



P.O. Box 2308 • Silverthorne, Colorado 80498
970-468-0295 • Fax 970-468-1208 • email: qqwater@nwccog.org

QQ Quarterly Board Meeting AGENDA
Thursday, October 6, 2016
10 AM – 3 PM

City of Steamboat Springs-Citizens Hall
[124 10th Street](#)
[Steamboat Springs, CO](#)

- 10:00 Welcome and Introductions
- 10:05 Rural and urban development relating to water in Steamboat and Routt County. *Steamboat representative TBD, Chad Phillips, Routt County Planning Director*
- 11:00 Grand County BLM oil and gas lease proposal
Bill Gray, Grand County Director of Community Development
- 11:30 Water Quality Updates- *Lane, Torie & Lotic*
- 12:00 Lunch
- 1:00 Member updates
- 1:30 CO Water Plan & Basin Roundtable Updates- *Torie, Lane, Barbara*
- 2:00 2016 Legislative Session and Ballot Initiatives- *Torie*
- 2:15 Updating [*Water & Its Relationship to the Economies of Headwaters Counties*](#)
- *Torie & Barbara*
- 2:30 Member Dues, Scope of Work & Contract for 2017
- 3:00 Adjourn



BOARD OF COMMISSIONERS

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LEE A. STAAB
County Manager
ALAN N. HASSLER
County Attorney

September 6, 2016

Bureau of Land Management
White River Field Office
Attn: May 2017 Lease Sale
Meeker, CO 81461
(sent VIA EMAIL only to blm_co_may_2017_lease_sale@blm.gov)

Re: Public Scoping Comments for May 2017 Lease Sale

Dear Bureau of Land Management:

Grand County respectfully submits the following public scoping comments on the proposed May 2017 Lease Sale to the Bureau of Land Management ("BLM") as noticed in the Sky Hi News, on August 8, 2016, in advance of the Environmental Assessment beginning for this proposal.

Introduction

Grand County has great concerns in regards to the upcoming leases of 20 parcels totaling 27,529 acres of public and private land in Grand County for oil and gas development. The local ecosystem is very fragile and much care is taken to protect it in order to preserve the County's natural beauty. The County feels that oil and gas development would have negative consequences on our local environment and economy.

Water Resources and Water Quality

Two of the most serious issues in Grand County are water resources and water quality. Grand County is a unique and sensitive area due to being the headwaters for the Colorado River. Several tributaries to the Colorado River run through the proposed lease parcels, including Trail Creek, Willow Creek, Drowsy Water Creek, McQueary Creek, Sheriff Creek, Ute Bill Creek, First Creek, Second Creek and several un-named water courses. Water quality in all of these Creeks and water

courses is of concern, as they provides irrigation water to several area ranches, and they are critical to the ranching and outdoor recreation economy in Grand County.

Grand County has a growing concern regarding availability of water to support the current population and tourism sector. Adding large industry, such as Oil and Gas, would put even further strain on this valuable resource. Water resources such as the Colorado River and many local lakes are also major tourist and recreation attractions. The heavy water needs adherent to Oil and Gas development would put a strain on these water bodies, thus endangering the features of these attractions.

Resource Management Plan

The majority of federal mineral estate in the Planning Area is characterized as low or no potential for oil and gas development. In addition, leasing activity in the Planning Area has always been relatively low and sporadic, especially in Grand County. The Environmental Assessment to be undertaken should provide clear evidence to support the rationale for offering up such a significant amount of land area for Oil and Gas that is located in an area designated as having a low potential

BLM should consider the importance of protection of plants, wildlife and wilderness characteristics. With respect to wildlife, such as mule deer, moose and elk, strong consideration should be given to the current condition of habitat and the impacts of oil and gas drilling on the habitat. Other wildlife concerns include critical winter habitat and potential habitat for threatened or endangered plant or animal species. Previous protest letters from Grand County have outlined concerns regarding raptor nesting and fledgling habitat, sage grouse nesting, and wetland vegetation areas, in addition to potential habitat for threatened or endangered plant or animal species.

Preserving wetlands is important to allow for a healthy ecosystem by improving water quality through filtering, maintaining stream flow during dry periods, and replenishing groundwater. According the United States Environmental Protection Agency:

More than one-third of the United States' threatened and endangered species live only in wetlands, and nearly half use wetlands at some point in their lives. Many other animals and plant depend on wetlands for survival. Migratory waterfowl use wetlands as resting, feeding, breeding, or nesting grounds for at least part of the year. Parcels that include wetlands that should be further studied to understand the impact that Oil and Gas exploration will have.

The BLM should also take into consideration the growing impact present to public lands caused by increased recreation demand and rapidly expanding urban interface areas in Grand County, particularly for those parcels in and around Granby and Hot Sulphur Springs. Furthermore, the designated areas are located in places within Grand County that are vital to our summer, fall and winter recreation and tourist based economy and the commercial facilities and activities supporting such uses, resort ranches, outfitters, hunting and fishing, hiking and trail running, OHV and mountain biking. The adopted RMP is required to recognize local master plans and policies. Oil and gas development in the magnitude as is being contemplated does not comply with the Grand County Master Plan.

Conservation Easements

Many of the parcels being considered for Oil and Gas leases are on private properties, and are in areas that we believe to be under conservation easements or near conservation easements. Conservation Easements are granted due to there “significant relatively natural habitat for native wildlife and ecological, scenic, and open space values,” as recognized in Colorado Revised Statute §§ 38-30.5-101 et seq. Many times the property conserved by the conservation easements is declared to be “Open space and natural land, and may not be coveted or directed to any uses other than those provided in the easement.” Mineral activities is addressed as follows: “Exploration or extraction of oil, gas, and other mineral in, on, or under the Property is prohibited by open-pit or surface mining methods. No sub-surface or other exploration or extraction of oil, gas, rock, gravel, sand or other minerals, including the lease, sale or other disposition of the rights to such material may impair or result in the destruction of the Conservation values.” It will be imperative that the BLM’s EA include a detailed assessment of conservation easements located within the areas that have been identified for Oil and Gas leases and the impacts to which this type of use may impact existing easements.

Conclusion

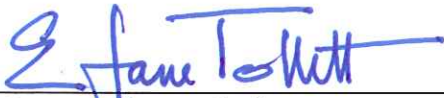
For the reasons stated above, the nominated parcels in Grand County are inappropriate for mineral leasing and development. There is too much at stake in Grand County to permit this kind of high impact activity, especially without current information and evaluation of relevant issues, especially water quality.

Due to the unique water quantity and quality issues facing Grand County we request no leasing be done in parcels that affect any of the tributaries to the

Colorado River. Since the Colorado River has its headwaters in Grand County any impacts to this river could impact millions of downstream users.

Grand County respectfully requests that the Field Manager withdraw the nominated parcels from the May 2017, competitive lease sale. In the event that the BLM proceeds to offer these parcels, all prospective bidders should be informed of the pending protest.

Sincerely,



E. Jane Tollett, Chair
Grand County Board of County Commissioners



Kristen Manguso
Grand County Board of County Commissioner



Merrit Linke
Grand County Board of County Commissioners

cc:

- Board of Trustees, Town of Kremmling
- Board of Trustees, Town of Granby
- Board of Trustees, Town of Grand Lake
- Board of Trustees, Town of Hot Sulphur Springs



WATER QUALITY / QUANTITY COMMITTEE (QQ)

P.O. Box 2308 • Silverthorne, Colorado 80498
970-468-0295 • Fax 970-468-1208 • email: qqwater@nwccog.org

August 11, 2016

Dear Senator Bennet,

QQ thanks you for your leadership in protecting Colorado from the host of problems associated with the infestation of aquatic nuisance species (ANS) like quagga mussels and zebra mussels.

We support your current efforts to include ANS prevention funding for U.S. Army Corps of Engineers ("Corps") facilities in the South Platte and Arkansas River Basins in the Water Resource Development Act (WRDA). Preventing ANS infestations in Corps facilities makes economic and practical sense, as treating an infested Corps system will cost significantly more money in perpetuity, and the recreation economy built around Corps facilities may be diminished.

Federal agencies should be key financial partners in ANS prevention, especially as state funding for Colorado's ANS prevention program has been slashed due to decreased oil and gas revenues and a recent Colorado Supreme Court decision requiring the repayment of overpaid severance tax payments. If the Corps is able to contribute to ANS prevention in their facilities in the South Platte and Arkansas Basins, the state could redirect its limited resources to other areas of the state, such as the QQ region, that desperately need it.

Colorado has been lucky, and has worked hard to prevent ANS infestations to date. Already in 2016 the program has intercepted a new record for infested boats attempting to enter Colorado waters. We must be vigilant to keep these invasive species out of our reservoirs and river systems.

Thank you again for your ongoing work to add ANS prevention to WRDA, and for your work to develop additional funding sources and solutions to continue battling these aquatic nuisance species.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel E. Richards". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Rachel Richards
Chair, NWCCOG/ QQ
Chair, Pitkin County Board of County Commissioners



WATER QUALITY / QUANTITY COMMITTEE (QQ)

P.O. Box 2308 • Silverthorne, Colorado 80498
970-468-0295 • Fax 970-468-1208 • email: qqwater@nwccog.org

August 11, 2016

Dear Senator Gardner,

QQ appreciates your ongoing work to protect Colorado from the host of problems associated with the infestation of aquatic nuisance species (ANS) like quagga mussels and zebra mussels.

We support current efforts to include ANS prevention funding for U.S. Army Corps of Engineers ("Corps") facilities in the South Platte and Arkansas River Basins through an amendment to the Water Resource Development Act (WRDA). We ask that you consider supporting these efforts as well.

Preventing ANS infestations in Corps facilities makes economic and practical sense, as treating an infested Corps system will cost significantly more money in perpetuity, and the recreation economy built around Corps facilities may be diminished.

Federal agencies should be key financial partners in ANS prevention, especially as state funding for Colorado's ANS prevention program has been slashed due to decreased oil and gas revenues and a recent Colorado Supreme Court decision requiring the repayment of overpaid severance tax payments. If the Corps is able to contribute to ANS prevention in their facilities in the South Platte and Arkansas Basins, the state could redirect its limited resources to other areas of the state, such as the QQ region, that desperately need it.

Colorado has been lucky, and has worked hard to prevent ANS infestations to date. Already in 2016 the program has intercepted a new record for infested boats attempting to enter Colorado waters. We must be vigilant to keep these invasive species out of our reservoirs and river systems.

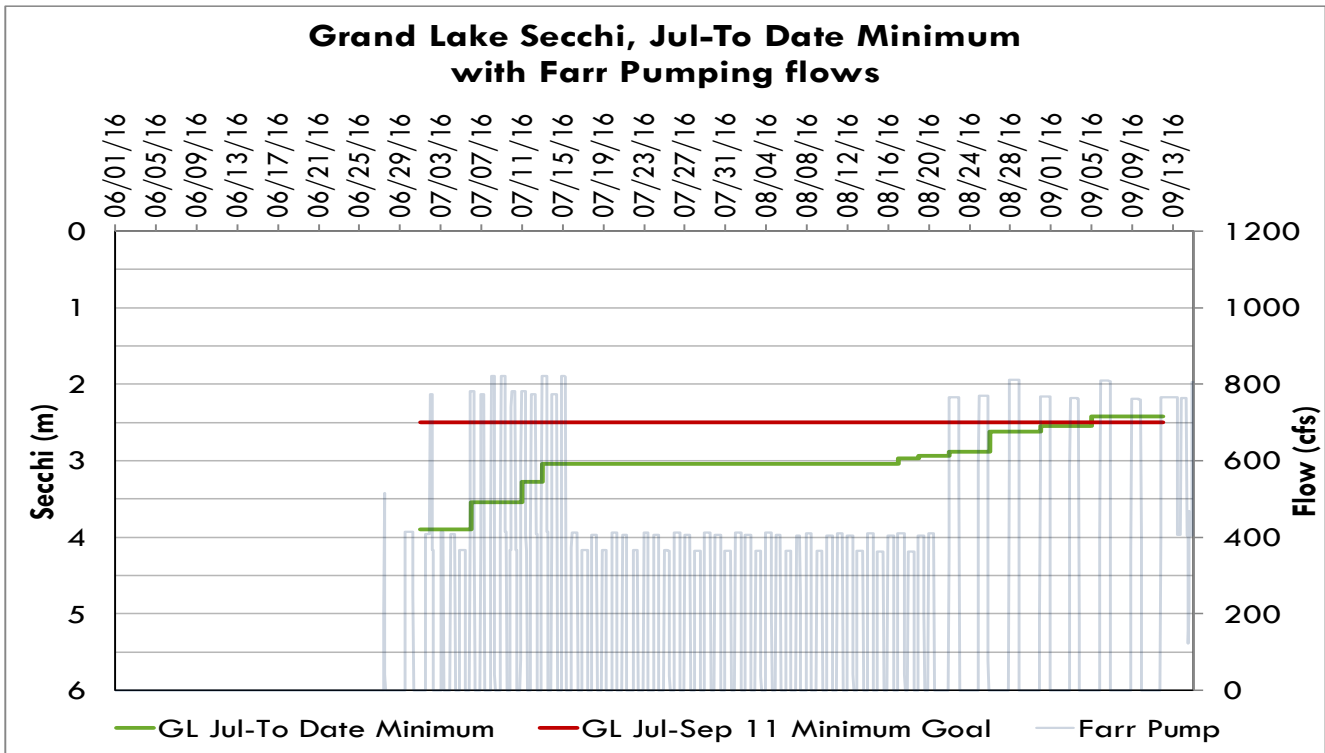
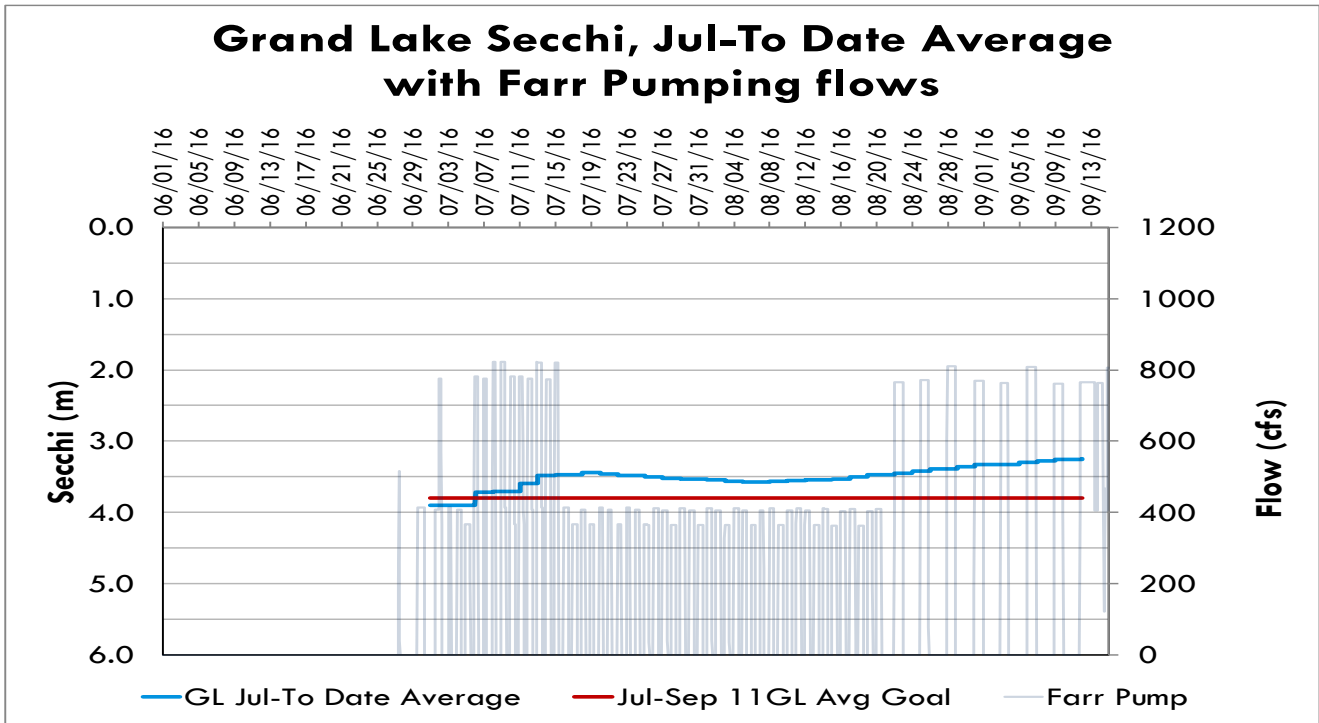
Thank you for all your work to develop additional funding sources and solutions to continue battling these aquatic nuisance species. We hope that you will consider supporting an amendment to add ANS prevention to WRDA.

