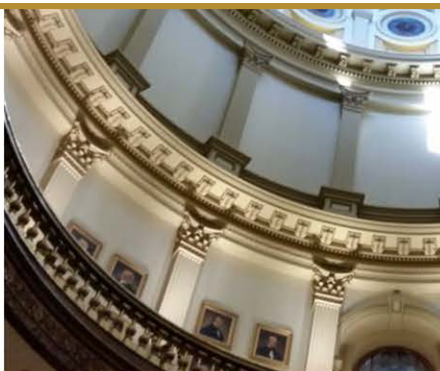


Final Report to the General Assembly

Water Resources and Agriculture Review Committee
December 2023 | Research Publication 804



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December 2023

To Members of the Seventy-fourth General Assembly:

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

At its meeting on November 15, 2023 the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2024 session was approved.

Sincerely,

/s/ Senator Stephen Fenberg
Chair

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This report is also available online at: <https://leg.colorado.gov/committees/water-resources-and-agriculture-review-committee/2023-regular-session>

Committee Charge

The recently renamed Water Resources and Agriculture Review Committee (WRARC) was created to contribute to and monitor the conservation, use, development, and financing of Colorado's water resources and agriculture for the general welfare of the state (Section 37-98-102, C.R.S.). In 2022, the committee charge was updated to include Colorado agriculture issues. The committee is also required to review statewide planning for water resources. The WRARC reviews and proposes legislation to further its purpose. In conducting its review, the WRARC consults with experts in the fields of agriculture and water conservation, quality, use, finance, and development.

The committee is now a year-round committee after the passage of [Senate Bill 23-010](#). The bill required that the committee meet at least four times per year and removed the limit of the number of field trips the committee may take.

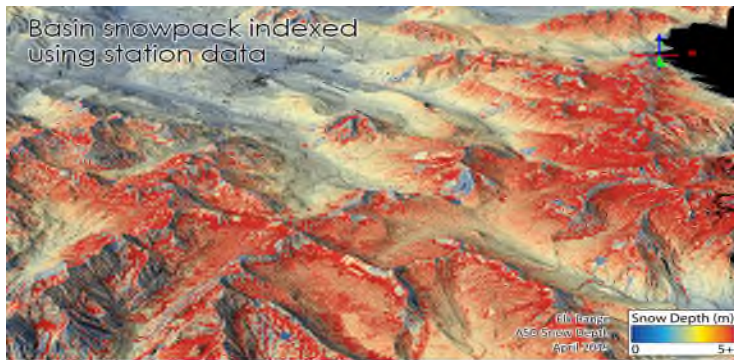
Committee Activities

The committee held seven meetings in 2023, including two during the legislative session and five during the interim. The committee also conducted four tours/field trips. Briefings and presentations were made by Colorado State University, Airborne Snow Observatories, Inc., Upper Colorado River Commission, the Colorado Drought Task Force, Veterinary Management Group, American Veterinary Association, Dumb Friends League, Office of Senator Michael Bennet, Colorado Farm Bureau, Colorado Department of Natural Resources, Colorado Cattlemen's Association, Colorado Parks and Wildlife, Colorado River District, Denver Water, Western Resource Advocates, Colorado Municipal League, Aurora Water, Colorado Livestock Association, Colorado Association of Certified Veterinary Technicians, the University of Tennessee, Texas A&M University, local government and municipal representatives, Western Resource Advocates, Trout Unlimited, Colorado Water Trust, Colorado Farm Bureau, North Sterling Irrigation District, Castle Rock Water, Colorado Department of Public Health and Environment, Water Education Colorado, other local and statewide organizations, and members of the public on a wide range of subjects, including:

- the Colorado River;
- gray wolf reintroduction;
- non-functional turf;
- pesticide regulation;
- public rights on rivers;
- snowpack measurement;
- stream restoration;
- veterinary care access; and
- veterinary telehealth.

The following sections discuss the committee's activities during the 2023 interim.

