

Water Resources Review Committee

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Water Resources Review Committee Report

Committee Charge

The Water Resources Review Committee (WRRC) was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources for the general welfare of the state (Section 37-98-102, C.R.S.). The committee is authorized to review and propose legislation in furtherance of its purposes. In conducting its review, the committee is required to consult with experts in the field of water conservation, quality, use, finance, and development. The committee was authorized to meet six times in 2014, including two times outside of the interim period, and to take two field trips in connection with its mandate.

Senate Bill 14-115 and statewide hearings on the Colorado Water Plan. Pursuant to Senate Bill 14-115, the Water Resources Review Committee is required to review statewide planning for water resources. The law requires the committee to hold at least one public hearing in each geographic region associated with basin roundtables to collect feedback from the public. The committee must provide a summary of the public's feedback, as well as its own feedback to the Colorado Water Conservation Board (CWCB) by November 1, 2014. The committee may recommend the introduction of legislation based on the results of the review. Any hearing held regarding the state water plan does not count against the committee's meeting or field trip limit.

Senate Bill 14-017 concerning municipal outdoor water consumption. Senate Bill 14-017 directs the Water Resources Review Committee to study best practices to limit municipal outdoor water consumption during the 2014 interim. The committee may propose legislation to facilitate the implementation of those best practices that are both reasonable and likely to result in the measurable conservation of municipal water used for outdoor purposes.

Committee Activities

The committee held six regular meetings and took three tours during the 2014 interim. The Executive Committee of Legislative Council authorized the committee to take an additional tour. During the 2014 interim, the committee met with a broad range of water users and government officials, including local water providers, state water rights administrators, water quality regulators, state water planners, water project developers, and concerned citizens. The committee received briefings on major water issues affecting the state, including: planning for future water needs; funding needs for state water agencies and water projects; regulation of groundwater use; implementation of new water laws; development of the Colorado Water Plan; and other issues; and recommended a number of proposals.

Committee tours. In July, the committee attended a two-day tour of the Yampa River Basin, where it visited water storage and distribution facilities, irrigation projects, recreational facilities, and other sites. This tour was organized by the Colorado Foundation for Water Education. In July, the committee held a public meeting at Western State Colorado University in Gunnison and attended the Colorado Water Workshop. In August, the committee attended the Colorado Water Congress summer convention in Snowmass, where it held a public meeting and attended presentations about water and energy development, water infrastructure financing, ongoing water supply studies, and other water management issues.

Activities related to Senate Bill 14-115. Pursuant to Senate Bill 14-115, the committee held nine meetings, one in each geographic region associated with basin roundtables, to collect feedback from the public on the draft Colorado Water Plan. Specifically, the committee met in Alamosa, Denver, Durango, Fort Collins, Glenwood Springs, Gunnison, Pueblo, Steamboat Springs, and Walden. As required by the law, the committee will provide a summary of the public's feedback, as well as its own feedback, to the CWCB by November 1, 2014. The committee also instructed staff to prepare a preliminary summary of public testimony received during the interim to the CWCB prior to the board's October 10, 2014, deadline for submitting public comments on the draft Colorado Water Plan. The committee decided to defer providing its own feedback to the CWCB until after the board has prepared a draft plan.

Activities related to Senate Bill 14-017. Pursuant to Senate Bill 14-017, the committee met with municipal water providers, agricultural water users, and other interested persons to consider best practices to limit municipal outdoor water consumption. It also recommended two bills that may help reduce municipal outdoor water consumption. Bill A directs the CWCB, in consultation with the Department of Local Affairs, to provide free training programs for local government water use, water demand, and land use planners regarding best management practices for water demand management and water conservation.

Precipitation harvesting occurs when rain or snow melt is collected from an impervious surface, such as a roof or paved area, prior to reaching a stream and applied to a beneficial use, such as lawn watering. Under current law, precipitation collection is limited to certain types of well users, and the collected water may only be used for certain purposes to ensure that other water users are not harmed. Some studies have indicated that additional precipitation may be harvested without causing injury to water users. In 2009, the General Assembly authorized up to ten precipitation harvesting pilot projects for new real estate developments. However, only one pilot project has been approved. Bill B provides incentives for new precipitation harvesting pilot projects and expands the types of eligible projects to include the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property..