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Richards".

Rachel Richards
Chair, NWCCOG/ QQ
Chair, Pitkin County Board of County Commissioners

Water Quality Summary



Local, State, and Federal Approval Criteria and Application Materials for Water Projects.

Part I: Criteria

Prepared by NWCCOG Water Quality/ Quantity Committee

July 22, 2016

Criteria for Regulatory Approval

✓ = criterion included in permit requirements
 ☆ = criterion referenced indirectly

	1041	USFS	404	401 Cert	Water Conservancy Act	
I. Project is in compliance with other permits and approvals	✓		✓			
II. Project is technically and financially feasible	✓	✓	✓			
III. Socioeconomic criteria.	1041	USFS	404	401 Cert	Water Conservancy Act	Notes:
a. Project will not have significant adverse affect on existing and projected land use patterns	✓	☆				USFS requires that an authorized agent reviewing a proposal shall reject it if "[t]he proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses." 36 CFR § 251.54(e)(5)(i).
b. Project will not have a significant adverse effect on the capability of local governments affected by the Project to provide services, or exceed the capacity of service delivery systems	✓		☆		✓	404 requires the denial of a permit application if the proposed development will "have an unacceptable adverse effect on municipal water supplies." 33 USC § 1344(c). 404 regulations do not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]," including "adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies." 40 CFR 230.10(c)(1). Water Conservancy Act states that any transmountain diversion project "shall be designed, constructed, and operated in such manner that the present... [and] prospective uses of water for irrigation and other beneficial consumptive use purposes... within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin." CRS 37-45-118(b)(II).

Representative 1041 regulations for matters of state interest. ("1041")
 Authority for local government regulations from 24 CRS § 61.1-101 et seq.

Forest Service Special Use Authorization. ("USFS") 36 CFR 251 et seq.
 *Note: This authorization is only applicable to projects on USFS land.

§ 404 regulations for the discharge of dredged and fill material. ("404") 33 USC § 1344. Army Corps of Engineers: 33 CFR § 320; EPA Guidelines: 40 CFR 8-302; 40 CFR § 121 et seq.
 *Note: The overarching criterion for 404 is that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." 40 CFR 230.10(a).

§ 401 State Water Quality Certificate ("401 Cert."): 33 USC § 1341; CRS § 25-45-118(b)(II). *Note: This section applies only to conservancy districts and to projects diverting water from the Colorado River Basin.

Colorado Water Conservancy Act. ("Water Conservancy Act") CRS § 37-45-118(b)(II).

Local, State, and Federal Approval Criteria and Application Materials for Water Projects.

Part I: Criteria

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July 22, 2016

c. Project will not have significant adverse affect on existing permanent and seasonal housing	✓					
d. Project will not will not create an undue financial burden on existing or future residents of the County.	✓				✓	<u>Water Conservancy Act</u> states that any transmountain diversion project "shall be designed, constructed, and operated in such manner that the present... [and] prospective uses of water for irrigation and other beneficial consumptive use purposes... within the natural basin of the Colorado river in the state of Colorado from which water is exported will not be impaired nor increased in cost at the expense of the water users within the natural basin." CRS 37-45-118(b)(II).
Water Conservancy Act						
<i>Socioeconomic criteria, continued.</i>		1041	USFS	404	401 Cert	Notes:
e. Anticipated growth and development that may occur as a result of a proposed project can be accommodated within the financial and environmental capacity of the area to sustain such growth and development	✓					
f. Project will not significantly degrade any current or foreseeable future sector of the local economy	✓			☆		<u>404</u> does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]" including "adverse effects. . . on recreational, aesthetic, and economic values." 40 CFR 230.10(c)(4). For private projects, <u>404</u> also "assume[s] that appropriate economic evaluations have been completed, the proposal is economically viable, and is needed in the market place," but <i>may</i> conduct a separate analysis of overall public interest and impacts to the local economy as needed. 33 CFR § 320.4(q).
g. Project will not have significant adverse affect on existing and potential recreational opportunities	✓			✓		<u>404</u> requires the denial of a permit application if the proposed development will "have an unacceptable adverse effect" on "recreation areas." 33 USC § 1344(c). <u>404</u> also does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]" including "adverse effects. . . on recreational, aesthetic, and economic values." 40 CFR 230.10(c)(4). Also under the public interest review, applicants must "avoid significant adverse effects" on "historic, cultural, scenic, and recreational values." 33 CFR § 320.4(e).
h. Project will not have significant adverse affect on areas of paleontological, historic or archaeological importance	✓			✓		As part of the <u>404</u> public interest review, applicants must "avoid significant adverse effects on. . . historic, cultural, scenic, and recreational values." 33 CFR § 320.4(e).
i. Project will not cause a nuisance (noise, glare, dust, fumes, vibration, odor)	✓					
j. The benefits accruing to the County and its citizens from the Project outweigh the losses of any natural, agricultural, recreational, grazing, commercial or industrial resources within the County, or the losses of opportunities to develop such resources	✓			☆		Under <u>404</u> public interest review, "[t]he extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited" will be evaluated as criteria in every application. 33 CFR 320.4 (a)(2)(iii).

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k. Project emphasizes the most efficient water use, recycling, reuse and conservation.	✓		✓			404 has a "water conservation" element to its public interest review that "requires the efficient use of water resources in all actions which involve the significant use of water or that significantly affect the availability of water for alternative uses including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements." 33 CFR § 320.4(m).
l. Will not result in excess capacity or create duplicative services.	✓					
m. Necessary to meet projected community development and population demands in area to be served	✓		☆			Under the 404 public interest review, the "relative extent of the public and private need for the proposed structure or work" will be evaluated as criteria in every application. 33 CFR § 320.4(a)(2)(i).
n. Constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities	✓					
Water Conservancy Act						
IV. Environmental criteria.	1041	USFS	404	401 Cert.	Act	Notes:
a. The project will not significantly degrade existing air quality	✓					
b. The project will not significantly degrade existing visual quality	✓		☆			404 does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]" including "adverse effects. . . on recreational, <i>aesthetic</i> , and economic values." 40 CFR 230.10(c)(4) (emphasis added).
c. The project will not significantly degrade existing surface water quality	✓		✓	✓		404 does not allow for the discharge of dredge or fill material if it will "cause or contribute to significant degradation of waters of the [US]." 40 CFR 230.10(c)(4). 401 certifies with reasonable assurance that "the activity will be conducted in a manner which will not violate applicable water quality standards." 40 CFR § 121.2(a)(3).
d. The project will not significantly degrade existing groundwater quality	✓					
e. The project will not significantly degrade existing floodplan, wetlands, and riparian areas	✓		✓			Under 404, no permit will be granted unless "benefits of the proposed alteration outweigh the damage to the wetlands resource." 33 CFR § 320.4(b)(4).
f. Project will not significantly degrade terrestrial or aquatic animal life or habitat	✓		✓			Along with this criteria, the State 1041 regulations authorize local governments to develop 1041 regulations for "[a]reas containing, or having a significant impact upon, historical, natural, or archaeological resources of statewide importance." CRS § 24.65.1.201(1)(c). This includes "the protection of those areas essential for wildlife habitat." CRS § 24.65.1.202.(3). § 122.2 Wildlife Mitigation Plan, described further in Part II: Application Materials, requires applicant to develop a "Wildlife Mitigation Plan," although it has no regulatory effect.

Local, State, and Federal Approval Criteria and Application Materials for Water Projects.

Part I: Criteria

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July 22, 2016

<i>Environmental criteria, continued.</i>	1041	USFS	404	401 Cert.	Water Conservancy Act	Notes:
g. Project will not significantly deteriorate terrestrial plant life or plant habitat	✓		✓			
h. Project will not significantly deteriorate soils and geologic conditions	✓		✓			
i. Project will not result in an unreasonable risk of releases of hazardous materials	✓		✓			
j. Urban development, population densities, and site layout and design of stormwater and sanitation systems prevent the pollution of aquifer recharge areas.	✓					

Part II: Application Materials and Required Analyses

Application Materials & Required Analyses.

*Note: Local 1041 requirements purposefully overlap with NEPA requirements to reduce burden on applicant while providing information necessary for the local government to issue the permit.

1041
USFS
404
401 Cert.
National Environmental Policy Act ("NEPA") - 42 USC § 4321 et seq; 40 CFR § 1501 et seq. *Note: For any "major Federal action," NEPA requires a "detailed statement" on a project's environmental impacts. 42 USC § 4332(C). For example, the decision to issue a 404 permit by the Corp of Engineers often is considered a "major federal action" that requires assessments and analyses under the National Environmental Policy Act (NEPA). Other "major federal actions" may include the issuance of Rights of Way permits by federal land managers, the incorporation of Bureau of Reclamation facilities, or where there is a need to issue or amend a FERC license.
§ 122.2 State Fish & Wildlife Mitigation Plan Regulations. ("§ 122.2") 37
CRS § 60-122.2; 2 CCR 406-1602. *Note: Although a Wildlife Mitigation Plan has no regulatory effect, § 122.2 requires the applicant to develop a Plan in order to "determine as official State position on [a Plan]."
*** Note: The Water Conservancy Act is not included in Part II because, while it has regulatory requirements, it does not have an application process with required materials or analyses.**

Notes:

I. Description of project purpose and need, including:							
a. The need for the Project	✓	✓	✓		✓		
b. Alternatives to the Project that were considered and rejected	✓				✓	✓	Under <u>NEPA</u> , an analysis of the project alternatives is the "heart of the environmental impact statement." 40 CFR 1502.16(c).
c. Other required permits and approvals	✓	✓		✓			
d. Technical and financial feasibility of the Project	✓	✓					
II. Socioeconomic impacts Requires applicant to provide analysis of project impacts to the following areas:							
	1041	USFS	404	401 Cert.	NEPA	§122.2	Notes:
a. Land Use	✓				✓		<u>NEPA</u> requires a discussion of "[p]ossible conflicts between the proposed action and the objectives of federal, regional, state, and local. . . land use plans, policies and controls for the area concerned." 40 CFR § 1502.16(c). <u>NEPA</u> also requires an analysis of indirect effects of a proposed project, which "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate." 40 CFR § 1508.8(b).
b. Local government services	✓				✓		

Part II: Application Materials and Required Analyses

c. Housing	✓						
d. Financial burden on county residents	✓						
e. Local economy	✓				✓		NEPA analyses may include a cost-benefit analysis, which would examine economic benefits weighed against "any analyses of unquantified environmental impacts, values, and amenities." 40 CFR § 1502.23
f. Recreational opportunity	✓				✓		
g. Areas of paleontological, historic or archaeological importance	✓				✓		NEPA requires a discussion of "[u]rban quality, historic and cultural resources, and the design of the built environment." 40 CFR § 1502.16(g)
h. Agricultural productivity capability of the land in the source development area (NRCS classification) and describe the potential effects of the diversion of water for the municipal or industrial water project on that agricultural productivity capability;	✓						
<p><i>Socioeconomic impacts, continued.</i> Requires the following information:</p>							
	1041	USFS	404	401 Cert.	NEPA	§122.2	Notes:
h. If project will cause nuisances such as noise, glare, dust, fumes, vibration, or odor.	✓						
i. Projected community development and population demands in area to be served	✓				✓		NEPA requires an analysis of indirect effects of a proposed project, which "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate." 40 CFR § 1508.8(b).
j. Efficient water use, recycling and reuse technology the Project intends to use.	✓						
k. Anticipated growth and development, and how Project can be accommodated within the financial and environmental capacity of the area where growth will occur.	✓				✓		NEPA analysis, see II.i. above.
l. Description of how the project will affect urban development, urban densities, stormwater, and sanitation systems	✓						
m. Description of how the project may affect adjacent communities and users on wells.	✓				✓		NEPA analysis, see II.i. above.
n. Description of increased water or wastewater treatment costs and plan to offset increased costs determined to be a direct result of flow modification from proposed project.	✓						

