



WATER QUALITY / QUANTITY COMMITTEE (QQ)

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

QQ Quarterly Board Meeting

Thursday, November 14, 2013
Blue River Meeting Room
North Summit County Library - Silverthorne, CO

Agenda

- 10:00 Welcome and Introductions
- 10:05 Presentation: Environmental Perspectives on the Colorado Water Plan and future water supply needs.
Bart Miller, Western Resource Advocates
- 10:50 Presentation: Broomfield Water, Planning, and Future.
Charles Ozaki, City and County of Broomfield
- 11:20 Colorado Water Plan updates and discussion
- 12:30 Lunch
- 1:30 Member updates
- 1:40 Upcoming legislation – *Torie*
- 2:15 Water Quality Control Commission– *Lane*
- 2:30 “Water and it’s Relationship to the Economies of the Headwaters Region” Expanded Study– *Torie/Barbara*
- 2:45 2014 Budget and Contract Approval- *Torie/Lane*
- 3:00 Adjourn



WATER QUALITY / QUANTITY COMMITTEE (QQ)

Post Office Box 2308 • Silverthorne, Colorado 80498
970-468-0295 • Fax 970-468-1208 • email: qqwater@nwccog.com

November 6, 2013

RE: West Slope Principles for the Colorado Water Plan

The attached West Slope Principles for the Colorado Water Plan ("Principles") is a set of broad values and principles designed as a guide to the Governor and the Colorado Water Conservation Board ("CWCB") during preparation of the Colorado Water Plan ("CWP"). The Principles reiterate and augment water policy statements adopted by the key west slope organizations over the years.

The Principles were prepared by local government officials, basin roundtable members, and other water leaders on the west slope. The goal is that these Principles inform the CWP process by expressing commonly-held west slope interests.

A list of the entities that have officially endorsed the Principles is attached.

West Slope Principles for the Colorado Water Plan

1. **Solutions in the Colorado Water Plan (CWP) to supply water for growth and development in one part of the state should not over-ride land use plans and regulations adopted by local governments in the part of the state from which water will be taken.** ^{1,2,3,4,5,6,7}
 - 1.1 No new water supply projects or major changes in operation of existing projects should be planned unless agreed to by the county, conservancy district, and conservation district in the area from which water would be diverted. ^{1,3,5,6,7}
 - 1.2 The CWP must take into account pending projects, water supply plans, comprehensive land use plans, local regulatory authority, water quality plans (208 Plans), watershed plans, multi-party water agreements and related documents adopted by local governments in the area from which water would be taken. ^{1,2,3,4,5,6,7}
 - 1.3 Both the legislative basis and the legal impact of local government regulatory tools adopted to mitigate impacts of water projects should be recognized and protected. ^{3,6,7}
 - 1.4 The CWP should never elevate the agricultural interests in one part of the state over the agricultural interests in another part of the state to meet the demands of Front Range development. Agriculture is an important segment of the state's economy as a whole. Agriculture provides food independence, open space, wildlife habitat, cultural value, and economic activity wherever it is located.
 - 1.5 Any new supply projects taking water from one area of the state to another should include funding for "compensatory projects" to serve the area from which the water is taken. ⁷
2. **The CWP should protect and not threaten the economic, environmental, and social well-being of the west slope.** ^{1,2,3,5,6}
 - 2.1 The cornerstones of the west slope's economy are tourism, recreation, agriculture, and resource development, all of which are highly dependent upon water to be successful. The CWP should not facilitate additional diversions that could threaten the region's environmental, social and economic well-being. ^{1,2,3,6}
 - 2.2 To educate the public about existing conditions on the west slope, the CWP should identify the location and amounts of water that are already diverted every year from the west slope to the east slope, and discuss the historic and current consequences of those diversions. ^{1,2,3,6,9}

- 2.3 The state should not facilitate, politically, financially, or legally, any new water supply projects from the Colorado, Yampa/White or Gunnison River Basins to the Front Range without the consent of the county, conservancy district, and conservation district in the basin of origin, and unless impacts are avoided and mitigation is provided. ^{1,2,3,6,7}
 - 2.4 New supply projects that involve storage on the west slope must make a significant amount of water available to west slope water uses. New supply projects that involve storage of west slope water in an east slope storage project must provide compensatory storage to protect existing and future west slope water uses, as well as the environmental and non-consumptive needs of the basin of origin. ⁷
 - 2.5 The CWP must protect investments in public water and wastewater facilities by ensuring that costs to upgrade and operate these facilities do not increase because of Front Range water projects. ⁵
 - 2.6 The CWP must afford recreational in-channel diversions and CWCB instream flows the same status as other water rights that are protected under Colorado law. ^{3,6} Other west slope non-consumptive water needs must be factored into the CWP.
 - 2.7 Water quality protection efforts of the west slope must be respected and enhanced by the CWP. ^{4,5,6}
 - 2.8 The historic use of west slope agricultural water rights provides a river flow regime that is relied upon by all west slope users and must be maintained. ⁸
3. **The CWP should identify a process and requirements for each basin to exhaust available water supply within its own basin before planning diversions from another area of the state.** ^{1,2,3,7}
- 3.1 Transmountain diversion water should be re-used to extinction to the extent allowed by law, before any proposed new supply development focuses on further west slope water supply. ^{1,2,3,6,7}
 - 3.2 Re-allocation of existing supplies in areas that need more water should be evaluated (e.g. rotational fallowing, changing to new uses, deficit irrigation). ^{1,3,6,7}
 - 3.3 Front range infrastructure and water should be shared to meet future demands (e.g. WISE). Laws and regulations that improve such sharing should be considered.
 - 3.4 New Front Range in-basin projects should be pursued to fully utilize in-basin supplies (e.g. Chatfield Reallocation, SDS, Arkansas Conduit, indirect and direct

re-use, gravel pit storage projects), including maintaining and enhancing existing storage facilities. The CWP should encourage and facilitate dredging to keep capacity, and streamline efforts to enlarge storage by dredging when practical.^{3,6}

- 3.5 The CWP should promote mechanisms to reduce demand through agricultural or municipal efficiency/conservation, land use and smart growth policies that further water conservation, and controls on water usage.^{3,6,7} Under no circumstances should agriculture be penalized for switching to more efficient water use methods.
 - 3.6 The CWP should reject proposals for water to supply new development when and where there are insufficient water resources available to support them under all hydrologic conditions without creating risks for other water users.^{1,3,6,7} Any new supply projects that rely on diversions from the west slope should be developed within the existing water rights system and not afforded special status.
 - 3.7 Front Range areas with present and future projected water shortages should pursue collectively financing projects that provide water resources to their areas.
4. **The CWP should outline mechanisms to mitigate the risk of potential Compact curtailment of the Colorado River. For example, the CWP should adopt low-risk legal and hydrologic assumptions related to Colorado's obligations under the Colorado River Compact and the Upper Colorado River Basin Compact in order to minimize the risk of curtailment on existing uses of Colorado River basin water.⁷**
- 4.1 There is disagreement on how much, if any, additional consumptive use water is available from the Colorado River. Because of justifiable reliance and financial investment, existing uses and users should be protected and not put at risk by new development.
 - 4.2 The facilities and methodologies for protecting existing users from a compact curtailment, as well as for mitigation, must be in place prior to any new project or methodology that would take additional water out of the Colorado River Basin.
 - 4.3 The CWP must disclose that fully developing the state's Colorado River compact entitlement will increase the chance of a compact curtailment that would impact existing users.
 - 4.4 New projects in the Colorado River Basin should be supported and approved, if at all, only on conditions that will allow diversion and storage at times and in amounts that will not increase the risk of compact curtailment of other post-Compact water rights.

5. **The State should not assume a role as a proponent of a water project until the State regulatory process has been completed and the project has been agreed to by the impacted counties, conservancy districts and conservation districts in the area from which water would be diverted.**

The above principles are taken from many sources of earlier water principles around the state. The numbers in the above principles indicate in which documents a similar principle may be found, including:

- ¹ Colorado 58 *Water Principles*. In approximately 1999, 58 Colorado Counties, signed onto these Water Principles, which were passed as a House Resolution as well.
- ² Colorado River Water Conservation District Policy Statement: Existing Transmountain Diversions, Adopted July 15, 2008, readopted July 2011. http://www.crwcd.org/media/uploads/20110719-policies_TMD_Existing_Projects.pdf
- ³ Colorado River Water Conservation District Policy Statement: Transmountain Diversions, adopted March 16, 2000, revised and readopted July 2011. http://www.crwcd.org/media/uploads/20110719-policies_TMDs.pdf
- ⁴ Colorado River Water Conservation District Policy Statement: Water Quality, adopted July 2010. http://www.crwcd.org/media/uploads/20100720_policy_water_quality.pdf
- ⁵ NWCCOG Water Quality/ Quantity Committee Policies, readopted November 2012.
- ⁶ 2012 NWCCOG Regional Water Quality Management Plan (208 Plan). http://nwccog.org/docs/wss/rwqmp_2012/Vol%201_Policy%20Plan%202012%20208%20Plan.pdf
- ⁷ Colorado Basin Roundtable Vision Statement (Nov. 2010).
- ⁸ Orchard Mesa Check Case, 91CW247, Water Division No. 5.
- ⁹ i.e. Senate Document No. 80, Windy Gap Project, Windy Gap Firming Project, Colorado River Cooperative Agreement

JURISDICTIONS ENDORSING
THE WEST SLOPE PRINCIPLES FOR THE COLORADO WATER PLAN

Eagle County

Sara Fisher, Eagle County Commissioner
Jill Ryan, Eagle County Commissioner
Kathy Chandler-Henry, Eagle County Commissioner

Grand County

James Newberry, Grand County Commissioner
Merrit Linke, Grand County Commissioner
Gary Bumgarner, Grand County Commissioner

Gunnison County

Paula Swenson, Gunnison County Commissioner
Jonathan Houck, Gunnison County Commissioner
Phil Chamberland, Gunnison County Commissioner

