

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 26, 2003

Date

Committee on Agriculture, Livestock, & Natural Resources.

After consideration on the merits, the Committee recommends the following:

HB03-1001 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute the following:

3 "SECTION 1. 37-95-109 (1), Colorado Revised Statutes, is  
4 amended to read:

5 **37-95-109. Bonds or notes - issuance - terms.** (1) The authority  
6 has the power and is hereby authorized from time to time to issue its  
7 bonds or notes in such principal amounts as in the opinion of the board  
8 are necessary to provide sufficient funds for any of its corporate  
9 purposes, including the payment, funding, or refunding of the principal  
10 of, or interest or redemption premiums on, any bonds or notes issued by  
11 it, whether the bonds or notes or interest to be funded or refunded have  
12 or have not become due, and including the establishment or increase of  
13 such reserves to secure or to pay such bonds or notes or interest thereon  
14 and all other costs or expenses of the authority incident to and necessary  
15 to carry out its corporate purposes and powers. THE AUTHORITY SHALL  
16 SUBSIDIZE SOME OR ALL OF THE COST OF ISSUANCE OF BONDS AND NOTES  
17 PURSUANT TO THIS ARTICLE FOR PROJECTS, INCLUDING SMALL WATER  
18 RESOURCES PROJECTS, TO BUILD WATER MANAGEMENT FACILITIES THAT  
19 ARE RAW WATER DIVERSION OR STORAGE PROJECTS THAT ARE JOINTLY



1 SPONSORED BY TWO OR MORE GOVERNMENTAL AGENCIES THAT DO NOT  
2 SHARE THE SAME GOVERNING BODY.

3 **SECTION 2.** 37-86-104, Colorado Revised Statutes, is amended  
4 to read:

5 **37-86-104. Condemnation of right-of-way.** (1) Upon the refusal  
6 of owners of tracts of land through which said right-of-way is proposed  
7 to run, to allow passage through their property, the person desiring such  
8 right-of-way may proceed to condemn and take same under the provisions  
9 of articles 1 to 7 of title 38, C.R.S., concerning eminent domain.

10 (2) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT  
11 PRACTICABLE, COOPERATE WITH PERSONS DESIRING A RIGHT-OF-WAY FOR  
12 WATER CONVEYANCE STRUCTURES.

13 **SECTION 3.** 37-87-101 (1), Colorado Revised Statutes, is  
14 amended to read:

15 **37-87-101. Storage of water.** (1) (a) The right to store water of  
16 a natural stream for later application to beneficial use is recognized as a  
17 right of appropriation in order of priority under the Colorado constitution.  
18 No water storage facility may be operated in such a manner as to cause  
19 material injury to the senior appropriative rights of others. Acquisition  
20 of those interests in real property reasonably necessary for the  
21 construction, maintenance, or operation of any water storage reservoir,  
22 together with inlet, outlet, or spillway structures or other facilities  
23 necessary to make such reservoir effective to accomplish the beneficial  
24 use or uses of water stored or to be stored therein, may be secured under  
25 the laws of eminent domain.

26 (b) STATE AGENCIES SHALL, TO THE MAXIMUM EXTENT  
27 PRACTICABLE, COOPERATE WITH PERSONS DESIRING TO ACQUIRE REAL  
28 PROPERTY FOR WATER STORAGE STRUCTURES.

29 **SECTION 4.** 37-60-126 (4) (g), Colorado Revised Statutes, is  
30 amended, and the said 37-60-126 is further amended BY THE  
31 ADDITION OF A NEW SUBSECTION, to read:



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1           **37-60-126. Water use efficiency - urban water use efficiency**  
2 **programs - relationship to state assistance for water facilities.** (4) In  
3 developing a plan pursuant to subsection (2) of this section, each covered  
4 entity shall consider at least the following water-saving measures:

5           (g) (I) Water rate structures AND BILLING SYSTEMS designed to  
6 encourage water use efficiency in a fiscally responsible manner;

7           (II) THE DEPARTMENT OF LOCAL AFFAIRS MAY PROVIDE TECHNICAL  
8 ASSISTANCE TO COVERED ENTITIES THAT ARE LOCAL GOVERNMENTS TO  
9 IMPLEMENT WATER BILLING SYSTEMS THAT SHOW CUSTOMER WATER  
10 USAGE AND THAT IMPLEMENT TIERED BILLING SYSTEMS;

11           (11) (a) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION  
12 (11), ANY NEW RESTRICTIVE COVENANT THAT PROHIBITS OR LIMITS THE  
13 INSTALLATION OR USE OF DROUGHT-TOLERANT VEGETATIVE LANDSCAPES  
14 IS PROHIBITED.