Part II: Application Materials and Required Analyses

III. Environmental impacts. Requires applicant to provide analysis of project impacts to the following areas:	1041	USFS	404	401 Cert.	NEPA	§ 122.2	Notes:
a. Air quality	✓				✓		NEPA requires an analysis of indirect effects of a proposed project, which "may include ... related effects on air and water and other natural systems." 40 CFR § 1508.8(b).
b. Visual quality	✓						
c. Surface water quality	✓		✓	✓	✓		A "central element" of the <u>401 Cert.</u> is "the identification of appropriate 'best management practices' (BMPs) for a proposed project" that "protect receiving water quality." 5 CCR § 1002-82, Appendix I.
d. Groundwater quality	✓		✓	✓	✓		<u>401 Cert.</u> , see III.c., above.
e. Water quantity	✓				✓		
f. Floodplain, wetlands, and riparian areas	✓				✓		
g. Terrestrial or aquatic animal life or habitat	✓		✓		✓	✓	
h. Terrestrial and aquatic plant life or habitat	✓				✓		
i. Soils, geologic conditions and natural hazards	✓				✓		
j. Monitoring and mitigation plan.	✓		✓		✓	✓	

Integrated Land and Water Planning in Colorado

By Anne Castle, John Sherman, and Larry MacDonnell

September 2016



This version for the QQ Board packet only includes the title page and table of contents.
Full report will be emailed to members, is available from the Getches Wilkinson Center for Natural Resources website or:
<https://www.colorado.edu/law/sites/default/files/Integrated%20Land%20and%20Water%20Planning%20in%20Colorado.pdf>

Integrated Land and Water Planning in Colorado

By Anne Castle, John Sherman, and Larry MacDonnell¹

September 2016

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¹ Anne Castle and Larry MacDonnell are Senior Fellows at the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment at the University of Colorado. John Sherman is a recent graduate of the University of Colorado Law School and has a Masters in Planning from the University of Colorado. The authors are very grateful for the review and comments on this paper by Peter Pollock, Eric Heil, Sherman Feher, Julio Iturreria, Wayne Forman, and Richard Alper.

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

BILL A

LLS NO. R17-0118.01 Kurt Woock x4349

HOUSE Joint Resolution

HOUSE SPONSORSHIP

Mitsch Bush and Coram, Arndt, Becker J.

SENATE SPONSORSHIP

Baumgardner, Sonnenberg

Senate Committees

House Committees

HOUSE JOINT RESOLUTION

101 **CONCERNING FUNDING FOR THE PREVENTION OF AQUATIC NUISANCE**
102 **SPECIES IN COLORADO.**

1 WHEREAS, The General Assembly has recognized that Aquatic
2 Nuisance Species (ANS) have devastating economic, environmental, and
3 social effects on the water resources and infrastructure of the state; and

4 WHEREAS, Due to the multi-jurisdictional nature of Colorado
5 waters, the State of Colorado Zebra and Quagga Mussel Management
6 Plan recommendations apply to all partners and no single entity is
7 responsible for, or capable of, implementing all of the actions necessary
8 to protect Colorado waters from invasive mussels or other ANS; and

9 WHEREAS, Zebra and quagga mussels are highly invasive aquatic
10 species that have negative effects on plankton communities, fisheries, and

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Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 water-based recreation in Colorado and also threaten our water storage
2 and distribution systems for municipal, industrial, and agricultural use;
3 and

4 WHEREAS, Aquatic nuisance species pose a significant threat to
5 the aquatic wildlife and aquatic wildlife habitats of Colorado; and

6 WHEREAS, In order to achieve the desired security of Colorado's
7 water infrastructure and aquatic wildlife and their habitats, it is necessary
8 to employ new, consistent, and cooperative funding mechanisms among
9 all jurisdictions that own and manage waters in Colorado; and

10 WHEREAS, Successfully implementing the Colorado Parks and
11 Wildlife ANS Program, along with partner programs, is critical to
12 maintaining opportunities for recreation, preserving natural resources, and
13 protecting water supply and delivery infrastructure for municipal,
14 industrial, and agricultural use; and

15 WHEREAS, Watercraft conveyances, including trailers and their
16 compartments, are acknowledged as the primary overland vector of
17 spread for zebra and quagga mussels and the transport of other ANS; and

18 WHEREAS, Any water retained in a watercraft increases the
19 possibility of introducing ANS into new waters; and

20 WHEREAS, Colorado Parks and Wildlife coordinates the vast
21 network of watercraft inspection and decontamination stations to protect
22 waters and infrastructure from invasive species, including standardizing
23 training and overseeing quality assurance;

24 WHEREAS, Watercraft inspection and decontamination stations
25 are operated by Colorado Parks and Wildlife, the National Park Service,
26 Larimer County, and various municipalities and private industry locations
27 including businesses, concessioners, marinas, clubs, and private lakes;
28 and

29 WHEREAS, Colorado Parks and Wildlife monitors waters of the
30 state for zebra and quagga mussels and other aquatic invasive plants and
31 animals; and

32 WHEREAS, Colorado's watercraft inspection and decontamination
33 program has prevented the introduction of these highly destructive

1 invasive species through the diligent efforts of watercraft inspectors and
2 decontamination staff and through ongoing sampling, monitoring,
3 education, and enforcement actions; and

4 WHEREAS, Since 2009, more than 100 out-of-state watercraft
5 with zebra or quagga mussels on them have been intercepted in Colorado;
6 and

7 WHEREAS, In 2015, Colorado Parks and Wildlife intercepted a
8 record number of infested out-of-state watercraft and decontaminated
9 them prior to allowing them into state waters, and 2016 is on track to
10 exceed the 2015 total; and

11 WHEREAS, Between 2008 and 2015, watercraft inspection and
12 decontamination stations in Colorado collectively performed nearly
13 3,000,000 inspections and 46,628 decontaminations; and

14 WHEREAS, Some dam and reservoir operators in Colorado, such
15 as Denver Water and the Colorado River Water Conservation District,
16 regularly pay for watercraft inspection and decontamination prevention
17 efforts; and

18 WHEREAS, The United States Bureau of Reclamation and the
19 United States Army Corps of Engineers both own and operate numerous
20 at-risk reservoirs and dams in Colorado, and although they fund their own
21 prevention efforts, they do not fund Colorado Parks and Wildlife; and

22 WHEREAS, Most watercraft inspection and decontamination
23 stations are operated by the recreational manager of a body of water or by
24 a contracted private entity through the recreational manager; and

25 WHEREAS, The United States Forest Service (USFS) is the
26 recreational manager of ten at-risk United States Bureau of
27 Reclamation-owned reservoirs; and

28 WHEREAS, The USFS has eliminated almost all financial
29 contribution to ANS watercraft inspection and decontamination
30 prevention efforts; and

31 WHEREAS, The USFS does not operate, or contract for the
32 operations of, any watercraft inspection and decontamination stations in
33 Colorado; and

1 WHEREAS, Colorado Parks and Wildlife or local entities contract
2 with private industry for watercraft inspection and decontamination
3 operations on USFS-managed waters; now, therefore,

4 *Be It Resolved by the House of Representatives of the Seventy-first*
5 *General Assembly of the State of Colorado, the Senate concurring herein:*

6 That we, the members of the Colorado General Assembly, urge the
7 United States Bureau of Reclamation, the United States Army Corps of
8 Engineers, and the USFS to provide funding to Colorado Parks and
9 Wildlife for implementation of the State of Colorado Zebra and Quagga
10 Mussel Management Plan.

11 *Be It Further Resolved,* That copies of this Joint Resolution be sent
12 to the Commissioner of the United States Bureau of Reclamation, the
13 Commanding General and Chief of Engineering of the Army Corps of
14 Engineers, the Chief of the United States Forest Service, and the members
15 of Colorado's congressional delegation.

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL B

LLS NO. 17-0119.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Becker J., Saine

SENATE SPONSORSHIP

Sonnenberg, Baumgardner

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN AUTHORIZATION FOR THE COLORADO WATER**
102 **CONSERVATION BOARD TO FINANCE SOUTH PLATTE RIVER BASIN**
103 **RESERVOIR DREDGING PROJECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. The bill appropriates \$5 million from the Colorado water conservation board construction fund to the Colorado water conservation board to make loans and grants to enable the recipients to dredge existing reservoirs located in the South Platte river basin to restore the reservoirs' full decreed storage capacity.

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. South Platte river basin reservoir dredging**
3 **projects - appropriation.** (1) For the 2017-18 state fiscal year,
4 \$5,000,000 is appropriated to the department of natural resources for use
5 by the Colorado water conservation board. This appropriation is from the
6 Colorado water conservation board construction fund created in section
7 37-60-121, C.R.S. To implement this section, the Colorado water
8 conservation board may use this appropriation to make the following
9 loans and grants to dredge existing reservoirs located in the South Platte
10 river basin to restore the reservoirs' full decreed storage capacity. The
11 grants made pursuant to this section must not exceed \$2,500,000 and the
12 board shall not award a grant or loan if the anticipated value of the
13 increased water storage capacity does not exceed the amount of the loan
14 or grant.

15 (2) The money appropriated in subsection (1) of this section
16 remains available for the designated purposes until the projects are
17 completed.

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

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

BILL C

LLS NO. 17-0120.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Arndt and Becker J., Coram

SENATE SPONSORSHIP

Sonnenberg and Baumgardner,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING UPDATES TO THE 1921 LAW GOVERNING IRRIGATION**
102 **DISTRICTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Water Resources Review Committee. This bill amends the 1921 irrigation district law to:

- Remove inconsistencies and update antiquated provisions;
- Clarify the definition of landowners entitled to receive water, vote in district elections, and serve on the board of directors;

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.

- Update dollar figures and, in subsequent years, adjust for inflation;
- Define "agricultural land";
- Update election procedures;
- Clarify how irrigation district assessments are collected and held; and
- Modernize procedures for selling surplus property.

The bill also clarifies that water acquired in excess of an irrigation district's own needs can be leased for all beneficial purposes, rather than only for domestic, agricultural, and power and mechanical purposes, and that the provisions of the 1921 irrigation district law are in addition to powers conferred on irrigation districts in other statutes.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-42-106, **repeal** (2)
 3 as follows:

4 **37-42-106. Notice of organization meeting and election.** (2) ~~At~~
 5 ~~all elections held under the provisions of this article, every owner of~~
 6 ~~agricultural land within said district who is eighteen years of age or older,~~
 7 ~~is a citizen of the United States or has declared his or her intention to~~
 8 ~~become a citizen of the United States, is a resident of the state of~~
 9 ~~Colorado, and has paid real property taxes upon the property located~~
 10 ~~within said district on an area in excess of one acre during the year~~
 11 ~~preceding the date of said election if a resident of the district or on an area~~
 12 ~~of forty acres or more if a resident of the state outside the district or who~~
 13 ~~is an entryman upon public lands of the United States and is residing~~
 14 ~~thereon, shall be entitled to vote at such election in the precinct where he~~
 15 ~~or she resides or, if a nonresident of the precinct, in the precinct within~~
 16 ~~which the greater portion of his or her land is located. Any person so~~
 17 ~~qualified to vote, and who resides in any county into which said district~~
 18 ~~extends, is eligible for election as a director in and for the division in such~~
 19 ~~district in which he or she is entitled to vote. All lands platted or~~

1 ~~subdivided into residence or business lots shall not be considered~~
2 ~~agricultural land.~~

3 **SECTION 2.** In Colorado Revised Statutes, 37-42-107, **amend**
4 (1) as follows:

5 **37-42-107. Organization - meeting - voting.** (1) The board of
6 county commissioners shall attend at the time and place of ~~such~~ THE
7 meeting SPECIFIED IN SECTION 37-42-106 and shall certify to the meeting
8 a list of the landowners of ~~said~~ THE proposed district, taking no account
9 of those who have prosecuted appeals from the order of the board of
10 county commissioners fixing and determining boundaries, together with
11 the number of acres within ~~said~~ THE proposed district, owned or
12 represented by each, the total of which acreage, for the purposes of this
13 meeting, shall be considered the total acres of the district. The board of
14 county commissioners shall also act as a credentials committee of ~~said~~
15 THE meeting and shall decide AND CREATE A WRITTEN CERTIFICATION
16 REGARDING who are eligible voters ~~thereat making a certificate~~
17 ~~concerning the same, and~~ AT THE MEETING. The ~~chairman~~ CHAIR of the
18 board shall preside at ~~said~~ THE meeting until ~~such time as~~ temporary
19 officers are elected from among those present. ~~The unit of voting power~~
20 ~~shall be the acre within said district or proposed district, each landowner~~
21 ~~being entitled to cast as many votes as he has acres of land within the~~
22 ~~district or proposed district, and, in casting such votes, such landowner~~
23 ~~may vote in person or by proxy, and, in the election of directors, the~~
24 ~~practice known as cumulative voting shall be allowed. Any person~~
25 ~~desiring to act as proxy for another must file written authority therefor~~
26 ~~before being allowed to vote, which authority shall be retained as part of~~
27 ~~the proceedings of the meeting at which such vote is cast and shall be~~

1 ~~subject to use at no other meeting.~~

2 **SECTION 3.** In Colorado Revised Statutes, 37-42-108, **amend**
3 (1) as follows:

4 **37-42-108. Directors - election.** (1) The board of directors ~~shall~~
5 ~~consist~~ CONSISTS of three landowners of the district who ~~shall~~ ARE
6 QUALIFIED TO VOTE AT DISTRICT ELECTIONS PURSUANT TO SECTION
7 37-42-112(2), INCLUDING AUTHORIZED AGENTS, AND WHO RESIDE WITHIN
8 THE DISTRICT. DIRECTORS hold their respective offices for the period of
9 three years and until their successors are elected and qualified. They shall
10 be elected by ballot upon public nominations made at the meeting at
11 which they are elected, and each ballot ~~shall~~ MUST contain the name of
12 the person for whom it is cast, the name of the voter or, if by proxy, the
13 name of both landowner and proxy, and the number of votes cast. Each
14 landowner may cast as many votes as he OR SHE has acres of land within
15 the district for each of three persons voted for. ~~and may vote~~
16 ~~cumulatively, if he so desires, indicating that fact upon his ballot.~~

17 **SECTION 4.** In Colorado Revised Statutes, 37-42-110, **amend**
18 (2)(b), (3), and (7); and **repeal** (4) as follows:

19 **37-42-110. Directors to organize - powers.** (2) (b) It is also the
20 duty of ~~such~~ THE board to make an annual report of ~~such~~ THE district
21 showing the status of its affairs generally, including full lists of assets and
22 liabilities, warrants and bonds outstanding, and such as have been paid or
23 retired during the last fiscal year, and to present the ~~same~~ REPORT to the
24 landowners at OR BEFORE the annual election.