Pitkin County

Rob Ittner, Pitkin County Commissioner
Rachel Richards, Pitkin County Commissioner
Michael Owsley, Pitkin County Commissioner
Steve Child, Pitkin County Commissioner
George Newman, Pitkin County Commissioner

Park County

Loren Grosskopf, Park County Commissioner
Joe Tilden, Park County Commissioner
Tim A. French, Park County Commissioner
Bucky Hall, Park County Commissioner
Lee Livingston, Park County Commissioner

Routt County

Tim Corrigan, Routt County Commissioner
Douglas B. Monger, Routt County Commissioner
Steven K. Ivancie, Routt County Commissioner

Summit County

Thomas Davidson, Summit County Commissioner
Karn Stiegelmeier, Summit County Commissioner
Dan Gibbs, Summit County Commissioner

JURISDICTIONS ENDORSING
THE WEST SLOPE PRINCIPLES FOR THE COLORADO WATER PLAN

Town of Breckenridge

John Warner, Mayor
Ben Brewer, Council Member
Mike Dudick, Council Member
Jen McAtamney, Council Member
Wendy Wolfe, Council Member
Mark Burke, Council Member
Gary Gallagher, Council Member

Town of Crested Butte

Aaron Huckstep, Mayor
David Owen, Council Member
Shaun Matuszewicz, Council Member
Jim Schmidt, Council Member
John Wirsing, Council Member
Roland Mason, Council Member
Glenn Michel, Council Member

Town of Dillon

Ronald J. Holland, Mayor
Kevin Burns, Council Member
Erik Jacobsen, Council Member
Terry King, Council Member
Mark Nickel, Council Member
R. Louis Skowrya III, Council Member
Tim Westerberg, Council Member

Town of Frisco

Gary Wilkinson, Mayor
Kent Willis, Council Member
Woody Van Gundy, Council Member
Kim Cancelosi, Council Member
Larry Sawye, Council Member
Kathleen Bartz, Council Member
Tom Connolly, Council Member

JURISDICTIONS ENDORSING
THE WEST SLOPE PRINCIPLES FOR THE COLORADO WATER PLAN

Town of Fraser

Peggy Smith, Mayor
Steve Sumrall, Trustee
Eileen Waldow, Trustee
Philip Nail, Trustee
Cheri Sanders, Trustee
Vesta Shapiro, Trustee
Adam Cwiklin, Trustee

Town of Grand Lake

Judy M. Burke, Mayor,
Jim Peterson, Trustee
Benton Johnson, Trustee
Elmer Lanzi, Trustee
Kathy Lewis, Trustee
Tom Ludwig, Trustee
Tom Weydert, Trustee

Town of Gypsum (with exceptions)

Steve Carver, Mayor
Tom Edwards, Council Member
Gary Lebo, Council Member
Pam Schultz, Council Member
Richard Mayne, Council Member
Beric Christiansen, Council Member
Tim McMichael, Council Member

Town of Kremmling

Tom Clark, Mayor
Grant Burger III, Council Member
Scott Crandall, Council Member
Casey Curran, Council Member
Wes Howell, Council Member
Mark Mahomey, Council Member
Gina Schroeder, Council Member

JURISDICTIONS ENDORSING
THE WEST SLOPE PRINCIPLES FOR THE COLORADO WATER PLAN

Town of Silverthorne

Dave Koop, Mayor
Bruce Butler, , Council Member
Dave Anderson, Council Member
Derrick Fowler, Council Member
David Preaus, Council Member
Ann-Marie Sandquist, Council Member
Stuart Richardson, Council Member

Town of Yampa

Tom Yackey, Trustee
Brian Ashley, Trustee
Jeff Drust, Trustee
Stephanie Hayden, Trustee
Mike Lewis, Trustee
Tom Estes, Trustee

Copper Mountain Consolidated Metropolitan District

Tom Malmgren, President,
Karl Anuta, Board of Directors
Bob Bloch, Board of Directors
Ben Broughton, Board of Directors
Dave Steele, Board of Directors

Middle Park Water Conservancy District

Duane Scholl, President
Jim Lenzotti, Secretary:
Jack Buchheister, Treasurer
Michael Eytel, Member
Peg Toft, Member
Sean Flanigan, Member
Tom Long, Member

Winter Park Ranch Water and Sanitation District

Jon Westerlund, President
Bob Dart, Member
Jim Cordell, Member
Tom Newton, Member
Tom Kalan, Member

Colorado Basin Roundtable - *See attached Colorado Basin Membership List*

Colorado Basin Membership List

Agricultural Representative	Melvin	Rettig	mmrettig@bigdoghsi.com
At-Large Representative	Kim	Albertson	lyrad41@aol.com
At-Large Representative	Thomas	Clark	mayor@townofkremmling.org
At-Large Representative	Duane	Scholl	
At-Large Representative	Dale	Tooker	dtooker@cliftonwaterdistrict.org
Basalt Water Conservancy District	Art	Bowles	bowles563@comcast.net
BLM(liaison)	Paula	Belcher	paula_belcher@blm.gov
Bluestone Water Conservancy District	Clay	Altenbern	
BOR (liaison)	Dan	Crabtree	dcrabtree@uc.usbr.gov
BOR (liaison)	Jaci	Gould	jgould@gp.usbr.gov
BOR (liaison)	Brent	Uilenberg	builenberg@uc.usbr.gov
BOR(liaison)	Ed	Warner	ewarner@uc.usbr.gov
CO. River Water Conservation District	Jim	Pokrandt	jpokrandt@crwcd.org
CO. Water Quality Control Division(liaison)	Bonie	Pate	bonie.pate@state.co.us
Collbran Water Conservancy District	Carlyle	Currier	cwcranch@aol.com
Colorado - CWCB Member	Russell	George	russgeorge11@hotmail.com
Colorado Geological Survey(liaison)	Peter	Barkmann	peter.barkmann@state.co.us
CSU Extension Service (liaison)	Rod	Sharp	rod.sharp@colostate.edu
Division of Wildlife(liaison)	David	Graf	david.graf@state.co.us
Division of Wildlife(liaison)	Jay	Skinner	jay.skinner@state.co.us
Eagle County	Caroline	Bradford	carolinebradford@wildblue.net
Elected Official	David	Merritt	DavidHMerritt@aol.com
Environmental Representative	Ken	Neubecker	eagleriver@sopris.net
Fish and Wildlife Service (liaison)	Patty	Schrader Gelatt	patty_schradergelatt@fws.gov
Forest Service (liaison)	Linda	Bledsoe	lbledsoe@fs.fed.us
Garfield County	Louis	Meyer	louism@sgm-inc.com
Garfield Muni	Karl	Hanlon	kjh@klawfirm.com
Grand County	Lurline	Curran	lcurran@co.grand.co.us
Grand Muni	Bruce	Hutchins	bhutchins@gcws1.com
Gunnison County	Eli	Beeding	elibeeding@aol.com
Industrial Representative	James	Carter	jcarter@gjpipe.com
Legislative Appointment	Mark	Fuller	fulcon@comcast.net
Mesa County	Richard	Proctor	gvvua1147@aol.com
Mesa Muni	Greg	Trainor	gregt@gjcity.org
Middle Park Water Conservancy District	Stanley	Cazier	cazier_mcgowan@hotmail.com
Non Voting Member	Wayne	Vanderschuere	wvanderschuere@csu.org
Non Voting Member	Jacob	Bornstein	jacob.bornstein@state.co.us
Non-Voting At Large Member	Ken	Baker	Consultant@uawcd.com
Non-Voting At Large Member	William	Bates	bill.bates@denverwater.org
Non-Voting At Large Member	Don	Carlson	dcarlson@ncwcd.org
Non-Voting At Large Member	Phil	Overeynder	philo@ci.aspen.co.us
Non-Voting At Large Member	Ken	Ransford	kenransford@comcast.net
Southeastern Colorado Water Conservancy	James	Broderick	jwb@secwcd.com
Summit County	Karn	Stiegelmeier	kams@co.summit.co.us
Summit Muni	Lane	Wyatt	qqiane@nwc.cog.co.us
Ute Water Conservancy District	Steve	Ryken	sryken@utewater.org
West Divide Water Conservancy District	Ed	Olszewski	edolszewski@comcast.net

November 7, 2013

FROM:

**American Whitewater
American Rivers
Conservation Colorado
Environmental Defense Fund
High Country Citizens' Alliance
Theodore Roosevelt Conservation Partnership
Western Resource Advocates**

Conservation Position and Principles for Colorado's Water Plan

I. Overview

Water has long been recognized as the lifeblood of Colorado and the rest of the West. Since the mid-19th century, Coloradans have applied their ingenuity to harnessing a reliable supply of water to irrigate agricultural fields and fuel our growing cities and towns. We've now reached a point at which our water sources are increasingly under strain; ingenuity is more important than ever.

The ecology of our rivers and streams, and the enormous economic stake that depends upon healthy rivers, necessitates that Colorado pursues a new approach to water policy that incorporates both our current physical reality and our modern economy. By maximizing the utility of each drop of water, we can balance the needs of the state's growing communities, agriculture, recreation and the environment.

Our organizations are encouraged by the Governor's May 2013 Executive Order which requires Colorado's Water Plan to incorporate the following values:

- A productive economy that supports vibrant and sustainable cities, viable and productive agriculture, and a robust skiing, recreation and tourism industry;
- Efficient and effective water infrastructure promoting smart land use; and
- A strong environment that includes healthy watersheds, rivers and streams, and wildlife.

We fully support these values and offer the following principles to implement them directly in Colorado's Water Plan and the Basin Implementation Plans. We believe Colorado's water future deserves 21st century problem-solving that is every bit as innovative and courageous as the vision and grit that sustained our 19th and 20th century forbearers.

II. Our Vision

Healthy rivers are—and always have been—essential to Colorado’s heritage, identity and way of life. Our rivers inspire and sustain millions of residents and visitors every year. They are a critical driver for our state’s economy. Each year, river-related recreation supports tens of thousands of jobs and produces billions in economic output.

