Republican River Basin and to help Colorado comply with the settlement agreement. The district includes Kit Carson, Logan, Lincoln Phillips, Sedgwick, Yuma, and Washington counties in northeastern Colorado. There are approximately 570,000 acres of irrigated land in district. The committee was briefed on alternatives that may help Colorado comply with the compact including the additional retirement of irrigated land to reduce the draw on groundwater resources that affect stream flows in the Republican River. A proposal to construct a pipeline to deliver water to the Republican River at the Colorado and Kansas boarder is being explored. Another alternative being explored is the effect of draining Bonny Reservoir which would reduce evaporative losses from the river.

Arkansas River Basin issues. The Supreme Court case between Colorado and Kansas was filed by Kansas to remedy past depletions in the Arkansas River that were occurring in Colorado between 1950 and 1996. Kansas claimed that Colorado had violated the Arkansas River Compact through storage projects in Colorado and the over-pumping of wells in the Arkansas River Basin. The amount of damage to Kansas during this time period was determined by the courts to be 428,005 acre feet. The initial estimate claimed that over \$300 million was owed to Kansas, however, the court concluded in a final report that the amount owed was approximately \$20 million. The final judgement for damages totaled \$34.6 million for injuries owed to Kansas with additional costs for attorney fees, interest, and inflation factors. The legislature appropriated \$38.8 million through Senate Bill 05-226 to compensate Kansas for water depletions from the Arkansas River. Additional costs may accrue over the next two years as the court finalizes the new decree for the Arkansas River. The committee was briefed on issues that are still being negotiated between the two states involving compliance modeling, water accounting, land management, and other stipulations of the decree. The decree will be final by late 2007 and will contain a dispute resolution provision to avoid future litigation and help address disagreements in the water compact between Colorado and Kansas.

Summary of Committee Recommendations

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

Bill A — Board of Directors of the Water Resources and Power Development Authority.

Bill A raises the per diem paid to members of the Colorado Water Resources and Power Development Authority's board of directors from \$50 to \$100. In addition, it expands the circumstances under which board members may participate in meetings via telecommunications devices, allowing such participation at any meeting of the board.

Bill B — Exemption of Depletions from Pumping that Occurred Prior to 1974.

Bill B provides that new augmentation plans and amended plans do not require replacement of out-of-priority depletions caused by pumping in the South Platte River Basin that occurred prior to March 15, 1974.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2007/07interim.htm

Meeting Date and Topics Discussed

August 23, 2007

- ♦ Review of funding for public water treatment facilities
- ♦ Discussion of proposed legislation
- ♦ Black Canyon National Park's water rights
- ♦ Central Colorado Project
- ♦ Alternatives to permanent transfers of agriculture water rights
- ♦ South Metro Water Supply Authority regional water master plan

September 12, 2007

- ♦ Implementation of House Bill 05-1177, concerning interbasin compacts
- ♦ South Platte River Basin Task Force recommendations
- ♦ Coal bed methane and produced water litigation
- ♦ Proposed Rio Grande Basin water project
- ♦ Proposed regional watershed supply project

September 26, 2007

- ♦ Water court procedures
- ♦ Letter concerning Chatfield Reservoir reallocation
- ♦ Water education and research programs
- ♦ Letter concerning CREP and EQIP funding in the 2007 Federal Farm Bill

October 31, 2007

- ♦ Colorado Water Conservation Board Construction Fund draft bill
- ♦ Severance Tax Interim Committee recommendations
- ♦ Interstate compact litigation
- ♦ Review of water court procedures

- ♦ Proposed legislation concerning instream flow water rights
- ♦ Revised letter concerning CREP and EQIP funding in the 2007 Federal Farm Bill
- ♦ Final action on draft legislation

Tours and Areas Visited

June 25 and 26, 2007

- ♦ Tour of the Gunnison River Basin water collection and distribution facilities with the Colorado Foundation for Water Education

August 22-24, 2007

- ♦ Tour of Upper Yampa River Basin water collection facilities and proposed water diversion project
- ♦ Colorado Water Congress Summer Convention in Steamboat Springs

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

BILL A

LLS NO. 08-0142.01 Thomas Morris

SENATE BILL

SENATE SPONSORSHIP

Schwartz, Brophy, Isgar, Taylor, and Tochtrop

HOUSE SPONSORSHIP

Gardner C., Curry, Hodge, McKinley, and White

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING THE BOARD OF DIRECTORS OF THE WATER RESOURCES
102 AND POWER DEVELOPMENT AUTHORITY.