25 (3) As compensation for ~~such~~ service as directors, each person so
26 acting ~~shall~~ IS ENTITLED TO receive ~~ten~~ ONE HUNDRED dollars for each day
27 necessarily spent in the discharge of district business and such expenses

1 as are necessarily incurred in the conduct of its affairs; except that, after
2 the first year, the landowners may fix other compensation by vote at any
3 annual OR SPECIAL election.

4 (4) ~~Each member of the board of directors shall execute an official~~
5 ~~bond in the sum of three thousand dollars, which shall be approved by the~~
6 ~~county judge of the county wherein such organization was effected, and~~
7 ~~the bond shall be recorded in the office of the county clerk and recorder~~
8 ~~thereof. Such official bond may be signed by a surety company authorized~~
9 ~~to do business in the state of Colorado, in which case the district shall be~~
10 ~~liable for and shall pay the premium on said bond.~~

11 (7) If it is found necessary by the board of directors to employ
12 judges of election, each ~~shall~~ JUDGE IS ENTITLED TO receive as
13 compensation for his OR HER services the sum of ~~ten~~ ONE HUNDRED
14 dollars per day to be paid by the district; EXCEPT THAT THE LANDOWNERS
15 MAY FIX OTHER COMPENSATION BY VOTE AT ANY ANNUAL OR SPECIAL
16 ELECTION.

17 **SECTION 5.** In Colorado Revised Statutes, **amend** 37-42-111 as
18 follows:

19 **37-42-111. Meetings of directors - notice.** The board of directors
20 shall hold its regular meetings at least four times each year, which may be
21 immediately following the general election and on the first Tuesday of
22 April, July, and October of each year, or, in the alternative, at such other
23 times as may be designated in the bylaws, RULES, OR REGULATIONS
24 adopted by the board, and such special meetings as ~~shall be~~ ARE called,
25 on at least five days' notice, by a majority of the board. All special and
26 regular meetings must be held where practicable within the district or, if
27 not so practicable, within the boundaries of any county in which the

1 district is located, in whole or in part, or in any county so long as the
2 meeting location ~~does not exceed~~ IS WITHIN twenty miles ~~from~~ OF the
3 district boundaries. The provisions of this section governing the location
4 of meetings may be waived only if the proposed change of location of a
5 meeting of the board appears on the agenda of a regular or special
6 meeting of the board and if a resolution is adopted by the board stating
7 the reason for which a meeting of the board is to be held in a location
8 other than under ~~the provisions of~~ this section and further stating the date,
9 time, and place of ~~such~~ THE meeting. In calling special meetings, the call
10 must state specifically the business to be transacted, and none other shall
11 be considered, but, at regular meetings, any business ~~which~~ THAT the
12 board of directors may legally transact may be acted upon. A majority of
13 all members of the board ~~shall~~ MUST concur in order to bind the district
14 or the board in any matter. All board meetings ~~shall~~ MUST be public,
15 EXCEPT FOR EXECUTIVE SESSIONS TO DISCUSS CONFIDENTIAL MATTERS
16 AND TO RECEIVE LEGAL ADVICE ON SPECIFIC LEGAL QUESTIONS, and the
17 records thereof, EXCEPT CONFIDENTIAL RECORDS, ARE open to general
18 public inspection during business hours. IRRIGATION DISTRICTS MAY
19 DEFINE CONFIDENTIAL RECORDS AND MATTERS SUBJECT TO EXECUTIVE
20 SESSION IN THE BYLAWS, RULES, OR REGULATIONS USING SECTION
21 24-6-402 (4) AS GUIDANCE.

22 **SECTION 6.** In Colorado Revised Statutes, **amend** 37-42-112 as
23 follows:

24 **37-42-112. District elections - definition.** (1) Elections are of
25 two kinds, general and special. A general election shall be held once each
26 year in the month of January, at a date, time, and place designated by the
27 board. Any business requiring or permitting a vote of the landowners may

1 be transacted at ~~such~~ THE election, including always the election of a
2 board of directors for the ensuing year. A special election may be called
3 at any time by the board of directors by resolution duly passed and
4 entered of record in the minutes of the proceedings of the board. Notice
5 of A general ~~elections shall~~ ELECTION MUST call attention to the date and
6 place of ~~such~~ THE election. In addition, notice of A special ~~elections shall~~
7 ELECTION MUST state the nature of the business to be transacted at ~~such~~
8 THE election, and no business shall be transacted ~~thereat~~ AT THE SPECIAL
9 ELECTION other than that mentioned in the call. In either case, notice shall
10 be ~~mailed~~ DELIVERED ELECTRONICALLY OR BY UNITED STATES MAIL to
11 each landowner of the district ~~at his~~ WHO IS QUALIFIED TO VOTE IN
12 DISTRICT ELECTIONS AT THE LANDOWNER'S last address as shown by the
13 records of the district at least thirty days prior to the date of ~~such~~ THE
14 election and also published once each week for four consecutive weeks
15 immediately preceding ~~such~~ THE election in a newspaper designated by
16 the board and of general circulation within ~~said~~ THE district.

17 (2) THE FOLLOWING LANDOWNERS WHO OWN AGRICULTURAL LAND
18 WITHIN A DISTRICT ARE ENTITLED TO VOTE AT ALL DISTRICT ELECTIONS
19 AND AT ELECTIONS FOR A PROPOSED DISTRICT UNDER SECTION 37-42-107:

20 (a) A LANDOWNER WHO IS A NATURAL PERSON OVER THE AGE OF
21 EIGHTEEN YEARS, IS A CITIZEN OF THE UNITED STATES, IS A RESIDENT OF
22 THE STATE OF COLORADO, AND HAS PAID OR IS OBLIGATED TO PAY
23 PROPERTY TAXES UPON REAL PROPERTY LOCATED WITHIN THE DISTRICT
24 FOR THE CALENDAR YEAR PRECEDING THE ELECTION;

25 (b) A LANDOWNER THAT IS NOT A NATURAL PERSON AND THAT HAS
26 PAID OR IS OBLIGATED TO PAY PROPERTY TAXES UPON REAL PROPERTY
27 LOCATED WITHIN THE DISTRICT FOR THE CALENDAR YEAR PRECEDING THE

1 ELECTION. IN ORDER TO VOTE AT AN ELECTION, THE LANDOWNER MUST
2 AUTHORIZE AN AGENT WHO SATISFIES THE RESIDENCY AND AGE
3 REQUIREMENTS SET FORTH IN SUBSECTION (2)(a) OF THIS SECTION TO VOTE
4 ON ITS BEHALF AT THE ELECTION AND MUST PROVIDE WRITTEN NOTICE OF
5 THE AUTHORIZED AGENT TO THE DISTRICT IN A FORM SATISFACTORY TO
6 THE DISTRICT.

7 (3) THE UNIT OF VOTING POWER IS ONE ACRE WITHIN A DISTRICT OR
8 PROPOSED DISTRICT, EACH LANDOWNER BEING ENTITLED TO CAST AS
9 MANY VOTES AS THE LANDOWNER HAS ACRES OF LAND WITHIN THE
10 DISTRICT OR PROPOSED DISTRICT, AND, IN CASTING SUCH VOTES, THE
11 LANDOWNER MAY VOTE IN PERSON OR BY PROXY. A DISTRICT MAY
12 ESTABLISH IN ITS BYLAWS, RULES, OR REGULATIONS QUALIFICATIONS FOR
13 PERSONS ACTING AS PROXIES. A PERSON DESIRING TO ACT AS PROXY FOR
14 ANOTHER MUST FILE WRITTEN AUTHORITY THEREFOR BEFORE BEING
15 ALLOWED TO VOTE, WHICH AUTHORITY:

16 (a) SHALL BE RETAINED AS PART OF THE PROCEEDINGS OF THE
17 MEETING AT WHICH THE VOTE IS CAST; AND

18 (b) IS NOT VALID AT ANY OTHER MEETING.

19 (4) IF THE DISTRICT IS DIVIDED INTO PRECINCTS, A LANDOWNER IS
20 ENTITLED TO VOTE AT AN ELECTION IN THE PRECINCT WHERE HE OR SHE
21 RESIDES OR, IF THE LANDOWNER IS NOT A NATURAL PERSON OR IS A
22 NONRESIDENT OF THE DISTRICT, IN THE PRECINCT WITHIN WHICH THE
23 GREATER PORTION OF THE LANDOWNER'S LAND IS LOCATED. THE BOARD
24 OF DIRECTORS OF THE DISTRICT MAY ORDER THAT THE ENTIRE DISTRICT
25 CONSTITUTES ONE ELECTION PRECINCT, IN WHICH CASE THE BOARD SHALL
26 ESTABLISH ONE POLLING PLACE IN THE PRECINCT AND SHALL APPOINT
27 ONLY THREE JUDGES OF ELECTION, WHO CONSTITUTE A BOARD OF

1 ELECTION, AND ALL QUALIFIED VOTERS VOTING AT THE ELECTION MUST
2 VOTE AT THE POLLING PLACE SO ESTABLISHED.

3 (5) AS USED IN THIS SECTION, "AGRICULTURAL LAND" HAS THE
4 MEANING SET FORTH IN SECTION 39-1-102 (1.6); EXCEPT THAT
5 "AGRICULTURAL LAND" DOES NOT INCLUDE ANY LAND THAT HAS BEEN
6 PLATTED OR SUBDIVIDED INTO RESIDENCE OR BUSINESS LOTS.

7 **SECTION 7.** In Colorado Revised Statutes, 37-42-113, **amend**
8 (1) and (2); and **add** (4) as follows:

9 **37-42-113. Powers of district.** (1) (a) Irrigation districts
10 organized under this ~~article~~ ARTICLE 42 may sue and be sued in their
11 district names, and courts shall take judicial notice of their organization
12 and territorial extent.

13 (b) The board of directors may acquire, by use, PRESCRIPTION,
14 appropriation, purchase, or condemnation, property or rights of any kind,
15 including rights-of-way, canals, or reservoirs either projected, or partly
16 constructed, or constructed, or the part or whole of any contemplated,
17 projected, partly completed system of irrigation or waterworks, water
18 rights, or any other property or right necessary or useful for carrying out
19 the objects of ~~said~~ THE irrigation district. The title to any such property so
20 acquired ~~shall vest~~ VESTS immediately in ~~said~~ THE irrigation district in its
21 corporate name and ~~shall be~~ IS held by ~~said~~ THE district in trust for, and
22 is hereby dedicated and set apart for, the uses and purposes provided for
23 in this ~~article~~ ARTICLE 42.

24 (c) Any contract purporting to bind the district to the payment of
25 any sum in excess of ~~twenty~~ FIVE HUNDRED thousand dollars ~~shall~~ MUST
26 first be ratified by a majority of all the votes cast at a general or special
27 election called for that purpose before it ~~shall become so~~ BECOMES

1 binding, and all contracts entered into by the board of directors agreeing
2 to a payment in excess of ~~such~~ THAT amount shall be construed as ~~made~~
3 BEING expressly subject to this ~~provision~~ SUBSECTION (1)(c) and ~~shall~~ DO
4 not become binding upon the district until authorized and ratified at an
5 election called and held for that purpose; EXCEPT THAT, ON JULY 1, 2022,
6 AND ON JULY 1 OF EVERY FIVE-YEAR PERIOD THEREAFTER, THE BOARD OF
7 DIRECTORS SHALL ADJUST THE DOLLAR AMOUNT SPECIFIED IN THIS
8 SUBSECTION (1)(c) IN ACCORDANCE WITH THE PERCENTAGE CHANGE OVER
9 THE PREVIOUS FIVE-YEAR PERIOD IN THE UNITED STATES DEPARTMENT OF
10 LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE INDEX FOR
11 DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN CONSUMERS, OR ITS
12 SUCCESSOR INDEX. THE BOARD OF DIRECTORS SHALL POST THE ADJUSTED
13 AMOUNT ON ITS WEBSITE AND IN ITS ANNUAL REPORTS.

14 (2) Where the compensation to be paid by the district to the
15 owners of any property ~~which~~ THAT the board of directors of an irrigation
16 district ~~are~~ IS authorized to take by proceedings in eminent domain has
17 been finally determined to be in excess of ~~twenty~~ FIVE HUNDRED thousand
18 dollars, THE COURTS SHALL GIVE sufficient time ~~shall be given by the~~
19 ~~courts~~ for the submission to and determination by the landowners of the
20 district, at a regularly called general or special election, of the ~~questions~~
21 QUESTION of whether the district shall pay ~~said~~ THE compensation or ~~shall~~
22 abandon ~~such~~ THE condemnation proceedings; EXCEPT THAT, ON JULY 1,
23 2022, AND ON JULY 1 OF EVERY FIVE-YEAR PERIOD THEREAFTER, THE
24 BOARD OF DIRECTORS SHALL ADJUST THE DOLLAR AMOUNT SPECIFIED IN
25 THIS SUBSECTION (2) IN ACCORDANCE WITH THE PERCENTAGE CHANGE
26 OVER THE PREVIOUS FIVE-YEAR PERIOD IN THE UNITED STATES
27 DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, CONSUMER PRICE

1 INDEX FOR DENVER-BOULDER-GREELEY, ALL ITEMS, ALL URBAN
2 CONSUMERS, OR ITS SUCCESSOR INDEX. THE BOARD OF DIRECTORS SHALL
3 POST THE ADJUSTED AMOUNT ON ITS WEBSITE AND IN ITS ANNUAL
4 REPORTS. If the landowners, by majority vote of all the votes cast at ~~such~~
5 THE election, ~~shall~~ vote for the payment of ~~such~~ THE compensation, the
6 COURTS SHALL GIVE THE DISTRICT THE necessary additional ~~times shall be~~
7 ~~given the district wherein~~ TIME to pay ~~such~~ THE compensation either by
8 levy and collection of assessments against the lands of the district, ~~or~~ by
9 the issuance and sale of bonds of the district, or by both such methods, as
10 may be determined at a district election.

