

Water Resources Review Committee

Members of the Committee

Senator Ellen Roberts, Chair
Representative Ed Vigil, Vice-Chair

Senator Randy Baumgardner	Representative Jeni Arndt
Senator Mary Hodge	Representative Jon Becker
Senator Matt Jones	Representative Don Coram
Senator Jerry Sonnenberg	Representative Diane Mitsch Bush

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November 2015

Water Resources Review Committee Report

Committee Charge

General charge. The Water Resources Review Committee (WRRRC) 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 to further its purpose. 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 eight times in 2015, including two times outside of the interim period, and to take two field trips.

Review of the Colorado Water Plan. Pursuant to Senate Bill 14-115, the WRRRC is required to review statewide planning for water resources. The law charged the committee with holding at least one public hearing in each geographic region associated with a basin roundtable during the 2015 interim to collect public feedback on the draft Colorado Water Plan. SB 14-115 also required the committee to provide a summary of the public's feedback, as well as its own feedback to the Colorado Water Conservation Board (CWCB) by November 1, 2015. The committee may recommend the introduction of legislation based on the results of such review. Any hearing held regarding the plan does not count against the committee's meeting or field trip limit. The committee, after holding a public hearing, may recommend the introduction of legislation based on the results of its review of the Colorado Water Plan. Such legislation does not count against the number of bills to which either the committee or the members of the General Assembly are limited by law or joint rule. The committee may repeat the review process for the Colorado Water Plan, including public meetings in each basin, whenever the CWCB submits a significant amendment to the plan. By November 1 of each year following the submission to the committee of a plan or plan amendment, any member of the General Assembly may request that the committee hold one or more hearings to review the plan or plan amendment. No later than November 1, 2017, and every five years thereafter, the committee is also required to prepare a list of specific topics that it deems necessary to be addressed in the plan.

Committee Activities

Regular meetings. During the 2015 interim, the committee held seven regular meetings and took two field trips unrelated to the Colorado Water Plan. 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.

Regular field trips. In June, the committee attended a two-day field trip in the Denver metropolitan area, where it visited water conservation, reuse, and storage facilities, and residential developments that emphasize water conservation. This tour was organized by the Colorado Foundation for Water Education. In August, the committee attended the Colorado Water Congress summer conference in Vail, where it held a public meeting and attended

presentations about water infrastructure financing, water planning, ongoing water supply studies, and other water management issues.

Meetings and field trips related to the Colorado Water Plan. According to SB14-115, the General Assembly intended to engage the people of the state in a public dialogue regarding optimal state water policy. Towards this end, the committee conducted a public outreach process that encouraged any interested person to provide testimony on state water policy at a public meeting or submit comments directly through the committee's website or by other means. In addition to seven regular meetings, the committee held nine special meetings during the 2015 interim to collect feedback from the public on the second draft of the Colorado Water Plan. These meetings were held in Alamosa, Aurora, Craig, Durango, Granby, Greeley, Montrose, Salida, and Walden. The committee also received public comments through letters, e-mails, and completed questionnaires. On September 30, 2015, the committee delivered its final report to the CWCB concerning the Colorado Water Plan. This report summarized the public feedback provided to the committee by September 15, 2015, and provided the committee's recommendation on the Colorado Water Plan. The committee did not recommend any legislation related to the Colorado Water Plan.

Abandoned mines in Colorado. The Colorado Division of Reclamation, Mining, and Safety (DRMS) in the Colorado Department of Natural Resources (DNR), estimates that there are more than 22,000 abandoned hard rock mines in Colorado and that at least 500 of these mines are polluting streams. During the 2015 interim, the committee received an update from DRMS on the Gold King Mine spill that occurred near Silverton on August 5, 2015, and discharged 3 million gallons of acidic water into the Animas River. The river was temporarily closed for recreation, fishing, irrigation, and drinking water purposes due to the mine discharge. Environmental organizations and other private entities with expertise in mine reclamation have expressed an interest in helping to remediate abandoned hard rock mines. However, these parties, called Good Samaritans, are discouraged from remediating abandoned mines because of the threat of liability under the "Clean Water Act" (CWA) and the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" (CERCLA) for such third-party reclamation efforts. The committee recommends Memorial A that urges Congress to pass legislation establishing a Good Samaritan exemption from liability under the CWA and CERCLA.