15           (b) AS USED IN THIS SUBSECTION (11), "RESTRICTIVE COVENANT"  
16 MEANS ANY COVENANT, RESTRICTION, OR CONDITION APPLICABLE TO REAL  
17 PROPERTY FOR THE PURPOSE OF CONTROLLING LAND USE, BUT DOES NOT  
18 INCLUDE ANY COVENANT, RESTRICTION, OR CONDITION IMPOSED ON SUCH  
19 REAL PROPERTY BY ANY GOVERNMENTAL ENTITY.

20           **SECTION 5.** The introductory portion to 37-92-308 (4) (a),  
21 37-92-308 (4) (a) (II), (4) (a) (III), (4) (a) (IV), the introductory portion  
22 to 37-92-308 (5) (a), and 37-92-308 (5) (a) (IV) and (5) (b), are amended,  
23 and the said 37-92-308 is further amended BY THE ADDITION OF A  
24 NEW SUBSECTION, to read:

25           **37-92-308. Substitute water supply plans - special procedures**  
26 **for review.** (4) (a) Beginning January 1, 2002, if an application for  
27 approval of a plan for augmentation OR CHANGE OF WATER RIGHT has  
28 been filed with a water court and the court has not issued a decree, the  
29 state engineer may approve the temporary operation of such plan OR  
30 CHANGE OF WATER RIGHT as a substitute water supply plan if the  
31 following conditions are met:



1 (II) The applicant has provided written notice of the request for  
2 approval of the substitute water supply plan by first-class mail or  
3 electronic mail to all parties who have filed a statement of opposition to  
4 the plan in water court and proof of such notice is filed with the state  
5 engineer, OR, IF THE DEADLINE FOR FILING A STATEMENT OF OPPOSITION  
6 HAS NOT PASSED, THE APPLICANT HAS PROVIDED WRITTEN NOTICE OF THE  
7 REQUEST FOR APPROVAL OF THE SUBSTITUTE WATER SUPPLY PLAN BY  
8 FIRST-CLASS MAIL OR ELECTRONIC MAIL TO ALL PARTIES WHO HAVE  
9 SUBSCRIBED TO THE SUBSTITUTE WATER SUPPLY PLAN NOTIFICATION LIST  
10 FOR THE WATER DIVISION IN WHICH THE PROPOSED PLAN IS LOCATED AND  
11 PROOF OF SUCH NOTICE IS FILED WITH THE STATE ENGINEER;

12 (III) The state engineer has given ~~the opposers in the water court~~  
13 ~~case~~ THOSE TO WHOM NOTICE WAS PROVIDED thirty days after the date of  
14 mailing of such notice to file comments on the substitute water supply  
15 plan. Such comments shall include any claim of injury, ~~or~~ any terms and  
16 conditions that should be imposed upon the plan to prevent injury to an  
17 opposer's water rights or decreed conditional water rights, and any other  
18 information an opposer wishes the state engineer to consider in reviewing  
19 the substitute water supply plan request.