Healthy river flows also sustain wildlife. Keeping vulnerable river-dependent species healthy and resilient preserves flexibility in future water development and river management. And protecting aquatic species before the law has to step in and protect them keeps open a wider range of options for the future.

A key first step to tackling these issues is to realize that the era of free water is over. Due to long-term drought and an increase in water demands across the state, we face the increased risk of over-developing supplies across the State. And this situation will likely get worse in the future. We need to apply great scrutiny to any proposal that would move additional water between basins.

Colorado’s water challenges are solvable, but only if we act wisely and now. Solving the State’s water challenges now—rather than after the rivers are harmed irreparably—will ensure that we maintain Colorado’s important river resources.

III. Solutions—developed collectively—should involve common-sense and cost-effective components:

A. Growing urban areas should take all steps possible to be self-sufficient and avoid costly water imports that negatively impact other communities and river-related values.

Principle 1: Urban water providers should commit to high water conservation targets inside their local plans and in basin implementation plans (BIPs).

- Water efficiency is the cheapest, fastest way for communities to meet their water needs and become self-reliant. Technologies exist that will allow us to be much more efficient with our water, but implementation requires political will.
- Water providers should show how they will meet the “high” level of savings articulated in SWSI 2010.
- State funding (and, if necessary, legislation) should incentivize reaching these targets; e.g., CWCB must limit grant & loan programs to those meeting conservation and efficiency standards.
- Colorado should partner with counties, land use planners, and water utilities to embrace integrated planning that will lower the water footprint of new urban development.
- Consumers have an obligation, as well, to commit—house by house and business by business—to use water wisely and efficiently. Water providers can assist them, through providing education and clear actions available for consumers to take.

Principle 2: It's time to refine the location and timing of the Front Range's municipal water "gap."

- Water is ultimately a local issue; specific projects and processes must be tailored for specific needs.
- Colorado must highlight specific geographic areas and timeframes where new demands are likely to outstrip supply.
- Once needs are specifically understood, water supply solutions should be targeted to meet specific gaps.

Principle 3: Water re-use/recycling projects are the infrastructure of the future.

- Existing trans-basin diversion water and non-tributary groundwater should be re-used to extinction (to the extent allowed by law) before further imports are approved.
- State funding should incentivize an acceleration of re-use.
- Federal funding (e.g., through Title 16 grants) may enable implementation.

Principle 4: The solution for the Front Range is not a large new trans-basin diversion from the Colorado River Basin.

- Once specific water needs are articulated (i.e., the "gap" is localized), some small-scale storage may be needed, for example, to enable use of water that becomes available through conservation, temporary agriculture transfers, and re-use.
- Significant new depletions from West Slope rivers, in contrast, are not tailored to specific water needs and are extremely costly. They risk over-development of the Compact and adverse effects to recreation, rural communities and the environment. As a result, these projects are controversial, divisive, and generate great uncertainty about federal permitting and financing.

- B. Agriculture must be part of the State's water solution as more than 85% of the water used in the state is used for irrigation. The agricultural community has the opportunity to modernize its water infrastructure and irrigation practices and find ways to share water with neighboring users and with cities and to make water available for instream flows while maintaining or improving net agricultural productivity and profitability.**

Principle 5: Creative water-sharing agreements (Alternative Transfer Mechanisms) can support agriculture, meet growing communities' needs, and protect Colorado's rivers.

- The State should support water sharing agreements—ones that are voluntary, compensated, temporary, and flexible—to help meet future municipal and healthy flow needs while making agriculture more profitable.
- Funding, criteria, and new legislation may be needed to make this happen.
- Water rights need to be respected. Farmers should be rewarded for conservation practices, efficiency improvements, and sharing.

- The State should create incentives to encourage infrastructure improvements that benefit agricultural operations, healthy flows, recreation, and rural community values.
- Some small-scale storage may be necessary to help agriculture manage their water more efficiently and provide late season flow needs for rivers and farms.
- A healthy agricultural industry is important for the region's economy and critical for rural communities throughout the state.

C. Healthy rivers are a vibrant component of the State's identity, economy and way of life. A State Water Plan must include specific measures to protect and restore these resources.

Principle 6: Structural projects should avoid adverse impacts to instream values and the health of local communities.

- Rural Colorado's economy rests heavily on river-dependent agriculture, tourism and recreation.
- Many urban areas celebrate the recreational and environmental amenities of their rivers; new and existing water uses should protect, if not enhance, such amenities.
- Projects should have, as a pre-requisite to approval, support from local communities to protect healthy flows and vibrant local economies.
- Projects with multiple beneficiaries are often preferable to single-purpose projects.
- Mitigation for projects must leave adequate river flows to support recreational uses and healthy ecosystems under all future scenarios, even if water availability decreases due to climate change [i.e., the risk of climate change or long-term drought should not be borne by the river].
- Risk management and environmental metrics should be developed to analyze impacts of proposed new supply projects and their compatibility with other consumptive and non-consumptive needs.
- Rebuilding infrastructure damaged by flooding or other disasters should respect and maintain the ecosystem values of river channels and floodplains and ensure future resiliency to variable climate conditions.
- Innovative water management of existing supplies can help protect flows for the environment, recreation, water quality, without adversely affecting yield and while continuing to meet our compacts obligations to downstream states.

Principle 7: Basin Implementation Plans and Colorado's Water Plan should include a timeline to complete meaningful processes or projects that protect and restore healthy rivers and streams (a/k/a non-consumptive needs).

- Colorado needs to play a greater role in protecting and improving our rivers—not just in avoiding additional harm, but in pro-actively protecting and restoring them.
- Meeting the environmental and recreational needs previously identified inside each basin, as spelled-out in their needs assessments, is an important first step to support the state's valuable recreation and tourism industry, as well as quality of life for all.

- The BIPs and the Plan should lay out timelines to meet in-stream values. Each BIP should include multiple, meaningful projects or processes that meet identified non-consumptive gaps to ensure we approach meeting these needs with parity to the attention paid to consumptive projects.

Principle 8: All stakeholder groups and the concerned public must have a clear avenue for input.

- The BIPs and Plan will impact millions of Colorado citizens who are unfamiliar with the Inter-basin Compact Committee, the Basin Roundtables and the CWCB. These citizens also are unfamiliar with the technical nature and language associated with these planning processes.
- The State must provide new forms and forums of public notice and opportunities for input, through a concerted outreach effort to concerned citizens, city and county governments, local businesses, and sportsmen groups.

IV. Summary

Colorado's Water Plan will set the course for the future. It is critical that we do this right. It's essential the Plan protect the State's economy, environment, and unique way of life. The principles noted above are foundational to building a future we can all be proud of.

Sincerely,

Nathan Fey
American Whitewater

Ken Neubecker, Colorado River Basin Roundtable member
American Rivers

Theresa Conley
Conservation Colorado

Jennifer Pitt
Environmental Defense Fund

Jennifer Bock, Gunnison Basin Roundtable member
High Country Citizens' Alliance

Melinda Kassen, IBCC member and consultant to
Theodore Roosevelt Conservation Partnership

Bart Miller
Western Resource Advocates

DRAFT

Colorado Water Plan

West Slope Basin Roundtable Position Statement – New Supply Projects

September 6, 2013

Preamble:

The Statewide Water Supply Investigation (2007 SWSI), the Interbasin Compact Committee, and the various Basin Roundtables chartered under HB 1177, have focused a large amount of attention on the so-called “Gap” between available water supplies and projected future water needs. The IBCC and others have identified 4 four legs of the stool that will address the Gap:

- Identified projects and processes (IPP’s), existing water supply efforts in various stages of planning and implementation such as Denver’s Moffat System Expansion and Northern Water’s Windy Gap Firming Project;
- Water Conservation
- Water Reuse
- New supply projects.

“New supply projects” means a new Transmountain Diversion (TMD) from the Colorado River basin, the primary purpose of which is a supply for the Front Range.

The following guidelines should be incorporated into the West Slope Roundtables’¹ Basin Implementation Plans and the Colorado Water Plan (CWP).

Position Statement:

1. The West Slope has negotiated recent agreements that have greatly facilitated development of Denver’s Moffat Expansion Project and Northern Water’s Windy Gap Firming Project, which are two IPP’s. The 1998 Eagle River MOU is a similar negotiated agreement. These negotiations were successful because the agreements represented an overall net benefit to the West Slope. Any future projects must similarly represent a net benefit to the basin of origin. The West Slope intends to negotiate in good faith on potential future cooperative projects, with Denver Water, as contemplated by the Colorado River Cooperative Agreement (CRCA) and with Colorado Springs and Aurora as contemplated by the Eagle River MOU.

¹ Southwest, Gunnison, Colorado, and Yampa/White River Basin Roundtables

2. The West Slope Roundtables recognize and value the importance of Colorado's agricultural economy on a statewide basis. East Slope and West Slope agriculture is vital to both region's economies and cultures and both are equally worthy of preservation.
3. Beyond the possible CRCA and Eagle River MOU cooperative projects mentioned above, the West Slope Basin Roundtables believe it is premature for the Colorado Water Plan to identify, include, or otherwise plan for a large, new TMD from the West Slope to supply the Front Range. The reasons for this include:
 - a. Other efforts to address the Gap – water conservation, reuse, reduction of demands through higher density development, maximization of Front Range native water supplies, and completion of other IPP's -- should be pursued first.
 - b. Recent studies of large pumpback projects (e.g. Flaming Gorge and Yampa pumpbacks) suggest such projects are financially infeasible, politically divisive, and have immense permitting hurdles.
 - c. With respect to the Colorado River Compact, Colorado has not adequately determined the risk of overdevelopment nor determined ways to mitigate the risk of overdevelopment. The initial data suggests that a significant risk is posed to existing post-compact water rights (used on both the West Slope and Front Range) by the development of a new large-scale TMD. Regardless, much more time, work, and public outreach is necessary to address the hydrologic and legal uncertainties related to these issues.
 - d. The Gap needs additional study. The data upon which the Gap was determined is stale. Ways to reduce the Gap, such as those identified above in 3.a., need to be prioritized and fully explored.
4. The West Slope Roundtables do not support a state water project or any attempted judicial or legislative "placeholder" water right for a future TMD. A state water right filing threatens the West Slope's ability to secure supplies for its future consumptive and non-consumptive needs. And a state water project poses a threat to local land use permitting authority.
5. The Colorado Water Plan must recognize the present and future demands on Colorado River supplies for West Slope uses, both consumptive and non-consumptive. The West Slope needs to obtain confidence it will be able to develop its native water supplies for its own long-term water needs. Any "placeholder" right or other speculative arrangement presents a significant threat to this principle.