Colorado's Airborne Snowpack Monitoring Program



The Airborne Snow Observatories, Inc. (ASO) presented to the committee about Colorado's Airborne Snowpack Monitoring Program (CASM). Colorado currently utilizes a measurement system for monitoring snowpack that relies on consistency, but CASM is able to adjust for the changing environment. Presenters spoke about how ASO

maps snowpack to predict runoff and snowmelt and displayed examples of the types of data and maps that ASO can provide (seen above). The committee heard about the benefits of gathering this data and how it is currently being used in California, funding that has been provided by Colorado to enable the program, and future opportunities for the program.

Colorado River Update and the Colorado River Drought Task Force

The committee had two presentations related to the Colorado River, one of which was an update on the work of the Colorado River Drought Task Force.

Update on the Status of the Colorado River

Several panelists presented to the committee about the status of the Colorado River, including:

- Amy Ostdiek, Colorado Water Conservation Board;
- Rebecca Mitchell, Colorado Commissioner to the Upper Colorado River Commission; and
- Chuck Collum, Executive Director at the Upper Colorado River Commission.

The panelists discussed the Colorado River Compact, including contents, its historical importance, and the relationship it creates between the Upper Basin and Lower Basin states. Commissioner Mitchell described her role and advocacy efforts. She discussed ongoing efforts to safeguard Colorado from mandatory cuts in water use, as well as tribal water rights on the river, and the coordination between the state and federal government. The committee and panelists also discussed system conservation, drought mitigation, and water rights.

Colorado River Drought Task Force

Eagle County Commissioner Kathy Chandler-Henry, task force chair, and Dr. Kelsea MacIlroy, task force facilitator, provided a statutorily required update from the Colorado River Drought Task Force. Dr. MacIlroy gave an overview of the logistics of the task force, including the number of meetings, how it collects public comments, and how members determine discussion topics. Commissioner Chandler-Henry spoke about recommendations the task force has been considering and how the public can [engage online](#) in the process.

The committee discussed industrial water rights, demand management, aging infrastructure, developing programs to protect Colorado's water, and ongoing negotiations with other states reliant on the Colorado River.

Colorado State University Rural Project and Veterinary College

Professors and staff from Colorado State University (CSU) presented on veterinary workforce trends and how CSU programming responds to the needs of the industry. Panelists also discussed rural and livestock veterinary care workforce shortages, curriculum revisions, and plans to expand the veterinary college. Panelists presented a draft curriculum aimed at training veterinary paraprofessionals in a master's program in veterinary clinical care, referred to as the Veterinary Professionals Associate program.

Economics of Veterinary Care and FDA Liability Laws

The Veterinary Management Group discussed the economics of the veterinary industry and its relationship with broader economic trends and conditions. Presenters discussed data concerning the rate of pet adoption in recent years, and the ratio of pets to veterinarians. They detailed the extent of "quit rates" in the profession and its implications on veterinary care industry labor markets.

The committee also heard from the American Veterinary Medical Association on the current Food and Drug Administration (FDA) laws regarding the veterinary client-patient relationship, specifically related to prescribing medications.

Federal Farm Bill

Staff from the Office of Senator Michael Bennet and representatives from the Colorado Farm Bureau each provided a presentation on the federal Farm Bill. Funding in the farm bill primarily focuses on nutrition, commodities, crop insurance, and conservation. The senator's office reported that an updated farm bill is pending and the temporary extension of the current bill may provide uncertainty for Colorado farmers and ranchers. Senator Bennet's team has been focused on advancing farm bill legislation on conservation, rural development, and forestry.

Committee members and panelists discussed what would happen in the absence of a new Farm Bill, and the role of the Farm Bill in staffing Farm Service Agency offices, providing mental health resources for those in the agricultural industry, and addressing rural development and housing.

Federal Funding of Colorado Water

The committee received a briefing from the Department of Natural Resources on federal funds that are or could be invested in Colorado's water resources. Panelists spoke about major water investments from the federal government, including the Infrastructure Investment and Jobs Act, the Inflation Reduction Act, and other previously existing programs. There are a variety of funding opportunities available at the federal level, which includes drought mitigation and technical assistance for water projects. The committee was also told about the [state-maintained database](#) for federal funding opportunities.

Federal Livestock Antibiotic Regulations

The Colorado Farm Bureau and Colorado Cattlemen's Association informed the committee about the new federal requirements that agricultural producers must establish a veterinary relationship and a prescription before obtaining certain antibiotics for livestock.