20 (IV) The state engineer, after consideration of the comments ~~from~~  
21 ~~any water court opposer~~ RECEIVED, has determined that the operation and  
22 administration of such plan will replace all out-of-priority depletions in  
23 time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE  
24 prevent injury to other water rights and decreed conditional water rights,  
25 including water quality and continuity to meet the requirements of use to  
26 which the senior appropriation has normally been put, pursuant to section  
27 37-80-120 (3), and will not impair compliance with any interstate  
28 compacts. The state engineer shall impose such terms and conditions as  
29 are necessary to ensure that these standards are met. In making such  
30 determinations, the state engineer shall not be required to hold any formal  
31 hearings or conduct any other formal proceedings, but may conduct a  
32 hearing or formal proceeding if the state engineer finds it necessary to  
33 address the issues. A SUBSTITUTE WATER SUPPLY PLAN APPROVED  
34 PURSUANT TO THIS SUBSECTION (4) MAY NOT APPROVE THE MOVEMENT OF  
35 WATER OR WATER RIGHTS FROM ONE WATER DIVISION TO ANOTHER WATER  
36 DIVISION THAT ARE NOT DECREED FOR USE IN SUCH OTHER DIVISION.



1 (5) (a) Beginning January 1, 2002, for new water use plans  
2 involving out-of-priority diversions OR A CHANGE OF WATER RIGHT, if no  
3 application for approval of a plan for augmentation OR A CHANGE OF  
4 WATER RIGHT has been filed with a water court and the water use PLAN OR  
5 CHANGE proposed and the depletions associated with such water use PLAN  
6 OR CHANGE will be for a limited duration not to exceed five years, the  
7 state engineer may approve such plan OR CHANGE as a substitute water  
8 supply plan if the following conditions are met:

9 (IV) The state engineer, after consideration of the comments ~~from~~  
10 ~~any opposer~~ RECEIVED, has determined that the operation and  
11 administration of such plan will replace all out-of-priority depletions in  
12 time, location, and amount ~~in a manner that will~~ AND WILL OTHERWISE  
13 prevent injury to other water rights and decreed conditional water rights,  
14 including water quality and continuity to meet the requirements of use to  
15 which the senior appropriation has normally been put, pursuant to section  
16 37-80-120 (3) and will not impair compliance with any interstate  
17 compacts. The state engineer shall impose such terms and conditions as  
18 are necessary to ensure that these standards are met. In making the  
19 determinations specified in this subparagraph (IV), the state engineer  
20 shall not be required to hold any formal hearings or conduct any other  
21 formal proceedings, but may conduct a hearing or formal proceeding if  
22 the state engineer finds it necessary to address the issues. A SUBSTITUTE  
23 WATER SUPPLY PLAN APPROVED PURSUANT TO THIS SUBSECTION (5) MAY  
24 NOT APPROVE THE MOVEMENT OF WATER OR WATER RIGHTS FROM ONE  
25 WATER DIVISION TO ANOTHER WATER DIVISION THAT ARE NOT DECREED  
26 FOR USE IN SUCH OTHER DIVISION.

27 (b) A substitute water supply plan approved pursuant to this  
28 subsection (5) shall not be approved for a period of more than one year;  
29 except that an applicant may request the renewal of a plan by repeating  
30 the application process described in this subsection (5). However, in no  
31 event shall any plan approved pursuant to this subsection (5) be  
32 APPROVED OR renewed ~~beyond~~ FOR MORE THAN five years. ~~after the initial~~  
33 ~~date of approval.~~

34 (9) IF AN ENTITY PAYS FOR REPAIRS, MAINTENANCE, DREDGING, OR  
35 OTHER IMPROVEMENTS, INCLUDING CAPITAL IMPROVEMENTS, THAT ARE



1 NECESSARY AND EFFECTIVE IN REMOVING A STORAGE RESTRICTION  
2 IMPOSED BY THE STATE ENGINEER PURSUANT TO SECTION 37-87-107 ON A  
3 DAM OR RESERVOIR OWNED BY A THIRD PARTY, SUCH ENTITY MAY APPLY  
4 TO THE STATE ENGINEER PURSUANT TO SUBSECTION (5) OF THIS SECTION  
5 FOR APPROVAL OF THE USE OF SOME OR ALL OF SUCH NEWLY  
6 UNRESTRICTED STORAGE AS A SUBSTITUTE WATER SUPPLY PLAN, IF THE  
7 ENTITY HAS A WRITTEN AGREEMENT CONCERNING SUCH USE WITH ALL THE  
8 OWNERS OF THE DAM OR RESERVOIR AND THE ASSOCIATED WATER RIGHTS.

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

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