The Pueblo Chieftain

WELCOME: [Home](#) [Contact](#) [Search](#) [Digital Edition](#) [Mobile](#) [Subscribe](#) [Advertise](#) [FAQ](#)

68° Fair

November 11, 2013

[News](#) [Sports](#) [Prep Rally](#) [Business](#) [Life](#) [Entertainment](#) [Multimedia](#) [Opinion](#) [Obituaries](#) [Classifieds](#) [Weather](#)

[EDITORIALS](#) [IDEAS](#) [LETTERS](#) [SUBMIT A LETTER](#) [COLUMNS](#) [BLOGS](#)

FEATURED: | [Popular](#) | [Jingle Mingle](#) | [Broncos](#) | [Tech Tips](#) | [Active Years](#) | [Water](#) | [Marijuana](#) | [NASCAR](#) | [Smartbuys](#) | [Deals](#)

FREE CHIEFTAIN APPS: | [iPad](#) | [Kindle Fire](#) | [Android tablet](#) | [iPhone](#) | [Android phone](#) | [Universal](#) | [All apps](#)

[Home](#) [Opinion](#)

Tell It To The Chieftain!



Submit a letter

Don't wash away state's future

[Like](#) 0 [Tweet](#) 0 [g+1](#) 0



get the chfa advantageSM

- 3% down
- no mortgage insurance

chfa. contact a participating lender

KARN STIEGELMEIER GUEST COLUMNIST

Published: September 29, 2013; Last modified: September 29, 2013 05:00AM

Karn Stiegelmeier is a Summit County commissioner, a member of the Colorado River Basin Roundtable and member of Northwest Colorado Council of Governments Water Quality/Quantity Committee.

Northern Colorado communities have been devastated by unprecedented storms and floods.

While their long recovery process begins, Southern Colorado continues to suffer from years of drought. Governor Hickenlooper issued an executive order in May of this year

directing the Colorado Water Conservation Board to prepare a Colorado water plan.

Although people say that “whiskey’s for drinking and water’s for fighting,” I believe that East Slope county and municipal officials, and those of us in the headwater communities of Colorado, share common values and responsibilities that are an important backdrop to the Colorado water plan effort. Regardless of the location, local government land-use planning and

management decisions drive the demand for more water, local government entities are the major water providers, and local government regulatory powers extend to the location and construction of water projects that transfer water from one part of the state to another.

As elected officials, we all are charged with protecting public health, safety, welfare and the environment, and we should honor each other’s responsibility to do so. If not properly guided, the Colorado water plan runs the risk of driving a wedge between different areas of the state by allowing Front Range water supply needs to trump the local government plans in areas of the state that are targeted as the source to meet those needs.

Whether in the Arkansas Valley or the mountains of Colorado, communities already have engaged in extensive land-use planning and long-range water supply planning that should be honored in the Colorado Water Plan.

Some on the Front Range have called for new supply projects from the Colorado River basin to address the anticipated demand for water to supply new growth. We hope that the governor, the CWCB, and the advocates for new supply projects will consider the lost agricultural production, degraded fisheries and compromised wildlife habitat caused by existing transmountain diversions from the headwaters of the Colorado River.

These environmental impacts translate to socioeconomic impacts. Agricultural land stripped of water rights produces no revenue and alters the community fabric. Reduced stream flows means fewer recreational opportunities for rafting, kayaking and fishing. Higher water temperatures produce a danger to healthy fish populations and threaten the status of “Gold Medal” fisheries. Water quality and clarity degradation impacts tourism and property values. And reduced flushing flows increase the cost of water and wastewater treatment.

The Front Range also has proposed a moratorium on new applications for recreational in-channel diversion water rights until new supply projects have been identified. This is an alarming proposal for two reasons.

First, RICDs are water rights under Colorado water law. The Colorado Water Plan is designed to honor this law.

Second, RICDs are a critical economic development tool for communities that are lucky enough to be located along stretches of river conducive to rafting, kayaking and other water-based recreation.

A moratorium would have the effect of denigrating one class of water rights while elevating the desire for new growth on the Front Range over economic development

plans of existing communities.

I propose that, in identifying future water supplies for a growing population, each water basin in the state will first consider how to fill those needs within its own basin before eyeing sources of water supply outside the basin. The Colorado Water Plan should identify processes and requirements for each basin to conserve, reuse and maximize in-basin water supply.

New development accommodating new population should use smart growth principles such as xeriscaping, water wise appliances, and cluster development so that our scarce water supply will be used efficiently, and agricultural lands can be protected for future generations if the landowner desires.

No water project should be supported by the state without the approval of the local government where it would be located.

Like 0 Tweet 0  0

From the Web

by Taboola



Pastor Mocked for His 'Biblical Money Code,' Gets Last Laugh
Moneynews



Miley Cyrus' Ridiculous Outfit Leaves Nothing to the Imagination (P...
Tasty Articles



Is the Juicy Rumor About Bill Clinton True?
Wall Street Daily



What Will Santa Bring? Perfect Toddler Toys
Fisher-Price



3 Super Foods That Burn Fat Like A Furnace
Perfect Living



30 Fairly Shocking Pictures of Celebrities Without Makeup
CelebrityToob



We're Done: Celebrities We Lost Respect For In 2012
Madame Noire



China's Newest Hotel Sinking to New Depths
Businessweek

Discuss this story

About online comments



CORE VALUES

By endorsing these core values, western Colorado expresses its resolve for smart water management and protection of healthy rivers and healthy communities on the West Slope of Colorado. These core values should also be reflected in water planning efforts such as the state water plan that Governor Hickenlooper has ordered be completed by December 2014. Signing these core values tells Colorado's water leaders that the state water plan must support the health of the Colorado River and the communities, businesses and families that depend on it.

1. **Cooperation, Not Conflict:** Work together to ensure the Colorado River is able to meet our diverse needs, from agriculture to recreation and tourism. Cooperation is the key to sustaining our present and growing our future.
2. **Protect Our Quality of Life:** Maintain our open spaces through a vigorous agricultural sector and ensure that our rivers and streams are flowing and healthy.
3. **Modernize Irrigation:** Upgrade our aging irrigation infrastructure systems to make them more productive, economical, and habitat-friendly.
4. **Innovative Management:** Explore new ways to meet our water supply needs through innovative conservation and management practices.
5. **Keep Our Rivers at Home:** Leave water in its home basins and oppose new, large scale, river-damaging transbasin diversions of water from the Colorado River to the Front Range.

Richard Van Gytenbeek
Colorado River Basin Outreach Coordinator
115 N. 5th St., Suite 409
Grand Junction, CO 81502
Ph. 307-690-1267
Email r.vangytenbeek@tu.org
www.ourCOriver.com

Editor:

Leaders from the headwaters region of Colorado are engaged in the Colorado Water Plan, much like the Grand Valley water users whose efforts were highlighted in the Sentinel's September 3rd edition. The headwaters have directly experienced devastating impacts of front range water diversions and hope that this experience will inform the state's process.

Northwest Colorado Council of Governments Water Quality/ Quantity Committee, comprising officials from Grand, Gunnison, Eagle, Park, Pitkin, and Summit local governments and water districts, is working to ensure that the state's planning process considers the economy, environment and well-being of the headwaters. We thus have adopted a set of principles as a guide. For example, the principles state that the Colorado Water Plan must start with existing local land use plans and regulations before endorsing plans to supply future growth. Each river basin in Colorado should exhaust available water supply within its own basin before planning to take water from another area of the state. The Governor's staff should not act as a proponent of a new water project until the state and federal regulatory process has been completed and local governments in the area from which water would be taken approve the project. Like the Grand Valley, we believe the Colorado Water Plan must acknowledge the risk of lower Colorado basin states like Nevada or California demanding water from Colorado, and must outline mechanisms to mitigate that risk.

Finally, the Colorado Water Plan should not plan supply to serve one part of the state at the expense of another. We will continue to work closely with state agencies to make sure this does not happen.

Thank you,

Kathy Chandler-Henry

Eagle County Commissioner

Submitted to **Denver Post** 10/28/13, not yet published as of 11/13/2013

BY KATHY CHANDLER-HENRY

Kathy Chandler-Henry is an Eagle County Commissioner and member of Northwest Colorado Council of Governments Water Quality/ Quantity Committee.

We're hearing a lot about the Colorado Water Plan these days. What does it mean for our state, and especially for our headwaters counties? Because approximately 80% of the State's water comes from the west slope, and about that same percentage of the population lives east of the Continental Divide, we have a vested interest in the Water Plan process and outcomes.

Why a Colorado Water Plan? Based on predictions for population doubling by 2030 and growing demands for water throughout the arid west, the Governor assumes there is a coming gap between the demand for water and available supply, and has directed his staff to develop a plan for the future.

Five factors that must inform the Colorado Water Plan are (1) advances in "smart" land use planning and development, (2) unrealistic estimates of water availability (and there really isn't any "new" water), (3) the interdependence of water in the stream and our lives and livelihoods in the headwaters and west slope, (4) the importance of conservation and reuse of water to meeting demand, and (5) the imperative of working together rather than independently throughout our river basins to develop a workable plan.

We've learned a lot from the recent decades of growth – local governments know the cost of sprawl and are increasingly instituting advanced land use planning that reflects our dry climate and water-short conditions. Colorado's Water Plan should take into account these advances when estimating future demand for water. We don't have to assume that new development and population distributions will or should mimic the patterns of the past 30 years.

