

The Southwestern Water Conservation District
The West Building, 841 E Second Avenue
Durango, CO 81301

NOTICE IS HEREBY GIVEN
A Regular Board Meeting of the
Southwestern Water Conservation District
will be held via teleconference on

Tuesday, June 30, 2020

8:30 a.m.- 4:30 p.m.

Video: [Click Here to Join Zoom](#)

or

Phone Number: (346) 248 7799

Meeting ID: 851 1949 9262

Password: 859820

Posted and Noticed June 26, 2020

Tentative Agenda

Please text 970-901-1388 if you have difficulty joining the meeting.

*Please raise your hand to be recognized by the chair. To raise your hand by phone, dial *9. To mute and unmute by phone, dial *6. To raise your hand by computer, please use Alt+Y (Windows) or Option+Y (Mac).*

- 1.0 Call to Order – Roll Call, Verification of Quorum (8:30 a.m.)**
- 2.0 Review and Approve Agenda (8:32 a.m.)**
- 3.0 Introductions & Zoom Instructions (8:34 a.m.)**
- 4.0 Approve and/or Remove Consent Agenda Items (8:35 a.m.)**
- 5.0 Consent Agenda (8:40 a.m.)**
 - 5.1 Approval of Minutes (April 2; April 15; April 29; May 6; May 27; June 3; June 11; June 16)
 - 5.2 Acceptance of the Treasurer's Report (May 2020)
- 6.0 New Business (8:45 a.m.)**
 - 6.1 SWCD's Draft Strategic Plan
- 7.0 Questions and Comments from Audience (10:20 a.m.)**
- Break (10:30-10:45 a.m.)**
- 8.0 Old Business (10:45 a.m.)**
 - 8.1 Colorado River matters
 - 8.1.1 Interstate and intra-state matters, including re-negotiation of the interim guidelines, and exploration of demand management
 - 8.1.2 Colorado River Water Bank Working Group

- 8.2 Proposed extension of C.R.S. § 37-92-305(3)(c) to Water Division 7 including, but not necessarily limited to, water conservation program participants

It is anticipated there will be a limited discussion of agenda item 8.2 at the June meeting. The Board intends to discuss this matter further at its August board meeting.

- 8.3 Legislative Update
- 8.4 SWCD Personnel Matter: Health Insurance Benefits for 2021

9.0 New Business (continued) (11:10 a.m.)

- 9.1 Review and Acceptance of FY2019 Audit Report
- 9.2 Sponsorship Request for NWRA Table Talks
- 9.3 Requests for COVID-19 Modifications from SWCD Funding Recipients
- 9.4 Proposed Two-Day August Board Meeting, in lieu of Board Tour and Remote Meeting

10.0 Reports (11:30 a.m.)

- 10.1 Director Reports
- 10.2 Board Committee Reports
 - 10.2.1 Strategic Planning (Notes from April 22, May 6)
 - 10.2.2 Finance (Notes from May 18)
 - 10.2.2.1 Discussion and Guidance regarding COLOTRUST Investments
- 10.3 Hydrologic Conditions Update
- 10.4 Office Update

11.0 Engineering Report (11:45 a.m.)

- 11.1 Upper Colorado & San Juan River Basin Recovery Implementation Programs
- 11.2 Paradox Valley Unit Environmental Impact Statement

12.0 General Counsel Legal Report (11:55 a.m.)

- 12.1 Rio Grande Water Conservation District's SWSP Application pursuant to C.R.S. § 37-92-308(5) for the 2020/2021 water year
- 12.2 State Engineer's Decennial Abandonment List
- 12.3 April and May Water Court Resume Review (Divisions 3, 4, 7)

Lunch (12:05-1:00 p.m.)

13.0 New Business (continued) (1:00 p.m.)

- 13.1 Short-Term and Long-Term SWCD Objectives, Organizational Structure, Staffing and Consultant Needs
 - 13.1.1 Executive Director or General Manager job search goals, including job description, deadline for applications and hiring process
 - 13.1.2 SWCD Representation on Various Committees and Boards

14.0 Executive Session (if necessary) (3:30 p.m.)

- 14.1 SWCD's Draft Strategic Plan
- 14.2 Process and Criteria for hiring Executive Director or General Manager
- 14.3 Colorado River Interstate and Intra-state matters, including re-negotiation of the interim guidelines and exploration of demand management
- 14.4 Rio Grande Water Conservation District's SWSP Application pursuant to C.R.S. § 37-92-308(5) for the 2020/2021 water year