11 (4) THE POWERS CONFERRED BY THIS ARTICLE 42 ARE
12 CUMULATIVE AND ARE IN ADDITION TO ALL POWERS POSSESSED BY AN
13 IRRIGATION DISTRICT UNDER THE OTHER LAWS OF THIS STATE.

14 **SECTION 8.** In Colorado Revised Statutes, 37-42-114, **amend**
15 (1) and (3) as follows:

16 **37-42-114. Landowners - definition - evidence of ownership.**

17 (1) ~~"Landowners"~~ "LANDOWNER", as used in this ~~article, shall include~~
18 ~~any persons, natural or artificial, resident or nonresident, who are citizens~~
19 ~~of the United States and owners~~ ARTICLE 42, MEANS AN OWNER in fee of
20 lands within the boundaries of any irrigation district organized or
21 proposed to be organized, ~~or holders of incomplete title under contracts~~
22 ~~to purchase state or Carey act lands, or the state board of land~~
23 ~~commissioners in care of agricultural college or public school lands,~~
24 ~~including also entrymen or purchasers of public lands of the United States~~
25 ~~under any of the agricultural public land laws, or the secretary of the~~
26 ~~interior in care of unentered public lands subject to this article under the~~
27 ~~terms of an act of congress entitled "An Act to promote reclamation of~~

1 ~~arid lands.", approved August 11, 1916, and all acts amendatory thereof~~
2 ~~or supplemental thereto~~ WHETHER A RESIDENT OR NONRESIDENT OF THE
3 DISTRICT, WHO OR THAT IS A CITIZEN OF, OR AN ENTITY OR ARRANGEMENT
4 CREATED OR ORGANIZED WITHIN, THE UNITED STATES.

5 (3) For the purposes of this ~~article~~ ARTICLE 42, evidence of
6 ownership ~~shall be~~ IS prima facie established ~~as to patented land,~~ by the
7 certificate of the county assessor of the county wherein the lands involved
8 are situated ~~as to unperfected entries upon public lands, by the certificate~~
9 ~~of the register of the United States land office of the district wherein the~~
10 ~~lands involved are situated; or as to holders of incomplete title under~~
11 ~~contracts to purchase state or Carey act lands,~~ OR by certificate of the
12 register of the state board of land commissioners.

13 **SECTION 9.** In Colorado Revised Statutes, 37-42-128, **amend**
14 (1), (3), (4), (5), and (6) as follows:

15 **37-42-128. Collection of assessments.** (1) The county treasurer
16 of the county wherein the office of an irrigation district is located ~~shall be~~
17 ~~and is, hereby constituted~~ ex officio, district treasurer of ~~such~~ THE
18 irrigation district and ~~shall be~~ IS liable upon his OR HER official bond and
19 to indictment and criminal prosecution for malfeasance, misfeasance, or
20 failure to perform any duty prescribed in this ~~article~~ ARTICLE 42, either as
21 county treasurer or as district treasurer, as is provided by law in like or
22 other cases as county treasurer. ~~Said~~ THE treasurer shall collect, receive,
23 and ~~PROVIDE A~~ receipt for all ~~moneys~~ ASSESSMENTS belonging to the
24 district.

25 (3) ~~In the case of irrigation district assessments, such county~~
26 ~~treasurer shall receive, in payment of the general fund assessment for the~~
27 ~~year in which taxes are payable, warrants drawn against said general fund~~

1 the same as so much lawful money of the United States, if such warrant
2 does not exceed the amount of the general fund assessment which the
3 person tendering the same owes. Such county treasurer shall receive, in
4 payment of the district bond fund assessment for the year in which said
5 taxes are payable, interest coupons or bonds of said irrigation district
6 maturing within the year said assessments are payable the same as so
7 much lawful money of the United States, if such interest coupons or
8 bonds do not exceed the amount of district bond fund assessment which
9 the person tendering the same owes. THE COUNTY TREASURER SHALL
10 PROVIDE A RECEIPT FOR payment of irrigation district assessments ~~shall be~~
11 ~~received~~ for upon the same receipt required in the collection of general
12 real estate taxes, but, in the case of payment of only general tax or
13 irrigation district assessment and the nonpayment of the other, such
14 nonpayment shall be clearly indicated upon ~~such~~ THE receipt so issued,
15 and the payment of the one ~~shall in no~~ DOES NOT IN ANY way affect the
16 lien or obligation of the unpaid tax or assessment, but each ~~shall exist~~
17 EXISTS and ~~be~~ IS enforceable separately.

18 (4) The county treasurer of each county comprising ALL OR a
19 portion only of an irrigation district ~~excepting the county treasurer of the~~
20 ~~county in which the office of said district is located,~~ SHALL, on the first
21 Monday of each month, ~~shall~~ remit to the district treasurer all moneys,
22 warrants, coupons, or bonds ~~therefore~~ collected or received by him OR
23 HER on account of ~~said~~ THE district. Every county treasurer shall keep a
24 general fund account, a bond fund account, and, in the case of a contract
25 with the United States, a United States contract fund account. THE
26 COUNTY TREASURER SHALL PLACE in the bond fund account ~~shall be~~
27 ~~placed~~ all ~~moneys~~ MONEY received from taxation for the payment of

1 bonds and the interest thereon. THE COUNTY TREASURER SHALL PLACE in
2 the United States contract fund account ~~shall be placed~~ all moneys MONEY
3 received for payments due or to become due the United States under any
4 contract between the district and the United States.

5 (5) EVERY DISTRICT TREASURER SHALL KEEP A GENERAL FUND
6 ACCOUNT, A BOND FUND ACCOUNT, AND, IN THE CASE OF A CONTRACT
7 WITH THE UNITED STATES, A UNITED STATES CONTRACT FUND ACCOUNT.
8 THE DISTRICT TREASURER SHALL PLACE IN THE BOND FUND ACCOUNT ALL
9 MONEY RECEIVED FROM TAXATION FOR THE PAYMENT OF BONDS AND THE
10 INTEREST THEREON. THE DISTRICT TREASURER SHALL PLACE IN THE
11 UNITED STATES CONTRACT FUND ACCOUNT ALL MONEY RECEIVED FOR
12 PAYMENTS DUE OR TO BECOME DUE THE UNITED STATES UNDER ANY
13 CONTRACT BETWEEN THE DISTRICT AND THE UNITED STATES. THE
14 DISTRICT TREASURER SHALL PLACE all other district moneys MONEY from
15 whatever sources ~~shall be placed~~ in the general fund, and SHALL KEEP the
16 three funds ~~kept~~ separate at all times. The district treasurer shall pay out
17 of ~~said~~ THE bond FUND and United States contract fund, when due, the
18 interest and principal of the bonds of ~~said~~ THE district, at the time and
19 place specified in ~~said~~ THE bonds, or all payments due to the United
20 States under any contract between the district and the United States, at the
21 time and in the manner provided in ~~said~~ THE contract, and shall pay out
22 of the general fund only ~~upon warrants signed by the person duly~~ THE
23 MONEY authorized by the board of directors of ~~said~~ THE district. ~~as~~
24 ~~provided in this section.~~

25 (6) The district treasurer ~~on the fifteenth day of each month,~~
26 ~~unless excused therefrom by order of the board of directors,~~ shall report
27 MONTHLY to the ~~secretary~~ BOARD OF DIRECTORS of the district the amount

1 of money in his hands to the credit of the respective funds, the amount of
2 warrants MONEY paid FROM THE RESPECTIVE FUNDS during the previous
3 month, and the amount of registered warrants, if any, together with an
4 account of bonds retired or United States contract payments made, if any.

5 **SECTION 10.** In Colorado Revised Statutes, **repeal** 37-42-129
6 as follows:

7 **37-42-129. Warrants - interest - call.** Except with respect to
8 claims coming within the provisions of article 10 of title 24, C.R.S., no
9 warrants shall be issued except upon a verified claim first audited and
10 allowed by the board, and each warrant shall be signed by the person duly
11 authorized by the board of directors; and, if the district treasurer has
12 insufficient money in the general fund to pay any warrant when presented
13 for payment, he shall enter such warrant, with its number, amount, date,
14 and the name and address of holder, in a register kept for that purpose and
15 shall endorse upon said warrant "presented and not paid for want of
16 funds", with the date of presentation. Such warrant shall draw interest at
17 the rate of six percent per annum from such date of presentation until
18 called for payment. When money sufficient to pay such warrant, or
19 sufficient to allow a credit of not less than one hundred dollars thereon is
20 in the general fund, such treasurer shall mail notice thereof to the holder
21 of record at his address of record, and interest thereon shall thereupon
22 cease. Warrants shall be paid in the order of their presentation for
23 payment.

24 **SECTION 11.** In Colorado Revised Statutes, 37-42-131, **amend**
25 (2); and **repeal** (1) as follows:

26 **37-42-131. Payment of general expenses.** (1) If any money in
27 excess of one hundred dollars remains in the general fund in any year

1 after the payment of all district warrants or other indebtedness properly
2 chargeable against such fund and due and payable within such fiscal year,
3 the board shall apply such surplus to the payment of the warrants of
4 preceding years, if any, in the order of their registration and thereafter, in
5 its discretion, by resolution, may authorize the transfer of such money
6 from the general fund to the bond fund, and a certified copy of such
7 resolution, signed by the president and attested by the secretary of the
8 district, shall be sufficient warrant to the treasurer for making such
9 transfer.

10 (2) (a) For the purposes of defraying the expenses of the
11 organization of the district and the care, operation, management, repair,
12 and improvement of all canals, ditches, reservoirs, and works, including
13 salaries of officers and employees, the board may: either

14 (I) Fix rates of tolls and charges and collect ~~the same of~~ THEM
15 FROM all persons using ~~said canal and~~ THE DISTRICT'S STRUCTURES OR
16 water for irrigation or other purposes; ~~and in addition thereto may~~

17 (II) Provide, in whole or in part, for the payment of ~~such~~ THE
18 expenditures SPECIFIED IN THIS SUBSECTION (2)(a) by levy of assessments
19 therefor, as provided in section 37-42-126; or

20 (III) ~~by~~ Both FIX tolls and LEVY assessments.

21 (b) ~~In case~~ IF the money raised by the sale of bonds issued is
22 insufficient and ~~in case~~ IF bonds are unavailable for the completion of the
23 plans of works adopted, ~~it is the duty of~~ the board of directors ~~to~~ SHALL
24 provide for the completion of ~~said~~ THE plans by levy of an assessment
25 therefor in the same manner in which levies of assessments are made for
26 ~~the~~ other purposes.

27 **SECTION 12.** In Colorado Revised Statutes, **amend** 37-42-135

1 as follows:

2 **37-42-135. District to lease surplus water.** Whenever any
3 irrigation district organized under ~~the provisions of this article~~ ARTICLE
4 42 acquires water in excess of its own needs or becomes the owner of
5 water or rights capable of use for other purposes than those for which it
6 was organized, without impairing or injuring such use, it may lease ~~such~~
7 ~~THE~~ water or rights for use within or without the district for ~~domestic,~~
8 ~~agricultural, power, or mechanical purposes~~ ANY BENEFICIAL USE, upon
9 affirmative vote of the ~~district~~ BOARD OF DIRECTORS authorizing ~~such~~ THE
10 lease, and the rentals derived from ~~such~~ THE lease shall be paid into the
11 general fund of the district. ~~Such rentals shall become due and payable~~
12 ~~semiannually, in advance, on March 1 and August 1 of each year, and~~
13 ~~shall bear interest at the rate of one percent per month from due date until~~
14 ~~paid.~~ At its option the board of directors may cancel any lease upon which
15 any rental is past due and unpaid. ~~and no lease shall extend beyond the~~
16 ~~term of twenty years from the date of its execution.~~

17 **SECTION 13.** In Colorado Revised Statutes, **amend** 37-42-137
18 as follows:

19 **37-42-137. Sale of surplus water - proceeds.** The board of
20 directors may sell property or assets of the district not needed for district
21 use nor essential to its operation from time to time as it ~~shall direct by~~
22 ~~resolution, at public auction,~~ DIRECTS and upon such notice as it ~~shall~~
23 ~~designate~~ DESIGNATES, and shall cause the proceeds thereof to be placed
24 in the bond fund or United States contract fund of the district. If ~~such~~ THE
25 district has no bonded or United States contract indebtedness, then ~~such~~
26 THE proceeds shall be placed in the general fund.

27 **SECTION 14.** In Colorado Revised Statutes, **amend** 37-42-140

1 as follows:

2 **37-42-140. Districts organized after April 7, 1921.** This article
3 ~~shall apply~~ ARTICLE 42 APPLIES only to irrigation districts organized after
4 April 7, 1921, and no existing laws in any manner relating to irrigation
5 districts ~~shall~~ apply to or affect irrigation districts organized after ~~said~~
6 THAT date, but ~~said~~ existing laws and all amendments thereto made after
7 ~~said~~ THAT date ~~shall be and~~ remain in and have full force and effect as to
8 all irrigation districts organized prior to April 7, 1921. However,
9 whenever ~~resident freeholders, representing~~ LANDOWNERS OF a majority
10 of the number of acres of the irrigable land in any irrigation district
11 organized prior to April 7, 1921, ~~shall~~ petition the board of directors to
12 call a special election for the purpose of submitting to the ~~qualified~~
13 ~~electors of said irrigation district, who for the purpose of this section are~~
14 ~~defined as the owners or entymen of agricultural or horticultural land~~
15 ~~within said district exclusive of lands platted or subdivided into residence~~
16 ~~or business lots,~~ LANDOWNERS ENTITLED TO VOTE AT ELECTIONS OF THE
17 IRRIGATION DISTRICT a proposition to vote, at any regular or any special
18 election called and notice given for such purpose, upon the question
19 whether ~~or not such~~ THE irrigation district shall thereafter operate under
20 ~~the provisions of this article~~ ARTICLE 42, and if two-thirds of ~~said~~
21 ~~qualified electors~~ THE LANDOWNERS of ~~such~~ THE irrigation district voting
22 upon ~~such~~ THE question ~~shall~~ vote in favor of coming under ~~the~~
23 ~~provisions of this article~~ ARTICLE 42, upon the filing of a statement of the
24 results of ~~such~~ THE election in the manner provided by section 37-41-112,
25 ~~such~~ THE irrigation district ~~shall~~ IS thereafter ~~be~~ governed by ~~the~~
26 ~~provisions of this article but~~ ARTICLE 42. The election of ~~such~~ THE district
27 to come under ~~the provisions of this article shall~~ ARTICLE 42 DOES not

1 invalidate any act or proceeding ~~therefore~~ PREVIOUSLY done under the
2 laws governing ~~such~~ THE irrigation district prior to ~~such~~ THE election and
3 ~~shall~~ DOES not impair any obligation of ~~such~~ THE irrigation district or any
4 right thereunder.