Freshwater Carbon Mechanisms

A professor from the University of Colorado, Boulder and the Chief Strategy Officer of Virridy presented their report on freshwater carbon capture mechanisms. The presentation highlighted the potential for carbon credits to help pay for watershed restoration, and the importance of investing in green infrastructure for water quality control.

Committee recommendations. In response to committee discussions, the committee recommends Bill F, which requires the Colorado Department of Public Health and Environment to conduct a feasibility study and create demonstration projects of green infrastructure as an alternative compliance mechanism for water quality compliance.

Gray Wolf Reintroduction

Panelists from Colorado Parks and Wildlife presented on the current status of gray wolf reintroduction. They spoke about the environmental impact statement and that the existing reintroduction plan for acquisition and transportation of wolves to Colorado, and efforts to protect agricultural producers. The panelists and committee considered the need for acquiring a 10(j) waiver under the Endangered Species Act, ongoing discussions with tribal nations, supplies for farmers and ranchers, and the effect on impacted communities.

Interstate Water Compacts

Kevin Rein, State Engineer, Division of Water Resources, discussed how Colorado stays in compliance with interstate river compacts. Rebecca Mitchell, Colorado Commissioner to the Upper Colorado River Commission, discussed her stakeholder engagement efforts across compact states to better manage the Colorado River. She assured the committee that Colorado has never been out of compliance with the Colorado River Compact. In addition, Andy Mueller, General Manager of the Colorado River District, discussed the district's role in compact compliance on the river.

Non-functional Turf

The committee heard from a variety of panelists, including Denver Water, Western Resource Advocates, Colorado Municipal League, and Aurora Water, on non-functional turf in metropolitan areas. Panelists discussed ongoing efforts from municipalities to replace non-functional turf. Non-functional turf is often found in medians and along sidewalks and is primarily ornamental. Replacing non-functional turf with drought tolerant landscaping is an effort to reduce municipal outdoor water demand. The panelists gave examples of current turf

replacement projects and the variety of partnerships between nonprofits and municipalities offering water conservation and lawn replacement services.

Aurora Water specifically discussed previous efforts to provide developer incentives that exist in the city; however, developers did not routinely take advantage of these incentives. This led the City of Aurora to ban the installation of non-functional turf in any new developments.

The committee also took a field trip across the Denver Metro area and heard from the Department of Natural Resources, Denver Water, Arapahoe County, Sterling Ranch, and Dominion Water and Sanitation about ongoing and completed turf replacement projects and efforts to decrease metropolitan water demands.

Committee recommendations. As a result of committee discussions, the committee recommends Bill D, which prohibits local governments or home owners' associations from installing, planting, or placing non-functional turf, artificial turf, or invasive plant species on any commercial, institutional, or industrial property.

Production Animal, Shelter, and Low-Cost Access to Care: Perspectives from the Veterinary Field

Panelists from Colorado Cattlemen's Association, Colorado Livestock Association, and veterinarians across Colorado discussed access to veterinary care. The committee considered the challenges of livestock production care and the shortage of veterinary generalists in rural Colorado. Panelists also discussed the challenges facing shelter animal medicine and the role of registered veterinary technicians. Shelters often use a variety of veterinary professionals to provide care.

Veterinarians from across Colorado, including the Colorado State Veterinarian in the Department of Agriculture, discussed their experiences with providing veterinary care in Colorado. Panelists spoke about the importance of the Veterinary Practice Act and their individual efforts to make their practices good places to work. The state veterinarian told the committee about her office's role in protecting human and animal health, as well as the food supply. She discussed the U.S. Department of Agriculture's accreditation process and the need for veterinary mentorships to encourage new vets to practice in rural areas.

Public Rights on Rivers

Two separate panels discussed public rights on rivers after the recent *Colorado v. Hill* decision. The first panel distinguished between navigable and non-navigable streams, and the different legal standards that accompany each. There are challenges in the courts over the right of individuals to float on streams that traverse through private property, including *Colorado v. Hill*. Panelists urged the committee to consider increasing public access to waterways.