Regulation of groundwater use. The committee held an entire meeting that focused on groundwater management. It reviewed current groundwater pumping regulations, including measures to protect senior water users from impacts caused by junior groundwater users, and received testimony from irrigators and other water users concerning ongoing groundwater supply challenges in the South Platte and Rio Grande Basins. Bill C continues current requirements for groundwater pumping in the Dawson Aquifer in the Denver Basin that underlies much of the Denver metropolitan area. Without this bill, the Division of Water Resources would be required to develop a costly groundwater model for an area in which few additional wells are expected to be drilled and that is unlikely to reduce material injury to current water rights.

Rising groundwater in the South Platte Basin. The General Assembly enacted House Bill 12-1278 that required the CWCB, in consultation with the State Engineer and the Colorado Water Institute, to conduct a comprehensive study of the South Platte River Basin alluvial aquifer. As part of this study, the Colorado Water Institute examined localized areas of high groundwater that are occurring in the basin near the communities of Fort Morgan, Gilcrest, Julesburg, and Sterling. The results of the study were reported to the General Assembly by December 31, 2013. The report determined that extensive development of recharge ponds and changes in groundwater pumping in the past decade have likely changed local groundwater conditions. The report recommended that the State Engineer be delegated responsibility to consult with the water court regarding new recharge structures before construction and to recommend changes in design or operation when a recharge plan is deemed likely to cause

harm. It also recommended that two pilot projects be authorized and funded by the General Assembly to allow the State Engineer to track and administer high groundwater zones for a specified period of time to lower the water table at Sterling and Gilcrest/LaSalle while testing alternative management approaches. At the groundwater hearing, the Colorado Water Institute testified that groundwater levels in the basin are continuing to rise and that homes and agricultural areas are being impacted by these waters. The committee approved Bill D that implements the House Bill 12-1278 recommendations to mitigate localized high water table conditions in the South Platte Basin.

Invasive phreatophytes. Phreatophytes are deep-rooted plants that consume water from the water table or the layer of soil just above the water table. Since their introduction in the late nineteenth century, Tamarisk, also called Salt Cedar, and Russian-Olive have become widely distributed along major rivers, lakes, and reservoirs in Colorado and other Western states. According to a study of native and nonnative riparian plants in 17 Western states commissioned by the U.S. Bureau of Reclamation, Tamarisk and Russian-Olive were the third and fourth most frequently occurring woody riparian plants and the second and fifth most abundant species (out of 42 native and nonnative species) along rivers in the Western United States. Tamarisk and other invasive phreatophytes consume substantial amounts of water that would otherwise be available for native vegetation or for beneficial uses, such as agriculture. Bill E establishes a five-year grant program for the management of invasive phreatophytes.

Appeals of Ground Water Commission Decisions. The Ground Water Commission is a regulatory and an adjudicatory body authorized by the General Assembly to manage and control groundwater resources within eight designated ground water basins in eastern Colorado. Designated Basins are located in the eastern plains where there is very little surface water and where users rely primarily on ground water as their source of water supply. The Ground Water Commission has delegated many of its regulatory functions to the State Engineer in the Department of Natural Resources, including the issuance of well permits and the determination of certain groundwater rights. The State Engineer also provides technical and administrative assistance to the commission. The commission has delegated to its hearing officer, an employee of the Division of Water Resources, the review of facts, conclusions of law, and initial decisions of the Ground Water Commission. The hearing officer's decision may be appealed to the commission. Appeals for Ground Water Commission decisions are heard by the district court in a de novo procedure. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the commission or state engineer is not limited to the evidence presented to the commission or State Engineer. Therefore, unlike appeals from other state agencies' decisions or actions under the State Administrative Procedure Act, a party appealing a decision or action of the commission or State Engineer may present new evidence on appeal that was not considered by the commission or State Engineer. Bill F limits the evidence that a district court may consider when reviewing a decision or action of the commission or the State Engineer on appeal to the evidence presented to the commission or the State Engineer.