Past estimates of the water available for future growth may be overstated, especially water from the Colorado River Basin. For example, the Bureau of Reclamation announced this year that it will reduce the amount of water released from Lake Powell in 2014 to the lowest annual release since filling Lake Powell in 1968. Estimates of available water must be revisited in the Water Plan.

The Colorado Water Plan must not require some areas of the state to sacrifice their economy, environment, and quality of life to become the water supply for other parts of the state. Impacts of transmountain water diversion projects can be devastating. In Eagle County we are hyper-vigilant in protecting our water quality and quantity, agriculture, open space, and water/snow-dependent recreation. We also understand that the front range needs water for future growth, and have initiated historic agreements with major Front Range water providers. The Colorado Water Plan should encourage Front Range local governments to narrow the gap between predicted supply and demand through smart growth practices, conservation, and reuse before looking to other areas for additional supply.

Finally, the current planning process charges water leaders in each river basin with independently defining their basin's future need for water through a roundtable process. As each roundtable works alone, we run the risk of Front Range roundtables planning on water supply that either doesn't exist, or that other roundtables have planned for their own local needs.

Perhaps most importantly, the people of Colorado have a seat at the table if their local elected officials are brought into the Water Plan process. It is critical that local government land use plans and authority throughout the State be respected. Sessions of the Interbasin Compact Committee should allow for public comment and discussion, and roundtables should encourage dialogue among diverse perspectives. We need an opportunity to understand each other's views and seek common ground. Only then will Colorado be able to join together in a Water Plan that addresses our water supply needs.

NOTICE OF PUBLIC INFORMATIONAL HEARING
BEFORE THE
COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

The Commission will hold an Issues Formulation Hearing for:

the Classifications and Numeric Standards for Upper Colorado River Basin and North Platte River (Planning Region 12), Regulation #33 (5 CCR 1002-33) and the Classifications and Numeric Standards for Lower Colorado River Basin, Regulation #37 (5 CCR 1002-37).

HEARING SCHEDULE:

DATE: Monday, November 4, 2013
TIME: 9:30 a.m.
PLACE: Buffalo Mountain Room
County Commons Building
0037 Peak One Drive
Frisco, CO 80443

The hearing may be reconvened at such times and places as the Commission may announce.

TRIENNIAL REVIEW PROCESS OVERVIEW:

This Issues Formulation Hearing is the second step in a three-step process for triennial review of surface water quality standards in Colorado. The first step is an Issues Scoping Hearing, which provides an opportunity for early identification of potential issues that may need to be addressed in the next major rulemaking hearing, and for identification of any issues that may need to be addressed in rulemaking prior to that time. This second step in the triennial review process – the Issues Formulation Hearing – results in the identification of the specific issues to be addressed in the next major rulemaking hearing. The third step is the Rulemaking Hearing, where any revisions to the water quality standards regulation are formally adopted. The Rulemaking Hearing for these basins will be held in June 2014. Information regarding triennial reviews of water quality classifications and standards for each of the Colorado river basins is provided on the Commission's web site at <http://www.colorado.gov/cs/Satellite/CDPHE-WQCC/CBON/1251590850526>.

ADDITIONAL BACKGROUND INFORMATION:

Information regarding the current quality of waters in Colorado is provided in the "Integrated Water Quality Monitoring and Assessment Report," which is Colorado's latest report pursuant to section 305(b) of the federal Clean Water Act. In addition, an identification of river basin segments included on Colorado's 2012 Section 303(d) List of Impaired Waters and Colorado's current Monitoring and Evaluation List are set forth in Regulation #93 (5 CCR 1002-93). These documents are posted on the Commission's website at <http://www.colorado.gov/cs/Satellite/CDPHE-WQCC/CBON/1251590894055>.

EPA has approved all of the current water quality standards for these basins.

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations orally or in writing as to any specific issues that should be addressed in the June 2014 rulemaking hearing regarding potential revisions to the current water quality classifications, standards and designations in these basins.

Anyone identifying issues should provide supporting information as to why those issues should be addressed in the rulemaking hearing. The Commission does not desire to hear the full evidence that would be presented at a rulemaking hearing that would follow. The Commission requests only information needed for it to determine whether or not to propose a regulatory change. In deciding whether any identified issue should be addressed in the upcoming rulemaking hearing, the Commission will consider whether the issue is ripe for resolution and whether there is any reason to address the issue in a hearing separate from the upcoming major hearing on the regulation in question. The question of "ripeness" generally will turn on whether adequate data or other information is or will be available, whether there has been or will be a good faith effort toward informal exploration of the proposal with the Division and other interested persons, and whether there is a need for an expeditious resolution of the issue.

Whenever possible, third parties are encouraged to provide a specific proposal as to the changes to the regulation that they believe are appropriate, along with a draft of proposed Statement of Basis and Purpose language in support of the proposal. If not submitted now, these documents will be required by mid-January 2014 if the proposal is to be addressed in the June rulemaking hearing. In addition, any third party advancing a proposal should assure that it will be able to provide the full set of evidence in support of its proposal in time to meet the deadline (mid-March) that will be set forth in the rulemaking hearing notice.

AUTHORITY FOR PUBLIC HEARING:

The provisions of 25-8-202(1)(f) C.R.S. and Section 21.5 B of the "Procedural Rules" Regulation #21 (5 CCR 1002-21) provide the authority for this hearing.

PARTY STATUS:

This is not a rulemaking hearing; therefore, party status provisions of 25-8-101 et. seq., and 24-4-101 et. seq., C.R.S. do not apply. Party status requests shall not be considered by the Commission.

PROCEDURAL MATTERS:

Oral and/or written comments will be accepted at the hearing; however, the Commission strongly encourages the submission of written comments or recommendations. Any written submissions should be received at the Commission Office by October 23, 2013, if feasible, so that they can be distributed to the Commission for review prior to the hearing. The Commission requests that the original and fifteen (15) **double-sided** copies of all written statements be submitted and suggests that additional copies be made available at the hearing for attendees. Anyone for whom the expense of providing these copies presents an economic hardship should contact the Commission Office to make alternative arrangements. If feasible, please also transmit an electronic copy of any written statements to cdphe.wqcc@state.co.us, so that such statements can be posted on the Commission's web site for review by interested persons.

Dated this 16th day of September 2013 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Trisha Oeth, Administrator



WATER QUALITY / QUANTITY COMMITTEE (QQ)

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

To: QQ Members
From: Lane, Barbara and Torie
Subject: 2014 WQCC Standards Rulemaking

The Colorado Water Quality Control Commission's Issues Formulation Hearing for the Upper Colorado River Water Quality Standards and Classifications occurred on November 4th. This Issues Formulation Hearing is the second step in a three-step process for triennial review of surface water quality standards in Colorado. At this second step in the triennial review process the specific issues to be addressed in the Rulemaking hearing are identified. The third step is the Rulemaking hearing in June 2014. At this Rulemaking the WQCC will determine, with input from parties and the public, what if any changes are to be made to the Upper Colorado Water Quality Standards and Classifications (WQCC Regulation #33).

This issues Formulation hearing was not a Rulemaking hearing so formal party status was not necessary. However, interested persons did provide their opinions or recommendations as to specific issues that should be addressed in the June 2014 rulemaking hearing. In addition, the Water Quality Control Division outlined the changes they intend to recommend.

Following is a very brief summary of the issues relevant to QQ that were raised at the issues formulation hearing. These are listed with the organization that is recommending them. A detailed summary of this is available at the WQCC website: <http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDPHE-WQCC%2FCBONLayout&cid=1251590851421&pagename=CBONWrapper>

The Water Quality Control Division will propose:

1. Temporary modifications for many stream segments will be allowed to expire
2. Review site specific standards and determine if still appropriate.
3. Many upgrades to water quality standards on certain specific segments, including:
 - a. Consider proposing the full suite of Aquatic Life standards
 - b. Consider proposing a Fish Ingestion qualifier
 - c. Consider segments classified Recreation N use for appropriateness
 - d. Propose to add a copper standard to protect the agriculture use
 - e. Evaluate appropriateness of a Water Supply use classification and standards
 - f. Review data supporting the Antidegradation designation
 - g. Propose to update standards to conform to changes in Basic Standards Reg 31 (Al, T, Mo, U, Zn)

4. Review temperature and dissolved oxygen standards for Wolford Mountain, Ruedi and Williams Fork Reservoirs.
5. Nutrient standards for phosphorus and chlorophyll a will be proposed for many segments.

Specific segment changes proposed by other entities:

- UC12: Grand Lake clarity standard (Northern)
- UCo8/BL13-14: Water Supply and Molybdenum (Climax)
- EA08-9a: Temperature (ERWSD)
- EA05a, 5b, 5c and 7b: Site-specific metals standards (ERWC)
- RF03a: Outstanding Waters (WildEarth Guardians)
- RF10: Outstanding Waters (Trout Unlimited)

The schedule for the WQCC Rulemaking is:

- Notice – January
- Proponent’s Prehearing Statements – March
- Responsive Prehearing Statements – April
- Rebuttal Statements – May
- Rulemaking Hearing – June 9, 10 – Grand Junction

QQ will participate as a party in this Rulemaking. Please contact any of us to discuss your concerns, opinions or positions or if you want to strategize on any of these proposals.



WATER QUALITY/QUANTITY COMMITTEE (QQ)

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

November 14, 2013

Romaine Pacheco, Director
Colorado Office of Boards and Commissions
136 State Capital
Denver, CO 80203

Dear Ms. Pacheco

The Northwest Colorado Council of Governments Water Quality/Quantity Committee (“QQ”) is an organization comprising more than 50 local governments in the headwaters of the Colorado River. QQ has an extensive history of involvement in water quality matters including innovative use of member’s land use authority to protect water quality, exemplary treatment of municipal wastewater, initiation of abandoned mine clean-up projects, and participation in state policy decision making forums conducted by the Water Quality Control Commission.