Conversely, a second panel, made up of individuals from Colorado Water Congress and Colorado Farm Bureau, discussed the need for protecting private property. Panelists discussed the private trust doctrine and its conflicts with the prior appropriation doctrine that exist in Colorado. The public trust doctrine was rejected in the *Colorado v. Hill* case and in other similar

cases. Colorado Farm Bureau expressed concerns over liability when it comes to allowing the public access to streams on private property. The committee discussed the interaction between private property rights, the right to float, and the ownership of water in a stream.

Role of Veterinary Technicians

The committee heard a presentation from the Colorado Association of Certified Veterinary Technicians on the role and distinctions of registered veterinary technicians, certified veterinary technicians, and veterinary technician specialists. Presenters spoke about the education opportunities and general challenges facing the profession. The committee also heard from the Gillespie College of Veterinary Medicine, Lincoln Memorial University, about the school's master level degree in veterinary technology, the first advanced degree specifically for credentialed veterinary technicians.

Committee recommendations. As a result of its discussions, the committee recommends Bill A, which requires the Department of Regulatory Agencies to develop a process for credentialing veterinary technician specialists, and adopt rules allowing veterinarians to delegate certain tasks to veterinary technicians and veterinary technician specialists. Additionally, the bill requires new rules and continuing education concerning the supervision and delegation of veterinary care by veterinarians.

State and Federal Regulation of Pesticides

The committee heard from local government representatives and non-profit organizations advocating for removal of state preemption of pesticide regulation to allow for local control. Local government representatives also provided information on pesticide-free projects in their communities. Private business owners highlighted potential complications and cost increases if the state removes preemption. A panel of county commissioners discussed pesticides, proper pesticide application, and pesticide regulation. Lastly, the committee heard from a representative from the federal Environmental Protection Agency (EPA) regarding an overview of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the relationship to state pesticide regulation. The committee and presenter also discussed guidelines about herbicides in relation to the Endangered Species Act.

Committee recommendations. As a result of committee discussions, the committee recommends Bill G. The bill allows for local enforcement of the Colorado Noxious Weed Act. Specifically, the bill allows each board of county commissioners to assess and collect fines for violations of local laws that manage noxious weeds, and allows violations to be charged in a county court as a civil infraction.

Stream Restoration

The committee discussed stream restoration activities at two of the meetings and heard from Kelly Romero-Heaney, Director for Water Policy at the Department of Natural Resources, and Abby Burke, Audubon Society. Panelists spoke about the value of healthy natural stream systems, including wildfire resilience and recreational opportunities. The committee heard about stream restoration projects and were shown examples of ongoing stream restoration activities.

The committee was shown a variety of stream restoration projects while on field trips in the San Luis Valley and in the Denver Metro area. Committee members spent time at the Chatfield Reservoir and the South Platte River viewing ongoing projects. In the San Luis Valley (pictured here), the committee was given an overview of the Rio Grande Headwaters Restoration Project and traveled to various irrigation ditches.



Veterinary Telehealth

The committee heard a presentation from AlignCare Health, Inc., and the Program for Pet Health Equity at the University of Tennessee on pet health equity and the relationship of access of care and telehealth. The committee also heard from the Texas A&M University School of Veterinary Medicine concerning components of veterinary telehealth that can be performed within the veterinary scope of practice, and which acts might require legislative changes. The committee discussed risks to animal health and social and economic considerations in the context of the telehealth.

Committee recommendations. As a result of its discussions, the committee recommends Bill E, which establishes a framework for the delivery of veterinary services through telemedicine. The Board of Veterinary Medicine in the Department of Regulatory Affairs is authorized to adopt rules regarding the use of telemedicine, and to require that persons practicing veterinary medicine be licensed in the state.

Water Conservation and Water Rights

The committee heard from various water professionals on the topic, including:

- the Colorado State Engineer;
- Western Resource Advocates;
- Trout Unlimited;
- Colorado Water Trust;
- Colorado Farm Bureau; and,
- North Sterling Irrigation District.

The committee heard from presenters about water conservation and the relationship to potential abandonment of water rights. The committee also heard from presenters about water conservation measures among different water divisions of the state, and how historical consumptive use and non-consumptive use factors into the issue. A recent change to Arizona law was also discussed including how a similar effort might be pursued in Colorado.

Committee recommendations. As a result of its discussions, the committee drafted Bill 8, which would have allowed water right owners to implement a water use reduction plan without their water rights being considered abandoned from nonuse. This bill was not recommended by the committee.