- 14.5 Paradox Valley Unit Environmental Impact Statement
- 14.6 Potential Consulting Services Agreement(s) for Engineering and/or other Services
- 14.7 Application of the Montezuma Valley Irrigation Company, Case No. 18CW3052, Division 7

15.0 Report from Executive Session (4:25 p.m.)

16.0 Adjournment (4:30 p.m.)

Upcoming Meetings

August 4-5, 2020	TBD	Regular Board Meeting
September 9, 2020	9:00 a.m.	Budget Workshop
October 13, 2020	TBD	Regular Board Meeting
October 14, 2020	8:30 a.m.	Annual Water Seminar

Except the time indicated for when the meeting is scheduled to begin, the times noted for each agenda item are estimates and subject to change. The Board may address and act on agenda items in any order to accommodate the needs of the Board and the audience. Agenda items can also be added during the meeting at the consensus of the Board.

Agenda items may be placed on the Consent Agenda when the recommended action is non-controversial. The Consent Agenda may be voted on without reading or discussing individual items. Any Board member may request clarification about items on the Consent Agenda. The Board may remove items from the Consent Agenda at their discretion for further discussion.

Southwestern Water Conservation District
Budget Comparison Summary
January through May 2020

	Jan - May 20	Budget	\$ Over Budget	% of Budget
Income				
4 · SWCD INCOME				
4.1 · Property Tax	1,179,871	1,620,102	(440,231)	73%
4.2 · Specific Ownership Tax	44,760	100,000	(55,240)	45%
4.3 · Interest, PILT & Other Taxes	36,274	35,500	774	102%
4.4 · Other Income				
4.4.1 · Interest Earned	26,192	40,000	(13,808)	65%
4.4.2 · Loan Interest	0	275	(275)	0%
4.4.3 · Miscellaneous Income	2,845	5,000	(2,155)	57%
4.4.4 · Water Seminar Registration	0	6,000	(6,000)	0%
4.4.5 · ALP/WIP Cost Sharing	0	200	(200)	0%
4.4.7 · SJRBRIP Water User Committee	50,873	50,873	0	100%
4.4.8 · Stream Gaging Reimbursement	17,913	32,481	(14,568)	55%
4.4.9 · Water Info Program	33,920	37,850	(3,930)	90%
Total 4.4 · Other Income	131,743	172,679	(40,936)	76%
Total 4 · SWCD INCOME	1,392,649	1,928,281	(535,632)	72%
Total Income	1,392,649	1,928,281	(535,632)	72%
Gross Profit	1,392,649	1,928,281	(535,632)	72%
Expense				
5 · SWCD EXPENSES				
5.01 · Water Management & Development				
5.1.1 · SWCD Grant Program	80,080	400,000	(319,920)	20%
5.1.2 · Previously Committed Grants	0	85,694	(85,694)	0%
5.1.3 · Project Reserve Fund	0	350,000	(350,000)	0%
5.1.4 · SJRBRIP Water User Committee	25,114	101,746	(76,632)	25%
5.1.5 · SWCD Project Water Rights	0	10,000	(10,000)	0%
5.1.6 · Weather Modification	17,320	117,000	(99,680)	15%
5.1.7 · Emergency Reserve Fund	0	500,000	(500,000)	0%
Total 5.01 · Water Management & Development	122,514	1,564,440	(1,441,926)	8%
5.02 · Data Collection				
5.2.1 · Center for Snow & Avalanche	7,000	7,000	0	100%
5.2.2 · Stream Gaging - Federal	24,253	108,500	(84,247)	22%
5.2.3 · Stream Gaging - Colorado	0	2,640	(2,640)	0%
5.2.4 · Water Quality Studies	7,000	13,000	(6,000)	54%
5.2.5 · SW Colorado Permanent Radar	0	10,000	(10,000)	0%
Total 5.02 · Data Collection	38,253	141,140	(102,887)	27%
5.03 · Ongoing Organizational Support				
5.3.1 · Event Sponsorships	700	6,000	(5,300)	12%
5.3.2 · Dues & Memberships	20,879	22,350	(1,471)	93%
5.3.3 · Bonita Peak CAG	0	5,000	(5,000)	0%
5.3.4 · Water Bank Working Group	11,000	17,500	(6,500)	63%
5.3.5 · Demo CSU Farm/Water Efficiency	0	10,000	(10,000)	0%
Total 5.03 · Ongoing Organizational Support	32,579	60,850	(28,271)	54%
5.04 · Water Education				
5.4.1 · Water Info Program	20,570	72,095	(51,525)	29%