There are few public servants who will commit the focus, energy, knowledge and wisdom offered by Lurline. In her years with Grand County she has proven herself to efficiently acquire the knowledge, to be open to input from the public, and to be balanced in her appraisal of the consequences of decisions. As her resume documents, she has extensive experience in statewide water issues involving the essential link between water quality and quantity, skill in forging intergovernmental partnerships, and deep understanding of the regulatory and policy challenges faced by boards and commissions.

Lurline would make an excellent member of the Water Quality Control Commission and QQ wholeheartedly supports her appointment.

Sincerely,

James Newberry
Chairman



WATER QUALITY/QUANTITY COMMITTEE (QQ)

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

November 14, 2013

Romaine Pacheco, Director
Colorado Office of Boards and Commissions
136 State Capital
Denver, CO 80203

Dear Ms. Pacheco

The Northwest Colorado Council of Governments Water Quality/Quantity Committee ("QQ") is an organization comprising more than 50 local governments in the headwaters of the Colorado River. QQ has an extensive history of involvement in water quality matters including innovative use of member's land use authority to protect water quality, exemplary treatment of municipal wastewater, initiation of abandoned mine clean-up projects, and participation in state policy decision making forums conducted by the Water Quality Control Commission.

QQ strongly supports the appointment of David Baumgarten on the Water Quality Control Commission. David will combine his legal expertise, sharp and disciplined thinking process with his openness for public input to make sound and defensible decisions. He would be able to provide the balanced perspective that stems from his unique local government experience as both a regulator and regulated entity.

Sincerely,

James Newberry
Chairman



Board of County Commissioners

970-453-2561
fax 970-453-3535

Post Office Box 68
208 East Lincoln Avenue
Breckenridge, Colorado 80424

October 22, 2013

The Honorable Tom McClintock
Chair
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Grace F. Napolitano
Ranking Member
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McClintock and Ranking Member Napolitano:

We are writing to convey the position of Summit County, Colorado on H.R. 3189, the Water Rights Protection Act.

Summit County is the home of four major ski areas that are located in whole or in part on National Forest System lands: Copper Mountain, Breckenridge, Keystone, and Arapahoe Basin. Together, these areas account for approximately 33% of the annual skier visits at all ski areas in Colorado. Downhill skiing and snowboarding and the associated lodging, restaurant, retail, and other related business activity represent a very significant portion of the economic base in the County. Ensuring the long-term viability of Summit County's recreational economy, including the use of public lands for winter sports, is a high priority for the County Government.

The County supports the intent of H.R. 3189 to prevent the Forest Service from requiring ski areas to convey title to existing water rights to the United States or to appropriate future water rights in its name. The County would also support an amendment to the bill to address other concerns of the ski industry that in the future the Forest Service might demand that the use of water be changed from ski area purposes to other purposes, or that water be leased to the US.

However, as drafted, the language in subsection 1 of the bill is sufficiently ambiguous to jeopardize the existing power of federal agencies to include, in special use permits for water projects, requirements that water that might otherwise be diverted or stored be left in the stream for protection of fisheries, the riparian environment, or other values. Bypass flow requirements on water diversion projects are of

critical importance in protecting the environment in the headwater counties. For example, permit conditions on the operation of the Dillon Reservoir/Roberts Tunnel system, the Moffat Tunnel system and Williams Fork Reservoir, and the Homestake Project protect fish habitat and fish populations in the Blue, Fraser, and Eagle Rivers, respectively. Legislation that jeopardizes these restrictions upon the renewal or amendment of existing permits, or the issuance of new permits for other projects, would radically alter the existing stream conditions. Since the bill also applies to the U.S. Fish and Wildlife Service, it would also cast doubt on programs to protect endangered species, including the Colorado River Endangered Species Recovery Program.

Summit County's position is that there is no reason to start down this path by enacting ambiguous legislation in the first place. The County is willing to support a bill that resolves the ski industry's Forest Service issue without jeopardizing much broader federal authority that is important to the health of streams in western Colorado. To that end, we believe that the bill should include, in addition to amendments that fully address the industry's concerns about the 2012 Forest Service permit directive, an express savings clause that preserves the power to protect streamflows. We have proposed the following language for inclusion in the text of the bill:

"Nothing in this Section is intended, nor shall be construed, to limit the authority of the Secretaries to reasonably condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement in order to protect the natural environment or downstream water uses, including without limitation requirements for minimum bypass flows."

A copy of the County's position paper on H.R. 3189 is attached.

Thank you for the opportunity to provide these comments. We look forward to continuing to participate in the development of this important legislation.

Very truly yours,



Thomas C. Davidson
Chair



Karn Stiegelmeier
Commissioner



Dan Gibbs
Commissioner



Board of County Commissioners

970-453-2561
fax 970-453-3535

Post Office Box 68
208 East Lincoln Avenue
Breckenridge, Colorado 80424

MEMORANDUM

This memorandum summarizes the concerns of the Board of County Commissioners of Summit County on H.R. 3189, which is entitled the "Water Rights Protection Act."

H.R. 3189 is ostensibly a response to a series of Forest Service directives and permit requirements concerning water rights that are used in connection with ski areas operating on public land. Under the most recent directive, which was effective March 6, 2012, the restrictions on the ownership and use of water rights varied depending on whether the water diverted was physically located within the permitted area or off-site and when and how the water rights were acquired. For example, on-site water rights initiated during the term of the permit were required to be appropriated jointly in the name of the permit holder and the United States. Off-site water rights initiated after November 8, 2011 were required to be appropriated solely in the name of the United States, while ownership of water rights acquired prior to that date would continue be governed by the terms of the ski area permit then in effect. In some cases, those permits required that such rights be held solely by the United States and in others they allowed ownership by the permit holder. However, the directive placed restrictions on the permittee's disposition of the water rights:

The holder shall not take any action intended to divide or transfer the holder's ownership interest in any right to divert water off site for use on site; to sever any right owned by the holder to divert water off site for use on site from support of operation of the winter or year-round resort and facilities authorized by this permit; or to modify the type, place, or season of use of any right owned by the holder to divert water off site for use on site, in any manner except as provided for in this permit and any previous Forest Service permit, unless otherwise approved in writing in advance by the authorized officer.

In *National Ski Areas Association, Inc. v. United States Forest Service*, Civil Action No. 12-cv-0048-WJM (December 19, 2012), the U.S. District Court for the District of Colorado invalidated the 2012 Forest Service Directive on procedural grounds. The Forest Service is in the process of revising that directive.

Summit County has participated in the formulation of the revised Forest Service policy and submitted comments stating, among other things, that there may be viable alternatives to ownership of water rights by the United States that would protect the interests of the Forest Service in water rights used within the ski area boundary. Those comments are attached to this memo.

As introduced, however, H.R. 3189 has a much broader reach than ski area permits issued by the Forest Service. First, it applies to all agencies in the Departments of Agriculture and Interior. In addition to the Forest Service and Bureau of Land Management, that would include agencies such as the

National Park Service, Bureau of Reclamation, and U.S. Fish and Wildlife Service that do not issue permits for ski areas, but are involved in managing and protecting water resources and fish and wildlife, including endangered species.

Second, the bill applies generally to any “issuance, renewal, amendment, or extension of any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement.” This would include permits for the use and occupancy of federal land in connection with dams, reservoirs, pipelines, and other water development structures that have no relationship to ski areas.

Third, the bill as introduced prohibits the agencies from requiring a “transfer or relinquishment of any water right directly to the United States, in whole or in part.” That language is not limited to a transfer of title, but instead can be interpreted broadly to prohibit any permit requirement that water that might otherwise be diverted or stored be left in the stream for protection of fisheries, the riparian environment, or other values. While the prohibition relates to a transfer or relinquishment “directly to the United States,” a bypass flow requirement that is imposed by a federal agency under federal law could be deemed to satisfy that criterion.

The preamble of H.R. 3189 also states that the bill is intended to preclude any “other impairment” of a water right, which supports a broad reading of the legislative intent. At best, the bill is deeply ambiguous and creates a substantial risk that a reviewing court would interpret it to prohibit bypass flow conditions in any land use permit, endangered species or Clean Water Act §404 consultation, or other action by the Departments of Interior or Agriculture.

Subsection 2 of the bill prohibits a requirement that a water user apply for a water right in the name of the United States under State law as a condition of the issuance of a permit or other federal action. While that section is also broadly worded, the historical context of such requirements has been limited to ski area, livestock grazing, and other permits under which the beneficial use of water occurs on the permitted federal land.

Some of the broader concerns of water users that have given rise to H.R. 3189 relate to a separate Forest Service directive in FSH 2709.11, issued on April 15, 2011, which adopted permit clauses D-24 through D-27. These clauses do not relate to ski area permits. It is important to accurately describe the relationship between these clauses and the terms of the bill. The only Forest Service clause currently in effect that requires water rights to be conveyed to or appropriated in the name of the United States is D-24, which is expressly limited to “facilities that divert or pump water from sources located on National Forest System lands *for use on National Forest System lands.*” Therefore, that clause does not restrict the ownership or appropriation of water rights by municipal, industrial, or agricultural users where the place of use is on private or other public lands.

Moreover, with respect to water rights existing at the time of the permit, subsection 3 of clause D-24 first requires that they be conveyed to the next holder of the underlying permit to occupy the NFS land where the water is used. It is significant that H.R. 3189 would not prohibit this requirement. Conveyance directly to the United States is required only if the use of the NFS land is not reauthorized and the holder does not change the point of diversion and place of use in accordance with state law, or the permit is revoked for non-use. While some water users may fairly disagree with these provisions,

they do not affect the ski industry and they do allow change in the use of the water rights under state law if the use of federal land is not reauthorized.