Water Quality Standards Rulemaking

The committee was given a presentation on rulemaking conducted by the Water Quality Control Division (WQCD) at the Colorado Department of Public Health and Environment (CDPHE) regarding water quality standards in lakes and reservoirs. Three separate panels presented on the topic. First they discussed the criteria setting process for water quality standards in lakes and reservoirs. Then they discussed the local impacts of the rules being implemented by the WQCD. Panelists told the committee about wastewater treatment facilities and the impacts on downstream water quality standards, specific to phosphorus and nitrogen levels. They also discussed the possible increase in consumer and water provider costs to implement new rules, and the potential environmental impacts and problems with varying standards.

In response, CDPHE staff discussed the challenges with nutrient concentrations in Colorado water resources and their effects on water quality. The committee heard about nutrient management plans that could be implemented and the feasibility of enforcing nutrient regulations. The committee asked questions about the costs to communities, sources of nitrogen and phosphorus, and the rulemaking timeline.

Waters of the United States

Two panels presented on the current status of Waters of the United States (WOTUS) and the recent *Sackett v. Environmental Protection Agency (EPA)* Supreme Court decision. This court case dealt with what constitutes WOTUS under the Clean Water Act.

The first panel was made up of representatives from Theodore Roosevelt Conservation Partnership, The Nature Conservancy, the City of Fort Collins, and HECHO. The panelists discussed the Sackett decision and how it has changed which wetlands and streams are protected by EPA rules. The panelists asserted that the change has created uncertainty for waters in Colorado that may need additional state protection, including the implementation of a permitting program to address this issue.

The second panel was made up of representatives from a Colorado law firm, the Pacific Legal Foundation, and CDPHE. Panelists from the law firm and Pacific Legal Foundation discussed the rationale behind the Supreme Court decision and what bodies of water are now covered by the Clean Water Act. The committee heard about the state's current role in managing water quality and how potential regulation could help with this at the state level.

Panelists from CDPHE spoke about the different types of state waters, including those previously covered under WOTUS and those covered after the Sackett decision. The committee and panelists discussed the state’s role in a potential permitting process, timeline restrictions, and conservation impacts.

Summary of Recommendations

As a result of the committee’s activities, the committee recommended nine bills to the Legislative Council for consideration in the 2024 session. At its meeting on November 15, 2023 the Legislative Council approved nine bills for introduction. The approved bills are described below.

Bill A – Veterinary Technician Scope of Practice

The bill allows veterinary technicians to receive a designation as a veterinary technician specialist (VTS) starting January 1, 2026, and provides title protection for VTSs. Prior to this date, the bill requires the Board of Veterinary Medicine in the Department of Regulatory Agencies (DORA) to establish a process for credentialing VTSs. DORA is prohibited from charging an additional fee for registration as a VTS, or charging a higher registration fee for specialists than for veterinary technicians.

Bill B – Authorize Conservancy District Water Management

This bill adds commercial uses to the purposes for which a district court may establish a conservancy district. Under current law, courts may only establish a conservancy district for agricultural, municipal, or industrial uses.

The bill also expands the powers of a board of directors of a water conservancy district to:

- participate in a plan for augmentation and, in conjunction with the plan, manage, control, deliver, use, and distribute water;
- contract services for the use and reuse of water and the retirement of wells;
- enter long-term contracts with public and private entities, and avail itself of public assistance from federal, state, and local governments; and
- establish a water activity enterprise.

Bill C – Agriculture & Natural Resources Public Engagement Requirement

The bill requires that the Governor-appointed members of the Parks and Wildlife Commission, the Colorado Water Conservation Board, and the Colorado Agricultural Commission hold two public, in-person meetings each year. The Department of Natural Resources and the Department of Agriculture must track and report the meetings of these board members and commissioners, and reimburse members for reasonable costs to conduct the public meetings.

Bill D - Prohibit Landscaping Practices for Water Conservation

Beginning January 1, 2025, the bill prohibits local governments or home owners' associations from installing, planting, or placing non-functional turf, artificial turf, or invasive plant species on any commercial, institutional, or industrial property or a transportation corridor. Further, the Department of Personnel and Administration must not use prohibited landscaping in construction and renovation projects on state facilities.