Southwestern Water Conservation District

Budget Comparison Summary January through May 2020

	Jan - May 20	Budget	\$ Over Budget	% of Budget
5.4.2 · Water Seminar	66	18,000	(17,934)	0%
5.4.3 · Water Education Colorado	10,500	10,500	0	100%
5.4.4 · Water Leaders Scholarship	3,500	5,000	(1,500)	70%
5.4.5 · Children's Water Festival	729	9,500	(8,771)	8%
5.4.6 · Watershed Education Program	6,000	6,000	0	100%
Total 5.04 · Water Education	41,365	121,095	(79,730)	34%
5.05 · Technical Support				
5.5.01 · Attorney Fees - General Counsel	56,143	140,000	(83,857)	40%
5.5.02 · Travel Exps - General Counsel	1,152	15,000	(13,848)	8%
5.5.03 · Litigation - General Counsel	12,606	30,000	(17,394)	42%
5.5.04 · Co River Litigation- General Co	0	40,000	(40,000)	0%
5.5.05 · Attorney Fees - Special Counsel	12,887	10,000	2,887	129%
5.5.06 · Attorney Exps - Special Counsel	0	5,000	(5,000)	0%
5.5.07 · Lobbying Fees	24,750	50,000	(25,250)	50%
5.5.08 · Lobbying Expenses	708	5,500	(4,792)	13%
5.5.09 · Engineering - General	16,253	45,000	(28,747)	36%
5.5.10 · Engineering - Special Projects	0	25,000	(25,000)	0%
5.5.11 · Technical Other Expenses	0	50,000	(50,000)	0%
Total 5.05 · Technical Support	124,501	415,500	(290,999)	30%
5.06 · District Staff				
5.6.1 · Wages - Executive Director	55,769	146,450	(90,681)	38%
5.6.2 · Wages - Programs Coordinator	20,075	50,393	(30,317)	40%
5.6.4 · Wages - Payroll Taxes	5,943	17,716	(11,773)	34%
5.6.5 · Wages - Retirement Benefit	3,896	11,811	(7,915)	33%
5.6.6 · Wages - Health & Life Insurance	13,099	46,260	(33,161)	28%
5.6.7 · Wages - ED Bonus	0	0	0	0%
5.6.8 · Wages - Coordinator Bonus	0	0	0	0%
Total 5.06 · District Staff	98,783	272,629	(173,846)	36%
5.07 · Meetings & Travel				
5.7.1 · Director Fees	5,025	21,000	(15,975)	24%
5.7.2 · Director Travel	4,616	31,000	(26,384)	15%
5.7.3 · Registration Fees	5,388	8,500	(3,112)	63%
5.7.4 · Meeting Expenses	1,132	10,000	(8,868)	11%
5.7.5 · Staff Travel	8,063	35,000	(26,937)	23%
Total 5.07 · Meetings & Travel	24,224	105,500	(81,276)	23%
5.08 · Administration				
5.8.01 · Audit	0	8,400	(8,400)	0%
5.8.02 · Accounting	1,035	500	535	207%
5.8.03 · Capital Outlay	14,910	15,000	(90)	99%
5.8.04 · Casual Labor	0	200	(200)	0%
5.8.05 · ED Discretionary Budget	0	2,000	(2,000)	0%
5.8.06 · Equipment Leasing	750	1,800	(1,050)	42%
5.8.07 · Insurance - General Liability	6,734	6,000	734	112%
5.8.08 · Legal Notices	0	600	(600)	0%
5.8.09 · Miscellaneous	0	500	(500)	0%
5.8.10 · Office Expenses	2,175	7,500	(5,325)	29%
5.8.11 · Postage	365	1,000	(636)	36%
5.8.12 · Rent	14,621	30,796	(16,175)	47%
5.8.13 · Staff Training/Development	0	2,500	(2,500)	0%
5.8.14 · Telephone	1,317	3,500	(2,183)	38%
Total 5.08 · Administration	41,907	80,296	(38,389)	52%

Southwestern Water Conservation District
Budget Comparison Summary
January through May 2020