Permits for diversion structures that are not used on Forest Service land are governed by Clause D-25, which clearly states that “water rights associated with use of that right-of-way may be acquired in the name of the holder.” There is no requirement that these water rights be conveyed to the United States or any other party. For example, the Forest Service permit for the County’s Old Dillon Reservoir project recognized the County’s ownership of water rights. It also imposed bypass flow requirements that were acceptable to the County as a means of protecting a healthy stream in Salt Lick Gulch.

The potential effect of the bill on bypass flows that may be required as condition of water projects, and transmountain water projects in particular, prompted Chris Treese to recommend that the River District Board oppose the bill unless it was amended. In an October 2, 2013 memo, Chris wrote that:

I’m concerned this bill has unintended adverse consequences. Had H.R.3189 been law in the 1960s, the bypass conditions on the individual tributary diversions of the Fry-Ark Project would have been impermissible. The River District and the West Slope broadly supported those bypass requirements and both the environment and West Slope water users are the direct beneficiaries of those limiting permit conditions. ... Of perhaps greatest concern, H.R.3189 would not even allow water-related conditions in an existing permit that has been operative for as long as forty years to be included in the renewal, amendment or extension of that same permit post passage of this bill.

Bypass flow requirements on transmountain diversion projects are of critical importance in protecting the environment in the headwater counties. For example, permit conditions on the operation of the Dillon Reservoir/Roberts Tunnel system, the Moffat Tunnel system and Williams Fork Reservoir, and the Homestake Project protect fish habitat and fish populations in the Blue, Fraser, and Eagle Rivers, respectively. Legislation that jeopardizes these restrictions upon the renewal or amendment of existing permits, or the issuance of new permits for other transbasin projects, would radically alter the existing stream conditions. Since the bill also applies to the U.S. Fish and Wildlife Service, it would also cast doubt on programs to protect endangered species, including the Colorado River Endangered Species Recovery Program.

The Federal District Court in Colorado has held that the Forest Service has the statutory authority to impose bypass flows as a condition to the issuance of land use permits for water projects. *Trout Unlimited v. U.S. Dep’t of Agric.*, 320 F.Supp.2d 1090, 1105, 1106 (D. Colo. 2004), *appeal dismissed at 441 F.3d 1214* (10th Cir. 2006). The court cited, among other cases, *County of Okanogan v. Nat’l Marine Fisheries Serv.*, 347 F.3d 1081, 1085 (9th Cir. 2003) and *PUD No. 1 v. Washington Dept. of Ecology*, 511 U.S. 700, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994). Statements by the proponents of H.R. 3189 are inconsistent as to whether the bill is intended to alter that existing law, and it is not apparent from the press releases accompanying the bill that all of the sponsors appreciate its significance.

We understand that in response to Mr. Treese’s objections, the proponents of the bill negotiated a potential amendment that would substitute the words “surrender of possession” for “relinquishment” in

the preamble and subsection 1 of the bill. If anything, that amendment would only increase the ambiguity in the legislation and make it more, rather than less, likely that a reviewing court would invalidate a requirement to leave in the stream a portion of the water that would otherwise be divertible under a water right. Since a water right is a usufructuary interest, it is difficult to articulate any other interpretation of this language. A bypass flow condition in a land use permit is essentially a requirement to “surrender possession” of a right to use a portion of a water right.

On October 15, a majority of the Directors of the River District voted to support H.R. 3189 conditioned on introduction of strong legislative history protecting the federal power to require bypass flows, and with a request to include the legislative history language as a savings clause in the actual text of the bill. Relying solely on legislative history is problematic for several reasons. First, interested parties will not know until after they have taken a position on the bill what actual statements will appear in the record in the House, whether lobbyists with contrary views about the intent of the bill will insert their own language in a committee report -- creating ambiguities within the history itself -- or what will happen in the Senate. See *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49, (1950) (declining to consult legislative history when that “history is more conflicting than the text is ambiguous”). Second, a reviewing court will not even review the history if it decides that the legislation has a clear meaning. Third, federal judges have become skeptical about relying on legislative history that is inserted into the record by particular interest groups. Finally, there is the risk that a reviewing court will defer to the agency’s interpretation under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

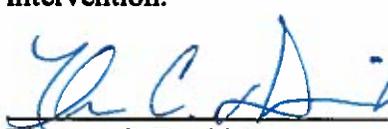
There are several ways to amend H.R. 3189 to resolve the ski areas’ dispute about the Forest Service permit policy directly without jeopardizing the broader federal authority to require bypass flows as a condition of land use permits. The first would be to narrow the operative language of subsection 1 of the bill to prohibit requirements that water rights used within the permit area be conveyed to the United States and to delete the language in the preamble concerning “impairment” of water rights. We understand that the ski industry is also concerned about the potential for a requirement of long-term leases or other restrictions, such as those in the excerpt from the 2012 Directive quoted above, on the ability of the ski areas to transfer ownership or change the use of their water rights. Language could certainly be drafted to limit the agency’s powers in this regard without impairing the power to protect streamflows.

A recent proposal from the NSAA is to “prohibit the conditioning of any permit, lease, or other use agreement on the transfer of ownership or substantial surrender of control, of any water right to the United States by the Secretaries of the Interior and Agriculture.” While this does address the industry’s concerns about the 2012 Directive, it does not in any way avoid the implications for federal bypass flows. If anything, it creates a more direct limitation on the power to require bypass flows than the “surrender of possession” language. In addition, it still encompasses other agencies, principally in the Department of Interior, that have responsibilities broader than managing federal lands.

A second option, which would probably be advisable in any event, is to include an unambiguous savings clause in the text of the bill itself to protect the existing federal power to condition permits on the protection of streamflows. The following language is a slight modification of a provision that we understand to have been suggested by the River District:

“Nothing in this Section is intended, nor shall be construed, to limit the authority of the Secretaries to reasonably condition any permit, approval, license, lease, allotment, easement, right-of-way, or other land use or occupancy agreement in order to protect the natural environment or downstream water uses, including without limitation requirements for minimum bypass flows.”

Alternatively, the sponsors of the bill could hold it in abeyance until the Forest Service issues its revised permit policy, and then revisit the issue to see if there is in fact a need for legislative intervention.



Thomas C. Davidson
Chair



Karn Stiegelmeier
Commissioner



Dan Gibbs
Commissioner

WATER RESOURCES REVIEW COMMITTEE

The 2013 Interim Water Resources Review Committee adopted 5 bills and one resolution out of 11 proposed bills. For more information and copies of the bills go to: www.colorado.gov/lcs/WRRC. The following bills and resolutions will be introduced during the 2014 legislative session.

Bill A: Hydroelectric Generation Incentives

requires the state electrical board to approve the installation of a motor as a generator for a hydroelectric energy facility in certain instances; Authorizes the department of natural resources to serve as central coordinating agency for small hydroelectric projects applying for exemptions from FERC processes; Incorporates community hydroelectric energy facilities into the community solar garden statute, allowing for joint communal subscriptions from small hydroelectric facilities.

Bill B: Flexible Water Markets

Creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.

Bill C: Wastewater Treatment Small Communities Grants

Clarifies that severance tax dollars credited to the small communities water and wastewater grant fund may be used for domestic wastewater treatment works; Repeals a statute that separately governs the funding, through grant-making, of domestic wastewater treatment works for small municipalities.

Bill D: Removal of Printing Requirements for Div. of Water Resources

updates statutes to remove printing requirements for certain written materials, specifically the state engineer's annual report to the general assembly, the division engineers' tabulations of decreed and conditional water rights, and decisions concerning substitute water supply plans. These materials will instead be disseminated through electronic mail.

Bill E: Protect Water Rights Ownership Rights

In 2012 the USFS imposed a guideline that requires ski areas to transfer exclusive ownership many types of water rights to the Federal Government without compensation. This guideline was nullified in court because the USFS did not follow proper procedures when they failed to ask for public comment on the issue. The USFS has stated they intend to release a new, similar guideline for public comment. No new guideline has been released to date (as of Nov. 13, 2013).

Bill E specifies that if (1) the United States obtains a water right as a result of a transfer conveyance required as a condition to a special use permit or other authorization to enter upon or use federally owned land, (2) the water right was originally appropriated by a person other than the United States, and (3) the water right is not a federal reserved water right, then the water right is presumed to be held by the United States for speculative purposes. Such a water right is not automatically abandoned but is forfeited by the United States and reverts to the prior owner for continued use under its original priority.

Resolution A: Forest Products Transport Interstate Weight Limit

Resolution urging Congress to pass legislation creating a special exemption from the federal maximum weight limit on interstate highways for forest product industries.

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 14-0248.01 Jennifer Berman

HOUSE BILL

HOUSE SPONSORSHIP

Fischer,

SENATE SPONSORSHIP

Schwartz,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF FLEXIBLE WATER MARKETS.**

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. Under the anti-speculation doctrine, current water court proceedings governing an application to change the beneficial use of an irrigation water right require the applicant to designate a specific alternative beneficial use identified at the time of the application. The bill creates a more flexible change-in-use system by allowing an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the

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.

permanent dry-up of irrigated lands to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied.

Section 1 of the bill defines "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use. It also redefines "appropriation" to exclude flex use from the anti-speculation doctrine.

Sections 2 and 3 describe the procedures for obtaining a flex use change-in-use decree and a flex use substitute water supply plan.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend**
3 (3) (b), (4) (b), and (4) (c); and **add** (4) (d), (7.3), and (7.5) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3) (b) Nothing in this subsection (3) ~~shall affect~~ AFFECTS
7 appropriations by the state of Colorado for minimum streamflows as
8 described in subsection (4) of this section OR APPROVAL OF FLEX USE.

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

14 (b) The diversion of water by a county, municipality, city and
15 county, water district, water and sanitation district, water conservation
16 district, or water conservancy district for recreational in-channel diversion
17 purposes; ~~and~~

18 (c) For the benefit and enjoyment of present and future
19 generations, the appropriation by the state of Colorado in the manner
20 prescribed by law of ~~such~~ THE minimum flows between specific points or

1 levels for and on natural streams and lakes as are required to preserve the
2 natural environment to a reasonable degree; AND

3 (d) A FLEX USE.