Bill E - Providing Veterinary Services Through Telehealth

The bill establishes a framework for the delivery of veterinary services through telemedicine. The Board of Veterinary Medicine in DORA is authorized to adopt rules regarding the use of telemedicine to provide veterinary services. Additionally, the bill requires a person to be licensed to practice veterinary medicine in Colorado in order to practice veterinary telemedicine.

Bill F - Study Green Infrastructure for Water Quality Management

The bill requires that CDPHE study the feasibility of substituting green infrastructure, a planned and managed network of natural green spaces, for traditional centralized wastewater and drinking water treatment mechanisms. The feasibility study must be completed by December 31, 2025. A progress report on the study must be presented by July 1, 2025 to the Water Resources and Agriculture Review Committee. After completing the study, the CDPHE must establish one or more pilot programs to demonstrate the use of green infrastructure as an alternative compliance program supported with environmental-focused funding. The CDPHE must coordinate with the University of Colorado and Colorado State University to conduct the study and to develop and provide technical assistance to the pilot programs.

Bill G - Local Authority Enforce Violation of Noxious Weed Act

The bill allows for additional local enforcement of the Colorado Noxious Weed Act. Specifically, it allows each board of county commissioners to assess and collect fines for violations of local laws that require management of noxious weeds. In addition, under state law, the bill allows violations of the Noxious Weed Act, or any state or local regulation under the act, to be charged in county court as a civil infraction. This civil infraction is in addition to, not a replacement of, the authority of the Commissioner of Agriculture to issue civil penalties for violations of the act.

Bill H - Authorizing Direct-to-Consumer Sales of Raw Milk

In current law, the sale of raw, unpasteurized milk is prohibited. The bill legalizes the sale of raw cow or goat milk when it is sold directly to consumers at the point of production, the consumer's residence, or at a farmer's market or roadside market. To sell raw milk, a producer must be registered with the CDPHE, which, in conjunction with the Department of Agriculture, must establish handling, storage, labelling, and transportation requirements for the sale of raw

milk by rule. The Department of Agriculture may investigate raw milk producers and apply a civil penalty or embargo to a producer that violates the program's requirements.

Bill I - Extend Wild Horse Project Appropriation Timeline

Senate Bill 23-275 created programs in the Department of Agriculture to support the management of wild horses in Colorado. A portion of this bill gave the department, with approval from the U.S. Bureau of Land Management, the authority to manage wild horse populations using fertility control management methods and support on-range stewardship and management of wild horse ranges. This authority is set to repeal July 24, 2024. Bill I extends the repeal date to December 31, 2025.

Resource Materials

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

<https://leg.colorado.gov/committees/water-resources-and-agriculture-review-committee/2023-regular-session>

Meetings and Topics Discussed

March 8, 2023

- Presentation about stream restoration
- Briefing on interstate water compacts

April 5, 2023

- Discussion of rulemaking on water quality standards

June 6-7, 2023

- Yampa River Basin tour

July 27-28, 2023

- San Luis Valley tour

August 22-24, 2023

- Colorado Water Congress Summer Conference

August 23, 2023

- Colorado River update
- Briefing on Waters of the United States (WOTUS)
- Presentation on freshwater carbon mechanisms

September 11, 2023

- Discussion of Veterinary mid-level professional proposal
- Veterinary economic data and FDA law & liability overview
- Discussion of masters of veterinary clinical care programs
- Briefing on AlignCare model and veterinary telehealth
- Discussion of production animal and shelter medicine, and low-cost access to care
- Discussion of perspectives from the Colorado veterinary field

September 12, 2023

- Briefing on EPA pesticide regulation
- Briefing on pesticide regulation in Colorado
- Discussion of federal livestock antibiotic regulations
- Discussion of impacts of conservation on water rights
- Briefing of the status of gray wolf reintroduction
- Discussion of tribal nation water rights in Colorado

October 30, 2023

- Denver Metro area tour

October 31, 2023

- Presentation on non-functional turf
- Federal farm bill update
- Discussion of public rights on rivers
- Briefing on stream restoration
- Briefing on federal funding of Colorado water
- Update from Colorado River Drought Task Force
- Briefing on Colorado's Airborne Snowpack Monitoring Program