5 **SECTION 15.** In Colorado Revised Statutes, **amend** 37-42-141
6 as follows:

7 **37-42-141. Ratification of irrigation district.** If the ~~qualified~~
8 ~~voters~~ LANDOWNERS of an irrigation district ENTITLED TO VOTE AT
9 ELECTIONS have authorized the dissolution of ~~such~~ THE district in the
10 manner provided by section 37-42-139 but the plan of dissolution so
11 authorized has not been implemented and the district has continued to
12 function as an irrigation district, ~~such~~ THE district may submit the
13 question of ratification of the district to the qualified voters in a district
14 election as specified in section 37-42-112. If a majority of the votes cast
15 at ~~such~~ THE election are in favor of the ratification of the district, the prior
16 authorization of dissolution shall be deemed null and void. The directors
17 shall file their certificate of ~~such~~ THAT fact with the county clerk and
18 recorder of the county wherein such district is situated, and the district
19 shall be deemed, for all purposes, to be a de jure irrigation district.

20 **SECTION 16. Act subject to petition - effective date -**
21 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
22 the expiration of the ninety-day period after final adjournment of the
23 general assembly (August 9, 2017, if adjournment sine die is on May 10,
24 2017); except that, if a referendum petition is filed pursuant to section 1
25 (3) of article V of the state constitution against this act or an item, section,
26 or part of this act within such period, then the act, item, section, or part
27 will not take effect unless approved by the people at the general election

1 to be held in November 2018 and, in such case, will take effect on the
2 date of the official declaration of the vote thereon by the governor.

3 (2) This act applies to conduct occurring on or after the applicable
4 effective date of this act.

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

BILL D

LLS NO. 17-0121.01 Jennifer Berman x3286

HOUSE BILL

HOUSE SPONSORSHIP

Arndt, Becker J.

SENATE SPONSORSHIP

Sonnenberg,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING AN EXEMPTION FROM THE WATER QUALITY CONTROL**
102 **COMMISSION'S GRAYWATER CONTROL REGULATIONS FOR**
103 **GRAYWATER USED FOR THE PURPOSE OF SCIENTIFIC RESEARCH**
104 **INVOLVING HUMAN SUBJECTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

Water Resources Review Committee. The water quality control commission in the department of public health and environment (commission) is responsible for developing requirements, prohibitions,

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.

and standards that protect public health and water quality for the use of graywater for nondrinking purposes. Scientific research on graywater that might involve graywater uses and systems that do not strictly comply with the requirements, prohibitions, and standards developed by the commission would not be permitted under the control regulations.

To facilitate scientific research related to graywater uses and systems, the bill creates an exemption from the commission's graywater control regulations for scientific research involving human subjects whereby a person may collect and use graywater for purposes of scientific research involving human subjects if the person:

- Seeks to conduct the scientific research on behalf of an institution of higher education;
- Utilizes a graywater treatment works system that incorporates a secondary water supply to provide an alternative source of water if any portion of the system does not function properly; and
- Collects and uses graywater in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows.

The person is required to report to the water resources review committee on an annual basis the results of periodic monitoring conducted to assess the continued functioning of the graywater treatment works system used in the project and the project's compliance with federal rules concerning the protection of human research subjects.

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-8-103, **amend** the
3 introductory portion and (8.3) as follows:

4 **25-8-103. Definitions.** As used in this ~~article~~ ARTICLE 8, unless
5 the context otherwise requires:

6 (8.3) (a) "Graywater" means that portion of wastewater that,
7 before being treated or combined with other wastewater, is collected from
8 fixtures within residential, commercial, or industrial buildings or
9 institutional facilities for the purpose of being put to beneficial uses
10 authorized by the commission in accordance with section 25-8-205 (1)(g);
11 EXCEPT THAT GRAYWATER USE FOR PURPOSES OF SCIENTIFIC RESEARCH

1 INVOLVING HUMAN SUBJECTS, AS DEFINED IN SECTION 25-8-205.3 (3),
2 MUST COMPLY WITH THE REQUIREMENTS OF SECTION 25-8-205.3, BUT
3 NEED NOT COMPLY WITH THE COMMISSION'S CONTROL REGULATIONS
4 ESTABLISHED UNDER SECTION 25-8-205 (1).

5 (b) Sources of graywater may include discharges from bathroom
6 and laundry room sinks, bathtubs, showers, laundry machines, and other
7 sources authorized by rule. Graywater does not include the wastewater
8 from toilets, urinals, kitchen sinks, dishwashers, or nonlaundry utility
9 sinks. Graywater must be collected in a manner that minimizes household
10 wastes, human excreta, animal or vegetable matter, and chemicals that are
11 hazardous or toxic, as determined by the commission; EXCEPT THAT A
12 PERSON MAY COLLECT AND USE GRAYWATER IN A MANNER THAT DEPARTS
13 FROM THE COMMISSION'S REQUIREMENTS IF THE PERSON COLLECTS AND
14 USES THE GRAYWATER FOR PURPOSES OF SCIENTIFIC RESEARCH INVOLVING
15 HUMAN SUBJECTS IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION
16 25-8-205.3.

17 **SECTION 2.** In Colorado Revised Statutes, 25-8-205, **amend**
18 (1)(g)(II) as follows:

19 **25-8-205. Control regulations.** (1) The commission may
20 promulgate control regulations for the following purposes:

21 (g) (II) EXCEPT AS AUTHORIZED IN SECTION 25-8-205.3, graywater
22 may be used only in areas where the local city, city and county, or county
23 has adopted an ordinance or resolution approving the use of graywater
24 pursuant to section 30-11-107 (1)(kk) or 31-15-601 (1)(m). ~~C.R.S.~~ The
25 city, city and county, or county that has adopted an ordinance or
26 resolution approving the use of graywater pursuant to section 30-11-107
27 (1)(kk) or 31-15-601 (1)(m) ~~C.R.S.~~, has exclusive enforcement authority

1 regarding compliance with the ordinance or resolution.

2 **SECTION 3.** In Colorado Revised Statutes, **add 25-8-205.3** as
3 follows:

4 **25-8-205.3. Exemption from control regulations for graywater**
5 **research - definition.** (1) SUBJECT TO THE CONDITIONS SET FORTH IN
6 SUBSECTION (2) OF THIS SECTION, A PERSON MAY COLLECT AND USE
7 GRAYWATER IN A MANNER THAT DEPARTS FROM THE REQUIREMENTS OF
8 THE COMMISSION'S CONTROL REGULATIONS, AS PROMULGATED PURSUANT
9 TO SECTION 25-8-205 (1)(g), IF, ON BEHALF OF AN INSTITUTION OF HIGHER
10 EDUCATION IN COLORADO, OR A PUBLIC OR PRIVATE ENTITY THAT AN
11 INSTITUTION OF HIGHER EDUCATION IN COLORADO CONTRACTS WITH TO
12 CONDUCT GRAYWATER RESEARCH ON THE INSTITUTION'S BEHALF, THE
13 PERSON COLLECTS AND USES THE GRAYWATER FOR PURPOSES OF
14 SCIENTIFIC RESEARCH INVOLVING HUMAN SUBJECTS.

15 (2) A PERSON COLLECTING AND USING GRAYWATER PURSUANT TO
16 THIS SECTION:

17 (a) SHALL COLLECT AND USE THE GRAYWATER IN ACCORDANCE
18 WITH THE TERMS AND CONDITIONS OF THE DECREES, CONTRACTS, AND
19 WELL PERMITS APPLICABLE TO THE USE OF THE SOURCE WATER RIGHTS OR
20 SOURCE WATER AND ANY RETURN FLOWS;

21 (b) SHALL UTILIZE A GRAYWATER TREATMENT WORKS SYSTEM
22 THAT INCORPORATES A SECONDARY WATER SUPPLY, SUCH AS A MUNICIPAL
23 WATER SUPPLY, TO PROVIDE AN ALTERNATIVE SOURCE OF WATER IF ANY
24 PORTION OF THE SYSTEM DOES NOT FUNCTION PROPERLY;

25 (c) MAY COLLECT AND USE THE GRAYWATER IN AN AREA THAT IS
26 NOT WITHIN THE JURISDICTION OF ANY CITY, CITY AND COUNTY, OR
27 COUNTY THAT HAS ADOPTED AN ORDINANCE OR RESOLUTION

1 AUTHORIZING GRAYWATER USE PURSUANT TO SECTION 25-8-205
2 (1)(g)(II);

3 (d) MAY USE THE GRAYWATER FOR A NONPOTABLE BENEFICIAL
4 USE INCLUDING SUBSURFACE IRRIGATION OR TOILET FLUSHING IF SUCH USE
5 IS TIED TO THE PURPOSE OF THE PERSON'S SCIENTIFIC RESEARCH; AND

6 (e) ON AN ANNUAL BASIS, SHALL REPORT TO THE WATER RESOURCE
7 REVIEW COMMITTEE, CREATED IN SECTION 37-98-102, THE RESULTS OF
8 PERIODIC MONITORING OF THE PROJECT CONDUCTED TO ASSESS:

9 (I) THE FUNCTIONING OF THE GRAYWATER TREATMENT WORKS
10 SYSTEM USED TO COLLECT GRAYWATER; AND

11 (II) THE PROJECT'S CONTINUED COMPLIANCE WITH THE
12 REQUIREMENTS OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN
13 SERVICES' REGULATIONS CONCERNING THE PROTECTION OF HUMAN
14 RESEARCH SUBJECTS, CODIFIED IN 45 CFR 46.

15 (3) AS USED IN THIS SECTION, "SCIENTIFIC RESEARCH INVOLVING
16 HUMAN SUBJECTS" MEANS A RESEARCH STUDY IN WHICH:

17 (a) EMPIRICAL DATA IS COLLECTED AND ANALYZED ABOUT
18 WASTEWATER COLLECTION, TREATMENT, OR USE; AND

19 (b) HUMANS PARTICIPATE AS SUBJECTS IN THE STUDY.

20 **SECTION 4. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

1 November 2018 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.

9-23-16 draft
_____ Regular Session
_____ General Assembly
STATE OF COLORADO

INTRODUCED

_____ **BILL 17-** _____

SENATE SPONSORSHIP

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Senate Committees

House Committees

A BILL FOR AN ACT

CONCERNING.....

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

In the case of *St. Jude's Co. v. Roaring Fork Club, LLC*, 351 P.3d 442 (Colo. 2015) ("*St. Jude's Co.*"), the Colorado Supreme Court held that diversions of water for aesthetic, recreational and piscatorial purposes, without impoundment, are not "beneficial uses" of water under Colorado law.

This bill: Clarifies that the decision in *St. Jude's Co.* interpreting section 37-92-103(4) does not apply to absolute or conditional decrees, or to pending claims that existed as of July 15, 2015.

Clarifies the definition of beneficial use to include the diversion of a direct flow water right for recreational or piscatorial purposes, subject to specified standards.

Establishes standards for the water courts to apply to the adjudication of direct flow water rights for recreational or piscatorial purposes.

Clarifies that water released from lawful storage may be put to beneficial use for recreational, piscatorial, municipal or other lawful purposes within a natural stream or by subsequent diversion from the natural stream.

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

2 **SECTION 1. LEGISLATIVE DECLARATION.** (1) THE GENERAL ASSEMBLY HEREBY:

3 (A) FINDS AND DECLARES THAT:

4 (I) IN THE CASE OF *ST. JUDE'S CO. V. ROARING FORK CLUB, LLC*, 351 P.3D 442
5 (COLO. 2015), THE COLORADO SUPREME COURT HELD THAT DIVERSIONS OF WATER FOR
6 AESTHETIC, RECREATIONAL, AND PISCATORIAL PURPOSES, WITHOUT IMPOUNDMENT, ARE
7 NOT BENEFICIAL USES OF WATER UNDER COLORADO WATER LAW; AND

8 (II) THE COURT SPECIFICALLY STATED THAT IT WAS FOR THE GENERAL
9 ASSEMBLY TO APPROVE SUCH USES;

10 (B) DETERMINES THAT:

11 (I) THE COURT'S OPINION HAS CREATED GREAT UNCERTAINTY REGARDING
12 THE LARGE NUMBER OF EXISTING DIRECT DIVERSION WATER RIGHTS DECREED FOR THESE
13 PURPOSES, AND HOW SUCH WATER RIGHTS SHOULD BE ADMINISTERED;

14 (II) THESE DECREED WATER RIGHTS ARE VALUABLE PROPERTY UPON WHICH
15 THEIR OWNERS RELY AND THAT ARE THE BASES FOR PLANNING DECISIONS AND
16 EXPECTATIONS;

17 (III) AS WITH ANY APPROPRIATION, A DIVERSION FOR RECREATIONAL OR
18 PISCATORIAL USE MUST BE "REASONABLE AND APPROPRIATE UNDER REASONABLY EFFICIENT
19 PRACTICES TO ACCOMPLISH WITHOUT WASTE THE PURPOSE FOR WHICH THE APPROPRIATION
20 IS LAWFULLY MADE."(C.R.S. 37-92-103(4)); AND

21 (IV) THE COURT’S OPINION ALSO HAS CREATED UNCERTAINTY REGARDING
22 HOW THE HOLDING AFFECTS THE RELEASE AND ADMINISTRATION OF STORED WATER FOR
23 RECREATIONAL, PISCATORIAL, MUNICIPAL OR OTHER PURPOSES WITHIN THE NATURAL
24 STREAM CHANNEL OR BY SUBSEQUENT DIVERSION FROM THE NATURAL STREAM CHANNEL.
25 FOR EXAMPLE, SUCH RELEASES SUPPORT IMPORTANT RECREATIONAL AND ENVIRONMENTAL
26 VALUES TO THE STATE OF COLORADO, INCLUDING THE RECOVERY OF ENDANGERED FISH
27 SPECIES IN THE COLORADO RIVER BASIN, COMPLIANCE WITH THE FEDERAL ENDANGERED
28 SPECIES ACT IN A MANNER CONSISTENT WITH STATE WATER LAW, AND FACILITATING THE
29 ABILITY OF WATER USERS TO PROVIDE NECESSARY MITIGATION TO OFFSET ANY ADVERSE
30 IMPACTS FROM NEW WATER DEVELOPMENT PROJECTS.