Federal funding for fighting wildfires. There are about 24 million acres of forests and woodlands in Colorado, of which more than two-thirds are owned and managed by the federal government. Most of Colorado's water supply comes from rivers and streams that originate on federal lands. Colorado's forests are increasingly susceptible to forest fires due, in part, to the age of the forests and federal forest management policies. Approximately 140,000 acres in Colorado burned per year on average for the period from 2008 through 2014. Under current federal law, money that was originally budgeted to mitigate fire risk, protect and restore watersheds, increase forest health, promote recreational opportunities, and conduct necessary forest planning is diverted to fight fires once the amount budgeted for firefighting has been depleted. In 1995, the United States Forest Service spent 16 percent of its annual budget on fire suppression and response. The agency announced that in 2015, it will spend more than half its budget to fight wildfires, and by 2025 it expects to spend over 60 percent of its budget on this task. The committee recommends Joint Memorial B that urges Congress to enact laws necessary to protect federal land management agencies' ability to mitigate the risk of catastrophic wildfires and manage the lands within their jurisdiction by funding catastrophic wildfire response in a manner analogous to that used for other natural disasters. The Wildfire Matters Review Committee also recommended this resolution.

State Engineer dam safety program and fees. The State Engineer directs the Division of Water Resources (DWR) in DNR. The division administers over 150,000 water rights, issues water well permits, monitors stream flows and water uses, and represents Colorado in interstate water compact proceedings. It also inspects dams to ensure safe operations and to prevent catastrophic failures. If DWR determines that a dam needs repair or rehabilitation, the owner or operator will be required to restrict the water level behind the dam, thus limiting the reservoir's storage capacity. To access a dam located on federal lands for repairs, an owner or operator of a dam must obtain permission from the federal agency managing the land. A federal agency's failure to respond promptly to requests for permission to access a dam may increase the cost of repairs and prevent the storage of water for use during times of scarcity. The committee recommends Resolution A that urges the U.S. Forest Service and the Bureau of Land Management to respond promptly to requests for permission to access a dam to maintain, repair, or rehabilitate it.

Penalty for illegal water diversions and DWR fees. The State Engineer and DWR staff are authorized to stop diversions that injure senior water rights or are not being used beneficially. The committee considered, but did not recommend, a bill that would have specified that a person who takes more than 50 gallons of water from a stream or other source without a water right is guilty of a misdemeanor. It also would have authorized peace officers and the appropriate district attorney to enforce the bill's prohibition. Under current law, certain fees collected by the State Engineer's Office are set in statute. The committee also considered, but did not recommend, a bill that would have allowed the State Engineer to set these fees by rule. It also would have amended several water laws to conform to modern drafting conventions.

State permitting requirements for water projects. The committee heard testimony at several SB 14-115 hearings about the challenge of obtaining state and federal permits for water development projects. The committee considered, but did not recommend, a bill that would have transferred to the State Engineer the authority to review certain types of permit applications that are currently reviewed by other state agencies. Another bill was considered, but not recommended, that would have designated the DWR as the state agency responsible for review of certain types of permit applications if these responsibilities are devolved from the federal government to the state government at a later date.

Rain harvesting. Rain harvesting, also called precipitation collection, 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. The committee requested, but did not take action on, a bill that would have allowed a water provider to permit residential customers to use up to 2 containers with a maximum storage capacity of 55 gallons each to collect precipitation from the customer's residential rooftop. The water provider would have been required to account for the captured water and provide a means of replacing any water lost to the stream system in order to protect vested water rights.

Committee Recommendations

As a result of committee discussion, the committee recommends two memorials and one resolution for consideration in the 2016 legislative session.

Memorial A — Good Samaritan Protection for Voluntary Remediation of Abandoned Mines. Joint Memorial A urges Congress to pass legislation establishing a good Samaritan exemption from liability under the CWA and CERCLA.

Memorial B — Wildfire Funding. Joint Memorial B urges Congress to enact laws necessary to protect federal land management agencies' ability to mitigate the risk of catastrophic wildfires and manage the lands within their jurisdiction by funding catastrophic wildfire response in a manner analogous to that used for other natural disasters.

Resolution A — Timely Access to Federal Lands for Dam Restoration. Resolution C urges the United States Forest Service and the Bureau of Land Management to respond promptly to requests for permission to access a dam to maintain, repair, or rehabilitate it.