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. Raises the per diem payment to board members of the water resources and power development authority from \$50 to \$100. Authorizes board members of the authority to participate in board meetings by using telecommunications devices.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

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

2 **SECTION 1.** 37-95-104 (6), Colorado Revised Statutes, is
3 amended to read:

4 **37-95-104. Establishment of authority - board of directors -**
5 **removal - organization - compensation - dissolution.** (6) Each
6 member of the board not otherwise in full-time employment of the state
7 shall receive a per diem of ~~fifty~~ ONE HUNDRED dollars for each day
8 actually and necessarily spent in the discharge of official duties, and all
9 members shall receive traveling and other necessary expenses actually
10 incurred in the performance of official duties.

11 **SECTION 2.** 37-95-105 (2), Colorado Revised Statutes, is
12 amended to read:

13 **37-95-105. Records and meetings of board - disclosure of**
14 **interests required.** (2) All meetings of the board shall be open to the
15 public. No business of the board shall be transacted except at a regular
16 or special meeting at which a quorum is present. ~~If a meeting of the~~
17 ~~board is called for the sole purpose of adopting resolutions authorizing~~
18 ~~the issuance of bonds, notes, bond anticipation notes, or other obligations~~
19 ~~by the authority,~~ One or more members of the board may participate in
20 ~~such~~ ANY meeting and may vote ~~on such resolutions~~ through the usage
21 USE of telecommunications devices, including, but not limited to, ~~the~~
22 ~~usage of~~ a conference telephone or similar communications equipment.
23 Such participation through telecommunications devices shall constitute
24 presence in person at such meeting. Such use of telecommunications
25 shall not supersede any requirements for public hearing otherwise
26 provided by law.

27 **SECTION 3. Safety clause.** The general assembly hereby finds.

1 determines, and declares that this act is necessary for the immediate
2 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 08-0232.01 Thomas Morris

HOUSE BILL

HOUSE SPONSORSHIP

Hodge, Curry, Gardner C., McKinley, and White

SENATE SPONSORSHIP

Brophy, Isgar, Schwartz, and Tochtrop

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE EXEMPTION OF DEPLETIONS FROM PUMPING THAT
102 OCCURRED PRIOR TO 1974.

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. Specifies that plans for augmentation applied for or amended in the South Platte river basin on or after the effective date of this act shall not require the replacement of out-of-priority depletions caused by pumping that occurred prior to March 15, 1974.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute

DRAFT

17

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

SECTION 1. 37-92-305 (8), Colorado Revised Statutes, is amended to read:

37-92-305. Standards with respect to rulings of the referee and decisions of the water judge. (8) In reviewing a proposed plan for augmentation and in considering terms and conditions that may be necessary to avoid injury, the referee or the water judge shall consider the depletions from an applicant's use or proposed use of water, in quantity and in time, the amount and timing of augmentation water that would be provided by the applicant, and the existence, if any, of injury to any owner of or persons entitled to use water under a vested water right or a decreed conditional water right; EXCEPT THAT, AS TO PLANS FOR AUGMENTATION APPLIED FOR OR AMENDED IN WATER DIVISION 1 ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (8), AS AMENDED, THE PLAN SHALL NOT REQUIRE THE REPLACEMENT OF OUT-OF-PRIORITY DEPLETIONS CURRENTLY AFFECTING THE RIVER CAUSED BY PUMPING THAT OCCURRED PRIOR TO MARCH 15, 1974. A plan for augmentation shall be sufficient to permit the continuation of diversions when curtailment would otherwise be required to meet a valid senior call for water, to the extent that the applicant shall provide replacement water necessary to meet the lawful requirements of a senior diverter at the time and location and to the extent the senior would be deprived of his or her lawful entitlement by the applicant's diversion. A proposed plan for augmentation that relies upon a supply of augmentation water ~~which~~

1 THAT, by contract or otherwise, is limited in duration shall not be denied
2 solely upon the ground that the supply of augmentation water is limited
3 in duration, so long as the terms and conditions of the plan prevent injury
4 to vested water rights. Said terms and conditions shall require
5 replacement of out-of-priority depletions that occur after any groundwater
6 diversions cease. Decrees approving plans for augmentation shall require
7 that the state engineer curtail all out-of-priority diversions, the depletions
8 from which are not so replaced as to prevent injury to vested water rights.
9 A plan for augmentation may provide procedures to allow additional or
10 alternative sources of replacement water, including water leased on a
11 yearly or less frequent basis, to be used in the plan after the initial decree
12 is entered if the use of said additional or alternative sources is part of a
13 substitute water supply plan approved pursuant to section 37-92-308 or
14 if such sources are decreed for such use.

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