	Jan - May 20	Budget	\$ Over Budget	% of Budget
5.09 · County Treasurer Fees	34,532	52,668	(18,136)	66%
5.10 · TABOR Reserve	0	84,424	(84,424)	0%
5.11 · Contingency Reserve	0	96,414	(96,414)	0%
Total 5 · SWCD EXPENSES	558,658	2,994,956	(2,436,299)	19%
Total Expense	558,658	2,994,956	(2,436,299)	19%
Net Income	833,992	(1,066,675)	1,900,667	(78)%

1:44 PM
June 5, 2020
Accrual Basis

Southwestern Water Conservation District
Bank Account Summary
As of May 31, 2020

	<u>May 31, 20</u>
ASSETS	
Current Assets	
Checking/Savings	
100 · SWCD Checking	284,391.51
101 · SWCD Credit Card	(209.82)
102 · SJRBRIP Checking	96,935.03
103 · WIP Checking	115,468.58
105 · COLOTrust Project Reserve	484,868.14
106 · COLOTrust Emergency Reserve	264,743.60
107 · COLOTrust General	752,441.34
123 · CD1 - 24 Month	1,537,695.32
159 · CD2 - 12 Month	411,503.56
160 · CD3 - 12 Month	100,982.47
	<hr/>
Total Checking/Savings	4,048,819.73
Other Current Assets	
131 · Bauer Lake Loan	11,011.25
	<hr/>
Total Other Current Assets	11,011.25
	<hr/>
Total Current Assets	4,059,830.98
	<hr/>
TOTAL ASSETS	4,059,830.98
	<hr/>
LIABILITIES & EQUITY	0.00

Colorado’s oldest water rights get extra protection from state engineer

Local [FOLLOW LOCAL](#) | 8h ago

Heather Sackett
Aspen Journalism



Coal Creek, where 27 water rights associated with the now-defunct Mid-Continent mine were placed on the 2011 revised abandonment list, flows into the Colorado River at Redstone. The state engineer has directed that all Western Slope, pre-Colorado River Compact rights are safe from state-led abandonment in 2020. Heather Sackett/Aspen Journalism



[Hide Captions](#)

For the second time, the state’s top water cop has directed the Western Slope’s oldest and most valuable water rights to be left off the once-a-decade abandonment list. That means hundreds of these mostly irrigation water rights have been granted immunity — even though they are no longer being used — from the threat of “use it or lose it,” further enshrining them in the state’s system of water administration and dealing a blow to the validity of the well-known adage.

Every 10 years, engineers and water commissioners from the Colorado Division of Water Resources review every water right — through diversion records and site visits — to see whether it has been used at some point in the previous decade. If it hasn’t, it could end up on the decennial abandonment list, which is scheduled to come out in July.

But a November 2018 email from state engineer Kevin Rein to all four Western Slope division engineers instructs them to not include pre-compact rights on the abandonment list. That includes all the water rights in the Yampa/White/Green, Colorado, Gunnison and San Juan/Dolores river basins.

“Since the nature of the pre-compact water rights is unique in Colorado when it comes to administration of the Colorado River Compact, and in recognition of the fact that the value of the rights could benefit all water users in Colorado, as opposed to only the owner of the water right, I will ask that you direct your staff to do no further investigation of pre-compact water rights and to not include them in the Division Engineers Proposed Abandonment list for 2020,” the email reads.

A primary job of the state and division engineers is to administer Colorado's system of prior appropriation, in which the older the water right, the more powerful it is.

Rein said he talked with major water providers and managers along the Front Range and on the Western Slope before making the decision, but he would not say which ones or anything about the nature of those conversations.

Former state engineer Dick Wolfe issued a similar directive regarding the 2010 abandonment list, meaning Colorado's water rights that date to before June 25, 1929 — when Congress ratified the Colorado River Compact — have enjoyed an extra level of protection from state-led abandonment for two decades.

“We need to allow for the fact that if those water rights are abandoned and taken off the tabulation, then that amount of water is no longer available to Colorado,” Rein said.

But what exactly the value of unused, pre-compact water rights could have to all Colorado water users remains unclear. Post-compact water rights, meaning those after June 25, 1929, are still eligible for the abandonment list.

According to Rein, the decision to include water rights on an abandonment list is administrative one and he has statutory authority to revise the list.