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

MEMORIAL A

LLS NO. R16-0199 Jennifer Berman x3286

SENATE JOINT MEMORIAL

SENATE SPONSORSHIP

Roberts,

HOUSE SPONSORSHIP

Coram and Mitsch Bush,

BILL TOPIC: "Good Samaritan Remediation Abandoned Mines"

SENATE JOINT MEMORIAL

101 **CONCERNING PROTECTION FROM LIABILITY FOR VOLUNTARY**
102 **RECLAMATION OF ABANDONED HARD ROCK MINES.**

1 WHEREAS, Mining began in Colorado in the mid-1800s; and

2 WHEREAS, Mining was the most significant industry in Colorado
3 in the nineteenth and early twentieth centuries and it remains an important
4 industry today, currently accounting for more than 57,000 jobs in
5 Colorado and nearly \$7 billion of Colorado's annual gross domestic
6 product; and

7 WHEREAS, Until the 1977 enactment of the "Colorado Mined
8 Land Reclamation Act", article 32 of title 34 of the Colorado Revised
9 Statutes, neither comprehensive environmental standards for mining nor
10 reclamation of previously mined lands were required by state law; and

11 WHEREAS, Modern mines in Colorado have won state and
12 national acclaim for outstanding reclamation and safety practices; and

13 WHEREAS, Despite the stringent environmental regulations now
14 in place for modern mines, abandoned hard rock mines that were closed
15 before the regulations took effect and without the benefit of reclamation
16 (abandoned hard rock mines) continue to threaten the public health,
17 safety, and environment of Colorado; and

18 WHEREAS, Acid-mine drainage from the abandoned hard rock
19 mines threatens to pollute nearby streams with heavy metals such as

1 cadmium, manganese, aluminum, and zinc; and

2 WHEREAS, According to the U.S. Environmental Protection
3 Agency, it would cost \$35 billion or more to remediate the half-million
4 abandoned hard rock mines in the United States; and

5 WHEREAS, The Colorado Division of Reclamation, Mining and
6 Safety (DRMS) estimates that there are more than 22,000 abandoned hard
7 rock mines across Colorado and that at least 500 of them are polluting
8 streams; and

9 WHEREAS, The Gold King Mine spill on August 5, 2015,
10 discharged 3 million gallons of acidic mine drainage from the abandoned
11 Gold King Mine near Silverton, Colorado, into the Animas River. The
12 contaminants turned the river a mustard yellow color and required the
13 river to be temporarily closed for recreation, fishing, irrigation, and
14 drinking water purposes; and

15 WHEREAS, As of August 11, 2015, the Gold King Mine
16 continued to spill 500 to 770 gallons of waste water per minute; and

17 WHEREAS, While the DRMS has already made more than 6,000
18 abandoned hard rock mines safe in Colorado according to its web site, the
19 Gold King Mine spill is sobering evidence that much more work needs to
20 be done to remediate abandoned hard rock mines; and

21 WHEREAS, Various nonprofit organizations, corporate entities,
22 and communities with expertise in mine reclamation have expressed
23 interest in helping to remediate abandoned hard rock mines; and

24 WHEREAS, These Good Samaritan groups are discouraged from
25 remediating abandoned hard rock mines because of the threat of liability
26 under the "Clean Water Act" (CWA) and the "Comprehensive
27 Environmental Response, Compensation, and Liability Act of 1980"
28 (CERCLA) for such third-party reclamation efforts; and

29 WHEREAS, Previous Congresses have introduced legislation to
30 provide Good Samaritan liability exemptions under the CWA and
31 CERCLA, but such legislation has not been signed into law; now,
32 therefore,

33 *Be It Resolved by the Senate of the Seventieth General Assembly*
34 *of the State of Colorado, the House concurring herein:*

35 That we, the members of the Colorado General Assembly, urge
36 Congress to pass legislation establishing a Good Samaritan exemption
37 from liability under the CWA and CERCLA as an important step toward
38 preventing another disaster like the Gold King Mine spill and remediating
39 all other draining abandoned hard rock mines in Colorado.

40 *Be It Further Resolved*, That copies of this Joint Memorial be sent
41 to the members of Colorado's congressional delegation.

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

MEMORIAL B

LLS NO. R16-0173.01 Thomas Morris x4218

SENATE JOINT MEMORIAL

SENATE SPONSORSHIP

Jones and Roberts, Baumgardner, Cooke, Hodge, Merrifield,

HOUSE SPONSORSHIP

Coram and Vigil, Arndt, Becker K., Buck, Hamner, Mitsch Bush, Singer, Thurlow

SENATE JOINT MEMORIAL

101 **CONCERNING THE NEED FOR CONGRESS TO FUND CATASTROPHIC**
102 **WILDFIRE RESPONSE COSTS OUTSIDE OF FEDERAL FOREST**
103 **MANAGEMENT AGENCIES' NORMAL BUDGETS.**

1 WHEREAS, There are about 24 million acres of forests and
2 woodlands in Colorado, of which more than two-thirds are managed by
3 the federal government; and

4 WHEREAS, Colorado's forests are increasingly susceptible to
5 forest fires, with an average of about 40,000 acres burned per year from
6 2004 through 2007 but an average of more than 140,000 acres burned per
7 year from 2008 through 2014; and