31 (C) DECLARES THAT:

32 (I) THE COURT'S DECISION IS CONTRARY TO AN EVOLVING RECOGNITION OF,
33 AND RELIANCE ON, THE ENVIRONMENTAL, FISH HABITAT, RECREATIONAL, AND ECONOMIC
34 BENEFITS OF THESE TYPES OF WATER USES; AND

35 (II) THIS ACT IS NECESSARY TO PROTECT WATER RIGHT OWNERS' PROPERTY
36 RIGHTS AND REASONABLE INVESTMENT-BACKED EXPECTATIONS, AND TO PROTECT THE
37 ABILITY TO USE STORAGE RELEASES TO ASSIST PRIVATE AND PUBLIC WATER USERS IN
38 SATISFYING STRICT ENVIRONMENTAL PERMITTING REQUIREMENTS.

39 (III) THIS ACT PROVIDES CLEAR STANDARDS FOR THE WATER COURTS TO
40 APPLY IN QUANTIFYING THE ‘DUTY OF WATER’ FOR RECREATIONAL AND PISCATORIAL WATER
41 RIGHTS.

42 **Section 2.** In Colorado Revised Statutes, 37-92-103 (4) **add** (d) and (e) as follows:
43 **37-92-103. Definitions.** As used in this article, unless the context otherwise requires:

44 (4) "Beneficial use" means the use of that amount of water that is reasonable and
45 appropriate under reasonably efficient practices to accomplish without waste the purpose
46 for which the appropriation is lawfully made. Without limiting the generality of the
47 previous sentence, "beneficial use" includes:

48 (d) THE APPROPRIATION OF A DIRECT FLOW WATER RIGHT FOR RECREATIONAL OR
49 PISCATORIAL PURPOSES, SUBJECT TO THE REQUIREMENTS OF SECTION 37-92-305(20), C.R.S.;
50 AND

51 (e) THE USE OF WATER LAWFULLY STORED FOR RECREATIONAL, PISCATORIAL,
52 MUNICIPAL, OR OTHER PURPOSES THAT IS RELEASED FOR SUCH USE THAT OCCURS WITHIN A

53 NATURAL STREAM, OR FOR SUCH USE THAT OCCURS BY SUBSEQUENT DIVERSION FROM A
54 NATURAL STREAM.

55 **SECTION 3.** In Colorado Revised Statutes, 37-92-305, **add** (19) and (20) as
56 follows:

57 **37-92-305. Standards with respect to rulings of the referee and decisions of the water**
58 **judge.**

59 (19) NEITHER THE DECISION IN *ST. JUDE'S V. ROARING FORK CLUB, LLC*, 351 P.3d 442,
60 451 (COLO. 2015) INTERPRETING SECTION 37-92-103(4), NOR PARAGRAPH (20) BELOW,
61 SHALL APPLY TO (A) ANY ABSOLUTE WATER RIGHT OR CONDITIONAL WATER RIGHT FOR
62 WHICH A DECREE WAS ENTERED OR FOR WHICH A WATER COURT CLAIM WAS PENDING PRIOR
63 TO JULY 15, 2015, (B), ANY FUTURE CLAIM FOR REASONABLE DILIGENCE OR CLAIM TO MAKE
64 ABSOLUTE SUCH A CONDITIONAL WATER RIGHT, (C) APPROVAL OF ANY PLAN FOR
65 AUGMENTATION ASSOCIATED WITH SUCH CONDITIONAL OR ABSOLUTE WATER RIGHT, OR (D)
66 THE RELEASE OF WATER LAWFULLY STORED FOR RECREATIONAL, PISCATORIAL, MUNICIPAL,
67 OR OTHER PURPOSES.

68 (20) AN APPLICATION FOR A WATER RIGHT AUTHORIZED BY SECTION 37-92-
69 103(4)(d) MAY BE GRANTED BY THE WATER COURT ONLY UPON FINDINGS THAT (1)
70 APPLICANT'S APPROPRIATION REMOVES WATER FROM ITS NATURAL COURSE OR LOCATION,
71 (2) APPLICANT'S BENEFICIAL USE WILL OCCUR SEPARATE FROM THE NATURAL COURSE OR
72 LOCATION, AND (3) THE AMOUNT OF WATER CLAIMED BY THE APPLICANT IS THE AMOUNT
73 REASONABLY NECESSARY TO ACCOMPLISH THE APPLICANT'S INTENDED BENEFICIAL USE. IN
74 MAKING A DETERMINATION UNDER THIS PARAGRAPH 20, THE COURT MUST FURTHER FIND:

75 (a) APPLICANT HAS DEMONSTRATED THAT THE AMOUNT OF WATER CLAIMED IS
76 BASED ON TECHNICAL, SCIENTIFIC, OR ENGINEERING EVIDENCE THAT TAKES INTO ACCOUNT
77 FACTORS BEARING ON THE REASONABLENESS OF THE AMOUNT OF WATER CLAIMED,
78 INCLUDING THE AVAILABILITY OF UNAPPROPRIATED WATER DURING THE INTENDED PERIOD
79 OF USE, THE RATE OF FLOW AND DURATION OF THE USE, AND THE REPLACEMENT OF OUT OF
80 PRIORITY DEPLETIONS, IF ANY, CAUSED BY THE INTENDED BENEFICIAL USE;

81 (b) APPLICANT'S WATER DIVERSION SYSTEM WILL ACCOMPLISH THE BENEFICIAL USE
82 IN A REASONABLY EFFICIENT MANNER AND WILL UTILIZE MEASURING DEVICES ADEQUATE TO
83 ENABLE ADMINISTRATION BY THE OFFICE OF THE DIVISION ENGINEER.

84 **SECTION 4. Safety clause.** The general assembly hereby finds, determines, and
85 declares that this act is necessary for the immediate preservation of the public peace, health,
86 and safety.

St. Jude's 2017 Legislation Q & A

September 23, 2106

Q. Why is this bill needed?

A. The Colorado Supreme Court's ruling in St. Jude's places hundreds, if not thousands, of existing direct diversion water decrees that include "recreational" and "piscatorial" uses at risk of judicial nullification. The decision also could affect the release of lawfully stored water for use within the natural stream channel. Such releases support the recovery of fish species in the Colorado River basin and ensure compliance with the federal Endangered Species Act in a manner consistent with state water law. As such, this bill benefits nearly the entire state, as almost the entire state uses Colorado River water. Finally, the court's decision is contrary to the evolving recognition of environmental, fish habitat and recreational benefits of Colorado's water use.

Q. What does this bill do?

A. This bill addresses the Colorado Supreme Court's St. Jude's decision, clarifying that recreational and piscatorial (fish propagation and habitat) uses are beneficial uses under Colorado law for the direct diversion of water from a stream. It also clarifies that releases of lawfully stored water for use within the natural stream channel, including recreational and piscatorial, is lawful under Colorado law, providing the State Engineer with clear authority to shepherd released water for such uses. This release of stored water can continue to be used to support the recovery of endangered fish species in the Colorado, Yampa, and Gunnison Rivers – which is vital to protect existing consumptive uses of water. This bill also includes standards for water court judges to employ for direct flow recreational and piscatorial water rights to ensure this bill cannot be used to appropriate excessive amounts of water for these rights.

Q. How is this bill different from HB16-1382?

A. There are three important provisions in this bill that address the concerns raised by opponents to HB16-1382. First, aesthetic uses are not included in this bill. Second, the bill specifically addresses the release of stored water for in-channel use – a common practice throughout the state, including the primary mechanism water is made available for the Colorado River endangered fish recovery program. Finally, this bill includes standards for the water courts to use when quantifying recreational and piscatorial direct flow water rights to prevent over-appropriation or overly-aggressive applications for water decrees. It requires the applicant to prove based on technical, scientific or engineering evidence that the amount of water claimed is reasonable and necessary.

Q. Who will this bill help?

A. As it ensures the State Engineer can continue to deliver released water to the 15 Mile Reach to assist recovery of endangered fish species, this bill has genuine statewide benefit, as nearly the entire state uses water from the Colorado River. This bill also protects the property interests of every water decree owner whose direct flow decree includes “recreational” or “piscatorial” among its beneficial uses.

Q. What does piscatorial mean?

A. Fish propagation and fish habitat enhancement.

Q. What are examples of direct flow recreational and piscatorial water rights addressed by this bill?

A. It’s important to remember that direct flow recreational and piscatorial water rights addressed by this bill are not for instream uses, water must be diverted from the stream and placed to beneficial use outside of the natural stream channel. Examples include municipal recreational facilities, golf course water features, enhanced off-stream fish habitats, and off-stream kayak courses.

Q. Is ‘aesthetics’ included in this bill? Why not?

A. It is not included. Proponents heard and responded to concerns that inclusion of aesthetic uses represented too great an opportunity for future mischief and setting standards for the “duty of water” for aesthetic purposes could be too subjective.

HOUSE BILL 17-xxxx RESTORES LONG-RECOGNIZED BENEFICIAL USES OF WATER
September 23, 2016

The Colorado Supreme Court's majority opinion in *St. Jude's Co. v. Roaring Fork Club, LLC*, 351 P.3d 442 (Colo. 2015) held that diversions of water in Colorado for recreational, aesthetic, and piscatorial (fish) purposes, without storage, are categorically non-beneficial uses of water for which a water right may not be confirmed. The decision, which the dissenting Justices called "unmoored from the constitution" and "conceptually untenable," brings into question countless existing decrees that include these beneficial uses and jeopardizes the real property rights associated with these appropriations. Justice Coats states in the *St. Jude's* majority opinion that it is the purview of the General Assembly to approve such beneficial uses, and House Bill 17-xxxx responds to that call by both restoring certainty to existing court decrees and confirming the long-accepted principle that the definition of beneficial use must be flexible and adaptive to Colorado's evolving economic and community values. This Bill does not, however permit new direct flow water rights to be obtained for aesthetic purposes. .

1. The *St. Jude's* decision imperils existing decreed water rights. For over a century Colorado's water courts have recognized and decreed as beneficial use direct flow diversions for recreational, and/or piscatorial uses. Hundreds, if not thousands, of water rights for such uses have been decreed and administered all across Colorado prior to the *St. Jude's* opinion. These existing water rights function to improve natural and man-made fisheries, increase property values, add value to private and public natural resources throughout Colorado, and benefit local economies. This bill prevents these valuable, existing real property rights from being judicially vanquished.
2. The potential unintended consequences of the *St. Jude's* decision have not been fully exposed. One concerning consequence of the *St. Jude's* decision is the threat to existing mechanisms used to comply with Endangered Species Act. As water users and the State Engineer continue to grapple with how the decision and the Court's choice of language may impact future river administration, there is a growing concern that the decision could imperil river flow augmentation efforts that support endangered fish recovery programs in the Colorado, Yampa, and Gunnison River basins which rely on the release of lawfully stored water for use within the natural stream. If these efforts are limited by the application of the *St. Jude's* decision, water use statewide for all who use the Colorado River is at risk. As recently confirmed in the Colorado Water Plan, the innovative and collaborative efforts utilized in connection with these recovery programs are critical to Colorado water users across the state.
3. The bill requires that appropriations for recreational and piscatorial uses will be subject to express objective standards commonly applied in other water rights cases As with other types of appropriations, a diversion for a recreational or piscatorial use must be "reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made." C.R.S. § 37-92-103(4). Water courts in Colorado are well-equipped to receive expert testimony and determine reasonable amounts for such uses. Such appropriations are often highly engineered projects, with diversion rates developed and decreed based on objective and accepted scientific principles. This bill includes standards specifically applicable to recreational and piscatorial water use that the water courts must use to quantify such uses and ensure that no mischief or over-appropriation of water is possible.
4. The direct-flow diversions for recreational and piscatorial purposes addressed by this bill are not instream flows or RICDS. The direct flow water rights imperiled by *St. Jude's* involve the diversion of water from the stream – such uses are not in-channel uses that infringe on the CWCB's exclusive

jurisdiction to appropriate instream flows nor upon RICD water rights. Though substantially non-consumptive, decrees approving direct flow water rights for recreational and piscatorial uses occasionally include an augmentation plan to replace depletions associated with evaporation or evapotranspiration. As such, the fisheries and wetland habitats established by such diversions complement the objectives of the instream flow program and also further the stated goals of the Colorado Water Plan, “to promote self-sustaining fisheries and functional riparian and wetland habitat”



CONTRACT

P.O. Box 2308 • Silverthorne, Colorado 80498
970-468-0295 • Fax 970-468-1208 • email: qqwater@nwccog.org

Northwest Colorado Council of Governments Water Quality/Quantity Program
and
Barbara Green for Sullivan Green Seavy, Lane Wyatt & Torie Jarvis
Year of 2017

This Contract is entered into this _____, by and between the Northwest Colorado Council of Governments QQ Program (hereinafter "QQ") and Barbara Green for Sullivan Green Seavy ("SGS"), Lane Wyatt, and Torie Jarvis (hereinafter "SGS, Wyatt & Jarvis").