COLORADO RIVER COMPACT

A major fear of Colorado water managers is what's known as a “compact call.” If the upper basin states — Colorado, Utah, Wyoming and New Mexico — don't deliver the required 75 million acre-feet of water over 10 years as specified in the Colorado River Compact to the lower basin states — California, Nevada and Arizona — it could lead to a compact call. This scenario, which looms larger each year with the increasing effects of drought and climate change on an over-allocated river, could trigger involuntary cutbacks for Colorado water users.

But water rights that had been perfected before the compact was ratified are exempt from these cutbacks. And now the state is adding unused, pre-compact water rights to this exempt category. In Colorado, many of these oldest water rights belong to Western Slope agriculture.

Like moving a pawn early in a chess match, it is unclear exactly how this directive from Rein could help Colorado in the future. Nobody really knows whether or how a compact call (or negotiations among states to avoid one) might play out. Therefore, no one can say exactly what value these pre-compact water rights have to Colorado.

Water experts and managers throughout the upper and lower basin were reluctant to talk about the issue and gave diplomatic responses to questions about the sensitive political issue of interstate compact compliance.

“I don't know the answer,” Rein said. “I think there's general agreement that these water rights may have value in a compact-call scenario. I don't know because of the complexities of it.”

Some water experts say preserving these pre-compact water rights, even though they aren't being used, could give Colorado stronger footing in potential negotiations with lower basin states by propping up Colorado's consumptive-use tally on paper.

“I would say it's a conservative approach and it might help in your negotiations with other states,” said Doug Kemper, executive director of the Colorado Water Congress. “You would be making the argument that we have this portfolio of water rights, these are still on the books. But again, you're trying to forecast how a negotiation might proceed, and I think to meaningfully comment on that would be almost impossible right now.”

Preserving these irrigation water rights also means they would be available to transfer to other users in the future, such as Front Range water providers — whose water rights are mostly post-1929 and therefore vulnerable to cutbacks under a compact call — as the state continues to urbanize.

In a prepared statement, Denver Water CEO Jim Lochhead said the water provider, which supplies water to 1.4 million people, “is supportive of the state's efforts to protect Colorado's pre-compact rights. This approach will benefit and help provide additional security for Colorado River water users on the West Slope and Front Range.”

Reagan Waskom, director of the Colorado Water Center at Colorado State University, agreed that hanging onto those pre-compact water rights could be in the state's best interest.

“The idea of holding as many of those pre-compact rights in place makes sense from a purely Colorado-centric point of view,” said Waskom. “We still don't know what a compact call or curtailment would look like, so we are going to stay as conservative and protective as we can.”

The Colorado River Water Conservation District is in favor of Rein’s directive, according to general counsel Peter Fleming. The Glenwood Springs-based River District works to protect water rights on the Western Slope, which often means advocating for agriculture interests.

But Fleming brings up an interesting point: The value of water rights in Colorado is based on them being used. If these water rights still exist on paper but haven’t been used in a decade — in some cases, two decades — what is their value?

“There’s this notion that pre-compact water rights are sacrosanct and very important, and that’s true if they have continued to be used and historically consumed,” Fleming said. “But you don’t just make water available by saying these rights that haven’t been used for X number of years still exist. So, I guess I would say it’s a risk-avoidance strategy, but it’s an unproven strategy.”

ABANDONMENT

Rein’s directive also helps debunk the adage “use it or lose it.” While the pre-compact rights are not being used, they also are no longer in danger of being lost. The threat of the state taking away a water right has now disappeared for Western Slope pre-compact irrigation rights.

The often-misunderstood tenet “use it or lose it” is embodied by the abandonment process.

Some water users believe that if they don’t divert the full amount they are entitled to — even if they don’t always need that much — the state will take it away and it will be available to another water user. But the concept is much more nuanced than that.

Colorado water law says abandonment is “the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or a part of the water available.”

Just not using the water will not lead to abandonment; there must be an intent to abandon the right.

For a water user to keep their water right, they must put the water to “beneficial use,” which in the case of irrigation water means growing crops. If the water has not been used for 10 years — meaning there are no diversion records and the local water commissioner does not see evidence of water use on their site visits — division engineers could presume that the water right has been abandoned. They put it on the state’s initial abandonment list, which is updated every 10 years and published in local newspapers.

Water-right holders then have one year to file an objection to their listing in writing with the division engineer.

“We don’t like close calls, so if they diverted the water 11 years ago, we are going think, ‘Eh, I don’t know,’ because we are talking about somebody’s property right,” said Alan Martellaro, Division Engineer for Water Division 5.