4 (7.3) "FLEX CONSUMPTIVE USE" MEANS THE FULLY CONSUMPTIVE
5 PORTION OF A WATER RIGHT THAT HAS BEEN QUANTIFIED BY EITHER A
6 WATER COURT CHANGE-IN-USE DECREE OR A SUBSTITUTE WATER SUPPLY
7 PLAN APPROVAL, ENTERED OR APPROVED ON OR AFTER JUNE 1, 2014,
8 THAT:

9 (a) IDENTIFIES THE WATER RIGHT AS A FLEX USE WATER RIGHT;

10 (b) QUANTIFIES THE HISTORICAL CONSUMPTIVE USE OF THE WATER
11 RIGHT;

12 (c) PROVIDES TERMS AND CONDITIONS FOR A CHANGE IN TYPE OF
13 USE OF THE WATER RIGHT THAT PREVENT MATERIAL INJURY TO OTHER
14 VESTED WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS,
15 INCLUDING THE RETURN FLOW OBLIGATIONS IN TIME, PLACE, AND
16 AMOUNT;

17 (d) PERMITS DELIVERY AND USE OF ALL OR A PORTION OF THE
18 CONSUMPTIVE USE ASSOCIATED WITH THE WATER RIGHT TO A FLEX USE
19 THROUGH THE IMPLEMENTATION OF FALLOWING, REGULATED DEFICIT
20 IRRIGATION, REDUCED CONSUMPTIVE USE CROPPING, OR OTHER
21 ALTERNATIVE TO PERMANENT CESSATION OF AGRICULTURAL IRRIGATION
22 ON THE PROPERTY THAT IS SERVED BY THE WATER RIGHT; AND

23 (e) ESTABLISHES A FIXED POINT OR POINTS OF DELIVERY FOR THE
24 FULLY CONSUMPTIVE PORTION OF THE WATER RIGHT.

25 (7.5) (a) "FLEX USE" MEANS AN APPLICATION OF FLEX
26 CONSUMPTIVE USE TO ANY BENEFICIAL USE.

27 (b) FOLLOWING DELIVERY OF FLEX CONSUMPTIVE USE AT THE

1 POINT OR POINTS OF DELIVERY IDENTIFIED IN THE APPLICABLE
2 CHANGE-IN-USE DECREE OR SUBSTITUTE WATER SUPPLY PLAN APPROVAL,
3 THE WATER USER MAY ACCOMPLISH FLEX USE BY DIRECT DELIVERY;
4 STORAGE; RECHARGE; EXCHANGE; WATER BANKING; WHERE APPROPRIATE,
5 NONCONSUMPTIVE USE; OR ANY OTHER LAWFUL MEANS THAT COMPLY
6 WITH APPLICABLE DECREES, STATUTORY AND OTHER LEGAL
7 REQUIREMENTS, AND ADMINISTRATION BY THE STATE ENGINEER AND
8 DIVISION ENGINEERS.

9 **SECTION 2.** In Colorado Revised Statutes, 37-92-305, **add** (3.7)
10 as follows:

11 **37-92-305. Standards with respect to rulings of the referee and**
12 **decisions of the water judge. (3.7) Flex use.** IF A CHANGE-IN-USE
13 APPLICATION SEEKS APPROVAL OF FLEX USE, THE TERMS AND CONDITIONS
14 OF THE DECREE MUST COMPLY WITH SECTION 37-92-103 (7.3) AND (7.5).
15 THE TERMS AND CONDITIONS OF THE DECREE MUST ALSO REQUIRE THAT
16 THE APPLICANT REPLACE HISTORICAL RETURN FLOWS IN TIME, PLACE, AND
17 AMOUNT TO PREVENT MATERIAL INJURY TO THE OWNERS OF VESTED
18 WATER RIGHTS AND DECREED CONDITIONAL WATER RIGHTS.

19 **SECTION 3.** In Colorado Revised Statutes, 37-92-308, **add** (12)
20 as follows:

21 **37-92-308. Substitute water supply plans - special procedures**
22 **for review - water adjudication cash fund - legislative declaration -**
23 **repeal. (12) Flex use.** IF THE STATE ENGINEER APPROVES A SUBSTITUTE
24 WATER SUPPLY PLAN APPLICATION IN WHICH THE PLAN SOUGHT IS FOR A
25 FLEX USE, THE TERMS AND CONDITIONS OF THE APPROVAL MUST COMPLY
26 WITH SECTION 37-92-103 (7.3) AND (7.5). THE TERMS AND CONDITIONS OF
27 THE APPROVAL MUST ALSO REQUIRE THAT THE APPLICANT REPLACE

1 HISTORICAL RETURN FLOWS IN TIME, PLACE, AND AMOUNT TO PREVENT
2 MATERIAL INJURY TO THE OWNERS OF VESTED WATER RIGHTS AND
3 DECREEED CONDITIONAL WATER RIGHTS.

4 **SECTION 4. Effective date.** This act takes effect June 1, 2014.

5 **SECTION 5. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL E

LLS NO. 14-0244.01 Thomas Morris x4218

HOUSE BILL

HOUSE SPONSORSHIP

Sonnenberg, Coram, Mitsch Bush

SENATE SPONSORSHIP

Roberts, Brophy

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A LIMITATION ON THE UNITED STATES' ABILITY TO**
102 **IMPOSE CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE**
103 **FOR PERMISSION TO USE LAND.**

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 specifies that if the United States obtains a water right as a result of a transfer or conveyance required as a condition to a special use permit or other authorization to enter upon or use federally owned land, the water right

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.

was originally appropriated by a person other than the United States, and the water right is not a federal reserved water right, the water right is presumed to be held by the United States for speculative purposes. Such a water right is not automatically abandoned but is forfeited by the United States and reverts to the prior owner for continued use under its original priority.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-92-103, **amend**
3 (3) (a) (II) as follows:

4 **37-92-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (3) (a) "Appropriation" means the application of a specified
7 portion of the waters of the state to a beneficial use pursuant to the
8 procedures prescribed by law; but no appropriation of water, either
9 absolute or conditional, shall be held to occur when the proposed
10 appropriation is based upon the speculative sale or transfer of the
11 appropriative rights to persons not parties to the proposed appropriation,
12 as evidenced by either of the following:

13 (II) (A) The purported appropriator of record does not have a
14 specific plan and intent to divert, store, or otherwise capture, possess, and
15 control a specific quantity of water for specific beneficial uses.

16 (B) THE WATER RIGHT WAS OBTAINED BY THE UNITED STATES AS
17 A RESULT OF A TRANSFER OR CONVEYANCE REQUIRED AS A CONDITION TO
18 A SPECIAL USE PERMIT OR OTHER AUTHORIZATION TO ENTER UPON OR USE
19 FEDERALLY OWNED LAND, WAS ORIGINALLY APPROPRIATED BY A PERSON
20 OTHER THAN THE UNITED STATES, AND IS NOT PART OF THE RESERVED
21 WATER RIGHTS OBTAINED BY THE UNITED STATES. SUCH A WATER RIGHT
22 IS PRESUMED TO BE HELD BY THE UNITED STATES FOR SPECULATIVE

1 PURPOSES. A WATER RIGHT HELD BY THE UNITED STATES FOR
2 SPECULATIVE PURPOSES PURSUANT TO THIS SUB-SUBPARAGRAPH (B) IS
3 NOT AUTOMATICALLY ABANDONED BUT IS FORFEITED BY THE UNITED
4 STATES AND REVERTS TO THE PRIOR OWNER, OR THE PRIOR OWNER'S
5 SUCCESSORS AND ASSIGNS, FOR CONTINUED USE UNDER ITS ORIGINAL
6 PRIORITY.

7 **SECTION 2. Act subject to petition - effective date -**
8 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
9 the expiration of the ninety-day period after final adjournment of the
10 general assembly (August 6, 2014, if adjournment sine die is on May 7,
11 2014); except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within such period, then the act, item, section, or part
14 will not take effect unless approved by the people at the general election
15 to be held in November 2014 and, in such case, will take effect on the
16 date of the official declaration of the vote thereon by the governor.

17 (2) This act applies to acts occurring on or after the applicable
18 effective date of this act.

NWCCOG/WATER QUALITY AND QUANTITY COMMITTEE

SCOPE OF SERVICES 2013

I. INITIATIVES AND PROJECTS FOR THE YEAR 2013

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 educate 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 refute mis-information.
- (6) Organize and present information, such as the Economic Impact Study 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. COLORADO FOR THE TWENTY FIRST CENTURY ACT/1177 (Implements Policies I, III, V)

- (1) Track the outcome of any potential legislation as a result of this 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.
- C. STATEWIDE WATER SUPPLY INITIATIVE ("SWSI") (Implements Policies I, III, V)
- (1) Continue efforts to correct misinformation from SWSI and monitor the use of SWSI data.
 - (2) Continue to track the development of the 1051 Water Conservation Data Collection process.
- D. 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.
- E. 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) Provide technical assistance to Colorado River Cooperative Agreement ongoing negotiations and associated implementation projects.
 - (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.
- (6) Track Recreational In-channel Diversions filings and CWCB hearings in QQ region.
- (7) Assist members to determine nonconsumptive stream flow needed to protect recreation and environmental values during Colorado River Roundtable process.
- (9) Represent member interests in Wild and Scenic Rivers processes.
- (10) Continue to work with municipalities to implement some form of the Conserve to Enhance program that would allow for additional in-stream flows.

F. 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, cons and QQ’s position.
- (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.

- (9) Participate in the Colorado Water Congress and other organizations that may create and or influence legislation pertinent to QQ's issues.

G. 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) Participate in discussions and hearings related to nutrient standards and other rulemakings and assist members in the site specific standards hearing.

H. 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, Shanna 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. 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.

I. 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.
- (4) Work with appropriate members to develop a water conservation plan based on the Conserve to Enhance model. Act as the interface with the University of Arizona Water Resources Research Center and QQ member(s) interested in developing a pilot project.

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 \$155,100.00. 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.