8 WHEREAS, According to the Insurance Information Institute,
9 Colorado has the second highest percentage of households that are at high
10 or extreme risk from wildfires of any state in the nation; and

11 WHEREAS, Under current federal law, money that was originally
12 budgeted to mitigate fire risk, protect and restore watersheds, increase
13 forest health, promote recreational opportunities, and conduct necessary
14 forest planning is diverted to fight fires once the amount budgeted for fire
15 fighting has been depleted; and

16 WHEREAS, The United States Forest Service spent only 16% of
17 its annual budget on fire suppression and response in 1995, but recently
18 announced that in 2015, for the first time, it will spend more than half its

1 budget to fight wildfires, and by 2025 it expects to spend 67% of its
2 budget on that task; and

3 WHEREAS, A 2013 study by Headwaters Economics showed that
4 in the 1990s, average federal spending to suppress wildfires was less than
5 \$1 billion annually, but since 2002, federal spending has risen to over \$3
6 billion annually and costs are still rising; and

7 WHEREAS, Paying for catastrophic wildfire response should not
8 come at the expense of programs that reduce the risk of wildfires, because
9 doing so plainly creates a feedback loop that increases the frequency and
10 severity of catastrophic wildfires; and

11 WHEREAS, Congress is currently considering several measures
12 that would create alternative ways to pay for catastrophic wildfire
13 response costs; and

14 WHEREAS, The General Assembly's Water Resources Review
15 Committee and Wildfire Matters Review Committee have approved this
16 Joint Resolution [Memorial]; now, therefore,

17 *Be It Resolved by the Senate of the Seventieth General Assembly*
18 *of the State of Colorado, the House concurring herein:*

19 That Congress should enact laws necessary to protect federal land
20 management agencies' ability to mitigate the risk of catastrophic wildfires
21 and manage the lands within their jurisdiction by funding catastrophic
22 wildfire response in a manner analogous to that used for natural disasters.

23 *Be It Further Resolved*, That a copy of this Joint Memorial be
24 provided to Colorado's congressional delegation, Governor John
25 Hickenlooper, the Western Governors' Association, Secretary of
26 Agriculture Tom Vilsack, and Secretary of the Interior Sally Jewell.

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

RESOLUTION A

LLS NO. R16-0139 Jennifer Berman x3286

HOUSE JOINT RESOLUTION

HOUSE SPONSORSHIP

Coram and Mitsch Bush

SENATE SPONSORSHIP

Baumgardner, Roberts

HOUSE JOINT RESOLUTION

101 **CONCERNING TIMELY ACCESS TO FEDERAL LANDS FOR DAM**
102 **RESTORATION PROJECTS.**

1 WHEREAS, Colorado faces an increasing gap between water
2 supply and demand that could reach a statewide shortfall totaling 500,000
3 acre-feet or more by 2050; and

4 WHEREAS, Water storage is paramount as a means to address this
5 increasing gap in Colorado; and

6 WHEREAS, Reservoirs used for water storage and the dams used
7 to retain water within them should be operated and maintained in a
8 manner to maximize their water storage capacity; and

9 WHEREAS, The General Assembly has authorized the State
10 Engineer to inspect dams routinely to determine the safe storage level of
11 reservoirs; and

12 WHEREAS, When, upon inspection, the State Engineer
13 determines that the condition of a dam is unsatisfactory and the dam is in
14 need of repair or rehabilitation, the State Engineer will restrict the water
15 level behind the dam for safety purposes, thus limiting the reservoir's
16 storage capacity; and

17 WHEREAS, It is imperative for the purpose of maximizing our
18 state's water storage capacity that any dam put under restriction be
19 restored to a satisfactory condition as soon as practicable to remove 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.

1 storage restriction; and

2 WHEREAS, In order to access a dam for maintenance, repairs, or
3 rehabilitation, an owner or operator of a dam located on federal land must
4 seek permission, sometimes in the form of a special use permit, from the
5 federal agency managing the land; and

6 WHEREAS, Federal agencies have not responded promptly to
7 requests for approval to access the federal land on which a dam is located,
8 even when the purpose of seeking access to the dam is to maintain, repair,
9 or rehabilitate the dam; and

10 WHEREAS, A federal agency's failure to respond promptly to
11 requests for permission to access a dam located on federal land extends
12 the period of time during which the dam is under a storage restriction,
13 thus counteracting efforts to maximize our state's water storage capacity;
14 and

15 WHEREAS, A federal agency's failure to respond promptly to
16 requests for permission to access a dam in need of maintenance, repairs,
17 or rehabilitation could further exacerbate the deteriorating condition of
18 the dam, potentially increasing both the cost to restore the dam to a
19 satisfactory condition and the risk the deteriorating dam poses to the
20 safety of the citizens of Colorado; now, therefore,

21 *Be It Resolved by the House of the Seventieth General Assembly*
22 *of the State of Colorado, the Senate concurring herein:*

23 That we, the members of the Colorado General Assembly, urge
24 federal agencies, specifically the United States Forest Service and the
25 Bureau of Land Management, to respond promptly to requests for
26 permission to access a dam located on federal land when the purpose of
27 accessing the dam is to maintain, repair, or rehabilitate the dam.