Alternatives to permanent agricultural water transfers. A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, the market value of these rights is steadily increasing as demand for municipal water increases. Large tracts of agricultural lands have been taken out of production to provide water to Colorado's growing municipalities, especially in the lower Arkansas River basin. The committee considered, but did not recommend, a bill to create an incentive to implement certain alternatives to permanent dry-up of irrigated lands by creating a more flexible change-in-use system.

Committee Recommendations

As a result of committee discussion, the committee recommends six bills for consideration in the 2015 legislative session.

Bill A — Promotion of Water Conservation in the Land Use Planning Process. Bill A directs the CWCB, in consultation with the Division of Planning in the Department of Local Affairs, to develop and provide free training programs for local government water use, water demand, and land use planners regarding best management practices for water demand management and water conservation. It must also make recommendations regarding how to better integrate water demand management and conservation planning into land use planning, including, as appropriate, legislative, regulatory, and guidance or policy recommendations. The CWCB and the Colorado Water Resources and Power Development Authority, in determining whether to provide financial assistance to a local governmental water supply entity, must consider whether the entity's planners, if it has any, have taken the training and are actively applying it in their planning decisions.

Bill B — Incentives for Precipitation Harvesting. Bill B expands the types of projects that are eligible for precipitation harvesting pilot projects to include the redevelopment of residential housing or mixed uses and new or redeveloped multi-building nonresidential property. It directs the CWCB to update its approval criteria that sponsors of precipitation harvesting pilot projects can use for substitute water supply and augmentation plans. It reduces the amount of water needed for a project's temporary substitute water supply plan and permanent augmentation plan by the amount of historical natural depletion caused by the preexisting natural vegetative cover and evaporation on the surface of the area made impermeable as part of the pilot project. It also specifies that a project's temporary retention of stormwater for the purpose of improving water quality is not subject to an order of the State Engineer or division engineers, if the retention complies with the board's criteria and guidelines and the applicable requirements of the state's water quality laws.

Bill C — Repeal New Augmentation Standard for the Dawson Aquifer. Current law specifies that, beginning July 1, 2015, augmentation requirements for the withdrawal of water from the Dawson Aquifer must be based on actual aquifer conditions. Bill C repeals this requirement, thereby continuing current law, which requires replacement of actual out-of-priority depletions to the stream. The replacement of post-pumping depletions is required only if necessary to compensate for injury.

Bill D — Implementation of House Bill 12-1278 Study Recommendation Number One Concerning the South Platte Alluvial Aquifer. Bill D requires the CWCB, in consultation with the State Engineer, to administer two pilot projects in the areas of Gilcrest/LaSalle and Sterling to evaluate alternative methods of lowering the water table in areas that are experiencing damaging high groundwater levels. It also authorizes the State Engineer to review an augmentation plan submitted to a water court if it includes the construction of a recharge structure. The water court may approve the augmentation plan only if the State Engineer approves the operation and design of the proposed recharge structure or proposes changes to the operation and design of the proposed recharge structure.

Bill E — Invasive Phreatophyte Management Grant. Bill E establishes a five-year grant program for the management of invasive phreatophytes and creates the Invasive Phreatophyte Grant Program Account in the Noxious Weed Management Fund. The Colorado Department of Agriculture administers the grant program under its authority to manage noxious

weeds. To qualify for a grant, an applicant must propose a project for the management of invasive phreatophytes that utilizes best management practices.

Bill F — Appellate Review of Ground Water Commission's Decisions. Under current statute, the evidence that a district court may consider on appeal when reviewing a decision or action of the Ground Water Commission or State Engineer is not limited to the evidence presented to the commission or State Engineer. Bill F limits the evidence that a district court may consider when reviewing a decision or action of the commission or the State Engineer on appeal to the evidence presented to the commission or the State Engineer.