NOW, THEREFORE, the parties mutually agree as follows:

1. Employment of SGS, Wyatt & Jarvis. QQ hereby agrees to engage SGS, Wyatt & Jarvis and SGS, Wyatt & Jarvis hereby agrees to perform the services hereinafter set forth.
2. Scope of Services. In consideration for moneys to be received from QQ, SGS, Wyatt & Jarvis shall do, perform, and carry out in a satisfactory manner, as determined by QQ, all work elements indicated in the "Scope of Services" set forth in attached Exhibit A incorporated hereinafter by reference. The Scope of Services is contingent upon receipt of the sum listed in Appendix A.
3. Time of Performance. The services of SGS, Wyatt & Jarvis shall commence January 1, 2017 and shall be undertaken in such a sequence as to assure completion of this Contract by December 31, 2017. After December 31, 2017, the contract may be extended by mutual agreement by both parties on a month to month basis.
4. Method of Payment. SGS, Wyatt & Jarvis shall submit a monthly invoice to QQ describing the activities associated with the various work elements described in Exhibit A. Upon receipt of invoice QQ shall compensate SGS, Wyatt & Jarvis for work performed.
5. Compensation. SGS, Wyatt & Jarvis shall be compensated monthly based on the proportion of the total contract amount for that billing period.

The total amount of compensation paid by QQ to SGS, Wyatt & Jarvis shall not exceed the maximum dollar amount established in the "Scope of Services" set forth in the attached Exhibit A unless QQ and SGS, Wyatt & Jarvis require additional services not herein defined.

6. Amendment. QQ may, from time to time, require changes in the "Scope of Services" to be performed by SGS, Wyatt & Jarvis. Such changes shall be incorporated into a Letter of Agreement between SGS, Wyatt & Jarvis and QQ Chair and Vice-Chair, which shall serve as an amendment to this contract with SGS, Wyatt & Jarvis and QQ.
7. Assign-ability. SGS, Wyatt & Jarvis shall not assign any interest in this Contract and shall not transfer any interest in the same without prior consent of QQ.

8. Termination of Contract by QQ for Cause. If SGS, Wyatt & Jarvis shall fail to fulfill in a timely and proper manner its obligation under this Contract, or if SGS, Wyatt & Jarvis violates any of the terms or conditions of this Contract, QQ shall have the right to terminate this Contract by giving written notice to SGS, Wyatt & Jarvis at least forty five (45) days before the effective date of such termination. In the event of termination, all finished or unfinished documents, data, studies, or other material prepared by SGS, Wyatt & Jarvis shall, at the request of QQ, be transmitted to QQ.

9. Termination of Contract by SGS, Wyatt & Jarvis. If QQ fails to make payment as herein provided, SGS, Wyatt & Jarvis may terminate this Contract by giving written notice to QQ at least ten (10) days before the effective date of such termination, during which time QQ may cure the default by making payment. In the event QQ fails to cure, SGS, Wyatt & Jarvis shall retain all materials and documents not previously given to QQ until an agreement is satisfactorily negotiated between QQ and SGS, Wyatt & Jarvis. If SGS, Wyatt & Jarvis propose to terminate this contract for reasons other than failure to make payment they shall give at least forty-five (45) days notice.

10. Agreement Contains All Understandings. This document represents the entire integrated agreement between QQ and SGS, Wyatt & Jarvis and supersedes all prior negotiations, representations, or agreements either written or oral.

IN WITNESS WHEREOF, QQ and SGS, Wyatt & Jarvis have executed this agreement on the date written above.

Chairperson Date
 NORTHWEST COLORADO COUNCIL OF GOVERNMENTS QQ COMMITTEE

Barbara Green Date

Lane Wyatt Date

Torie Jarvis Date

NWCCOG/WATER QUALITY AND QUANTITY COMMITTEE

SCOPE OF SERVICES 2017

I. INITIATIVES AND PROJECTS FOR THE YEAR 2017

A. COALITIONS AND EDUCATION (Implements Policies I, II, V)

- (1) Facilitate “fact-based” discussions of headwater impacts associated with Front Range growth.
- (2) Continue to inform Front Range policymakers and legislators about headwaters issues and transmountain diversion impacts in appropriate forums.
- (3) Collaborate with other East Slope and West Slope organizations to strengthen public awareness and educate Front Range citizens about headwater issues and transmountain diversion impacts on the West Slope.
- (4) Track and educate members on emerging water-related recreation issues.
- (5) Develop relationship with state-wide media to promote education on QQ issues. Send letters to the editors of the local and state newspapers on water issues to promote QQ policies and refute mis-information.
- (6) Organize and present information, such as the *Water & Its Impact to the Economies of the Headwaters Counties* report and QQ’s model water quality standards at meetings, workshops and other venues to advocate headwater perspectives throughout the State.
- (7) Serve on appropriate State and local task forces or committees to promote QQ’s interests.
- (8) Track and coordinate efforts with other groups and organizations to ensure awareness of diverse West Slope water concerns.
- (9) Increase efforts to inform certain stakeholders of unintended adverse impacts to local authority; and attempt to convey a more thorough understanding of current law.

B. BASIN ROUNDTABLES AND 1177 PROCESS (Implements Policies I, III, V)

- (1) Track the outcome of any potential legislation as a result of the 1177 process that may be counter to Headwater interests.

- (2) Participate in the Colorado Basin Roundtable and prepare reports to members as needed when important issues arise.
 - (3) Evaluate opportunities to identify and promote headwater interests through this initiative.
 - (4) Track IBCC process and alert members of issues that arise. Prepare draft letters and comments as needed.
 - (5) Participate in the implementation and updating of the Colorado Water Plan; advocate for Headwaters interests; provide support and analysis to efforts of elected officials and member jurisdictions to influence water plan policy.
- C. EVALUATE AND MONITOR TRANSMOUNTAIN DIVERSION PROPOSALS (Implements Policies I, II and III).
- (1) Participate in environmental assessment processes.
 - (2) Retain and supervise necessary technical consultants.
 - (3) Work with member jurisdictions to cooperate on review and mitigation of impacts that go beyond the boundaries of the permitting County through intergovernmental agreements.
 - (4) Assist the member counties and municipalities with 1041 permitting as requested.
 - (5) Follow activities of Front Range Water Council.
- D. STREAM MANAGEMENT AND NON-CONSUMPTIVE NEEDS (Implements Policies II, III, IV, V)
- (1) Continue to work with QQ members and Front Range diverters to implement solutions to identified in-stream impacts of transmountain diversions.
 - (2) Monitor, provide technical assistance and advocate for Headwaters interests in Learning By Doing and Grand Lake Clarity adaptive management processes and Colorado River Cooperative Agreement implementation.
 - (3) Provided the opportunity, explore and promote UPCO concept with other basins, including the “Stream Management Plan” approach.

- (4) Assist member jurisdictions in efforts to support Colorado Water Conservation Board (“CWCB”) Instream Flow Program and ensure state representatives understand the value of the program.
- (5) Assist member jurisdictions in the creation and protection of recreational in-channel diversions. Track Recreational In-channel Diversions filings and CWCB hearings in QQ region.
- (6) Assist members to determine nonconsumptive stream flow needed to protect recreation and environmental values during Colorado River Roundtable process.
- (7) Assist member jurisdictions in Wild and Scenic Rivers processes.

E. LOBBYING IN COLORADO LEGISLATIVE SESSION (Implements Policies I, II, V)

- (1) Provide policy analysis on legislative bills as they affect members’ authority.
- (2) Participate in development of any state water planning legislation.
- (3) Lobby on water-related bills that QQ has taken a position on, or based on QQ’s mission and policies.
- (4) Draft testimony, or assist in preparing testimony for QQ elected officials, as needed.
- (5) Communicate and collaborate with other entities where interests overlap.
- (6) Provide reports and action alerts to members on legislation, outlining pros and cons and recommending a QQ position based on QQ policies and member feedback.
- (7) Prepare alternatives to legislation that is counter to QQ’s interests as directed by the QQ Committee.
- (8) Evaluate and encourage legislation that furthers QQ interests. Possibilities include reuse, instream flows, metropolitan efficiency, special district legislation, or favorable changes in water law to promote conservation and the strengthened connection between land use and water planning.
- (9) Participate in the Colorado Water Congress and other organizations that may create and or influence legislation pertinent to QQ’s issues.

F. WATER QUALITY PROTECTION (Implements Policies II, III, IV, V)

- (1) File motions for party status on behalf of member jurisdictions and Participate in State Water Quality Control Commission (“WQCC”) rulemakings, hearings and meetings that affect Headwaters.
- (2) Participate in stakeholder meetings, Water Quality Control Division (“WCQD”) workgroups, and any rulemaking hearings.
- (3) Monitor WQCC and WQCD activities.
- (4) Continue to participate in the Snake River Task Force to identify remediation alternatives and seek funding for projects. Work closely with the State and others to develop appropriate water quality standards for the Snake River in the next five to ten years.
- (5) Finalize 208 Plan approval by the WQCC. Coordinate with NWCCOG to maintain 208 administrative responsibilities as determined by membership.
- (6) For a fee that will be passed on to developers, provide 208 Plan consistency review of land development proposals and water and sanitation facility siting on behalf of member jurisdictions during the development application process.
- (7) Coordinate with Water and Sanitation Districts on issues of interest.
- (8) Represent members in discussions and hearings related to nutrient standards and other rulemakings and assist members in the site specific standards hearing.

Comment [TJ1]: Lane, is this still accurate?

G. LOCAL, STATE AND FEDERAL REGULATIONS (Implements Policy I, III)

- (1) For reduced hourly rate, provide legal and technical assistance to member’s staff in revisions of their 1041 Regulations or other land use regulations. (Since the revision processes are specific to a particular member, the individual revisions will not fall within services covered by dues. Barbara, Torie and Lane will coordinate to minimize costs to members.)
- (2) Neutralize objections raised by the Front Range and through the IBCC process about the 1041 process.
- (3) Work with members in the QQ region on refinements to land use regulations, policies and technical approaches to protect water quality. Educate planning departments about the model water quality regulations prepared by QQ and update as necessary.
- (4) Spearhead efforts to maintain County authority over oil and gas operations, including on federal lands, so that water quality and quantity are protected.

Comment [TJ2]: Moved this to the TMD headings with LBD and CRCA. Agree?

Work with Department of Natural Resources to introduce County in-put into federal mitigation decision on leases.

- (5) Participate in other state rulemaking proceedings as needed to protect local authority over environmental and water quality impacts of oil and gas, mining and water projects.
- (6) Assist members as needed with federal legislation that approves the study of, or development of, projects leading to further potential transmountain diversions.

H. EVALUATE GROWTH IMPACTS TO WATER RESOURCES FOR MEMBERS (Implements Policies II, IV, V)

- (1) Inform public entities and private sector of regional water quality and quantity impacts of their proposals and identify mitigation measures.
- (2) Continue to assist ski areas through the NEPA processes, 404 permits and 401 certifications in an effort to analyze in-basin impacts.
- (3) Assist QQ members with the development and implementation of water conservation measures outlined in the Colorado Water Conservation Board Water Conservation Planning Guidelines.

Comment [TJ3]: Do we really do this?

II. LEGAL SERVICES

- A. Assist members to update 1041 or other land use regulations applicable to water matters at reduced hourly rate. Prepare model regulations for the region.
- B. Represent members in rulemaking hearings in front of Colorado Water Quality Control Commission and other state agencies. (When rulemaking hearings are complex and exceed legal time allotted to QQ, fees for this service may be charged to the Legal Defense Fund after approval by QQ Board.)
- C. Prepare briefs on behalf of members or the organization relating to legal matters of regional importance.
- D. Stay abreast of evolving judicial and legislative decisions that affect member authority and responsibilities in land use, water quality and water quantity issues. Prepare reports to members of these developments.

III. QQ PROGRAM ADMINISTRATION

- A. Organize and prepare for QQ meetings.
- B. Oversee QQ's program finances and report to QQ Committee.
- C. Meet with NWCCOG Executive Director as necessary to keep her apprised of issues that affect the NWCCOG organization.

IV. MEMBER SERVICES

- A. Represent QQ Committee at meetings, rulemaking hearings, and state water policy forums.
- B. Be available to QQ members to answer questions and provide technical, legislative and legal expertise on matters regarding water quality or quantity.
- C. Meet with members on individual basis to update elected officials on QQ's activities. Present QQ Program overview to newly-elected officials.
- E. Design QQ meetings as a forum for exchange of ideas and establishment of policy.
- F. Place QQ Committee members on key committees, commissions and boards relative to water quality and quantity issues. Participate on Boards and Commissions.
- G. Provide reports and white papers on regulations, Clean Water Act, water quality and quantity issues.
- H. Encourage and support intergovernmental, inter-jurisdictional cooperation in water matters. Assist members to implement intergovernmental agreements.

COST: FLAT RATE FEE OF \$161,444.00. As indicated in the scope of work, and as approved by the QQ Board, the Legal Defense Fund may be used to fund complex rule making hearings, amicus briefs, or other legal and technical defense costs that go beyond this scope of services.



2017 Water Quality/Quantity Budget

<u>ACCOUNT NAME</u>	<u>2015 Budget</u>	<u>2015 Actual</u>	<u>2016 Budget</u>	<u>2017 Proposed Budget</u>
* Reflects proposed 3% dues increase from 2016				
REVENUES				
County Pledges	\$ 95,500.00	\$ 99,100.00	\$ 95,500.00	\$ 98,365.00
Municipal Pledges	\$ 42,000.00	\$ 40,255.00	\$ 40,400.00	\$ 41,612.00
Assoc. Member Pledges	\$ 3,800.00	\$ 3,800.00	\$ 3,800.00	\$ 3,914.00
Water & Sanitation Pledges	\$ 11,100.00	\$ 13,100.00	\$ 11,100.00	\$ 15,553.00
Interest Income	\$ -	\$ 38.00	\$ -	\$ -
Reimbursed Expenses	\$ 2,000.00	\$ 2,217.00	\$ 1,200.00	\$ 2,000.00
L&C Fellowship	\$ -		\$ -	\$ -
CWCB Grant Leftover	\$ 8,410.00	\$ 8,410.00	\$ -	
TOTAL REVENUES	\$ 162,810.00	\$ 166,920.00	\$ 152,000.00	\$ 161,444.00
EXPENSES				
<i>Contract Services</i>				
Wyatt, Green & Jarvis	\$ 162,810.00	\$ 166,920.00	\$ 152,000.00	\$ 161,444.00
TOTAL EXPENSES	\$ 162,810.00	\$ 166,920.00	\$ 152,000.00	\$ 161,444.00
Defense Fund Balance	\$ 98,346.93	\$ 98,346.93	\$ 100,000.00	\$ 100,000.00