28 *Be It Further Resolved*, That copies of this Resolution be sent to
29 members of Colorado's congressional delegation, the Chief of the United
30 States Forest Service, and the Director of the Bureau of Land
31 Management.

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Seventieth General Assembly of the State of Colorado (2015) ***

TITLE 37. WATER AND IRRIGATION
WATER CONSERVATION
ARTICLE 98. WATER RESOURCES REVIEW COMMITTEE

C.R.S. 37-98-102 (2015)

37-98-102. Water resources review committee - creation

(1) (a) For the purposes of contributing to and monitoring the conservation, use, development, and financing of the water resources of Colorado for the general welfare of its inhabitants and to review and propose water resources legislation, there is hereby created the water resources review committee, referred to in this article as the committee. The committee shall meet at the call of the chair as often as six times during even-numbered years and eight times during odd-numbered years to review and to propose water resources legislation and matters relating thereto. No more than two of such meetings may occur during periods other than the interim period; except that the committee shall not meet during the 2010 interim period. In connection with such review, except during the 2010 interim period, the committee may take up to two field trips per year in connection with its mandate and shall consult with experts in the field of water conservation, quality, use, finance, and development. The department of natural resources, the state engineer, and the attorney general, together with the members and staff of the Colorado water conservation board, the Colorado water resources and power development authority, the Colorado water quality control commission, the department of public health and environment, the department of agriculture, and the great outdoors Colorado program, shall cooperate with the committee and with any persons assisting the committee in pursuing its responsibilities pursuant to this section. Further, the committee may utilize the legislative council staff to assist its members in researching any matters.

(b) (Deleted by amendment, L. 2003, p. 718, § 2, effective March 20, 2003.)

(2) (a) The committee shall consist of ten members of the general assembly to be selected as follows:

(I) Five members of the committee shall be from the senate, three appointed by the president of the senate and two appointed by the minority party leader; and

(II) Five members of the committee shall be from the house of representatives, appointed

by the speaker of the house of representatives after consultation with the minority leader of the house of representatives.

(b) At least four members of the committee shall either:

(I) Reside in that portion of the state that is west of the continental divide; or

(II) Represent a legislative district the majority of the population of which lies west of the continental divide.

(c) To the extent possible, the members shall be selected so as to achieve representation from each water division as defined in [section 37-92-201](#).

(d) (I) Except as provided in subparagraph (II) of this paragraph (d), members' terms shall extend from January 1 of an odd-numbered year to December 31 of the following even-numbered year.

(II) The terms of the members appointed by the speaker of the house of representatives, the president of the senate, and the minority leader of the senate and who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a) of this subsection (2). Thereafter, the terms of members appointed or reappointed by the speaker, the president, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Members shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(3) The president of the senate and the speaker of the house of representatives shall coordinate their appointments to the extent practicable.

(4) Members of the committee shall serve without compensation; except that each member shall receive the sums specified in [section 2-2-307 \(3\) \(a\)](#) and (3) (b), C.R.S., for attendance at meetings of the committee when the general assembly is in recess for more than three days or is not in session.

(5) During odd-numbered years, the president of the senate shall appoint the chair and the speaker of the house of representatives shall appoint the vice-chair, and during even-numbered years, the speaker of the house of representatives shall appoint the chair and the president of the senate shall appoint the vice-chair.

(6) (Deleted by amendment, L. 2002, p. 1099, § 1, effective June 3, 2002.)

HISTORY: Source: L. 2001: Entire article added, p. 726, § 1, effective July 1. L. 2002: (1), (2)(b), and (6) amended, p. 1099, § 1, effective June 3. L. 2003: (1) and (5) amended, p. 718, § 2, effective March 20. L. 2004: (2)(d) added, p. 162, § 1, effective March 17. L. 2007: (2)(d) amended, p. 190, § 28, effective March 22. L. 2010: (1)(a) amended, [\(SB 10-213\)](#), [ch. 375](#), [p. 1764](#), [§ 11](#), effective June 7.