After working through the objections with water-right holders, the division engineer publishes the revised abandonment list. If a water-right holder still protests their placement on the list, they can go to water court to argue that they did not intend to abandon the water right.

For the 2010 Division 5 abandonment list, Martellaro said the pre-compact rights comprised easily half the list before Wolfe instructed division engineers to take them off. The 2011 revised Division 5 abandonment list included about 75 water rights, one-third of which were related to the now-defunct Mid-Continent mine on Coal Creek near Redstone where a 1981 explosion killed 15 miners.

The 2020 abandonment list is expected to come out in July.

Aspen Journalism is a local, nonprofit and investigative news organization that covers water and river issues in collaboration with The Aspen Times and other Swift Communications newspapers. For more, go to aspenjournalism.org.

Support Local Journalism

Readers around Aspen and Snowmass Village make the Aspen Times’ work possible. Your financial contribution supports our efforts to deliver quality, locally relevant journalism.

Now more than ever, your support is critical to help us keep our community informed about the evolving coronavirus pandem

Our site uses cookies. By continuing to use our site, you agree to our [Cookie Policy](#).
[Cookie list](#)

› [Cookie Settings](#)

✓ Accept and Close

Lake Powell pipeline will 'make the river angry,' Southern Paiutes warn as feds release analysis



(Brian Maffly | Tribune file photo) Bullfrog Marina on Lake Powell in Utah on Nov. 29, 2018.



By Brian Maffly

Published: 21 hours ago

Updated: 13 hours ago

Any potential alignment of the Lake Powell pipeline would pass through lands that hold spiritual and cultural significance to Southern Paiutes, who fear the project would jeopardize their culture and upset the balance of nature.

One alternative route passes through Arizona's Kaibab Indian Reservation and the other, preferred by the water project's Utah proponents, skirts the reservation around its southern borders by following an existing utility corridor.

According to documents released Monday as part of the pipeline's long-awaited environmental analysis, the Kaibab Band of Paiute Indians sees significant problems not only with both alignments, but also with the entire project sought by Utah water officials to divert some of the Colorado River to feed the St. George area's growing demand.

The tribe's filings are attached as supplements to a draft environmental impact statement prepared by the U.S. Bureau of Reclamation in coordination with several other federal agencies. These documents speak to the reverence Native Americans hold for elements of nature.

[SUBSCRIBE](#) [DONATE](#) [NEWSLETTERS](#)

“Among these are the Colorado River, the veins of Mother Earth moving the essential element water. At creation, the Colorado River’s place and purpose was defined. The [Lake Powell pipeline] project proposes to remove the Colorado River from its appropriate place and to move it elsewhere to be used in different ways,” tribal officials wrote in one filing titled “Environmental Justice.” “This action will make the river angry and confused, the results of which are unknown but clearly a source of imbalance in the world.”

Utah has a legal right to some of the Colorado’s flow and intends to put 6% of its share to use by piping it across northern Arizona and southern Utah for use in Washington County, whose population is expected to more than double by 2060 to nearly half a million.

The Washington County Water Conservancy District and the Utah Division of Water Resources have spent 12 years and \$35 million designing and studying the proposed 140-mile-long pipeline, which would move up to 86,000 acre-feet of water a year through a 69-inch-diameter buried steel pipe.

The release of the EIS is an important milestone in the controversial project, opening a public comment period through Sept. 6.

“We invite the public to read the study and participate in the public comment period,” said Todd Adams, Division of Water Resources director. “The Lake Powell pipeline is an essential water delivery project and plays a critical role in delivering a second reliable water source to southern Utah.”

The Bureau of Reclamation will host online public meetings July 8 and July 9. Details will be posted on the EIS webpage, along with instructions for submitting comments.

Is the price right?

[SUBSCRIBE](#)

[DONATE](#)

[NEWSLETTERS](#)

Environmental groups, which have fought the project since its inception, pounced on the quality of the analysis released Monday.

Zach Frankel, executive director of the Utah Rivers Council, for one, rejected the bureau's assertion that the pipeline would cost between \$1.4 billion and \$1.5 billion to build, and \$312 million a year to operate.

"They are using 12-year-old estimates," Frankel said. "Even the [Utah] legislative auditor said it would cost \$2.2 billion and that was without hydro."

The pipeline previously was conceived as an energy initiative with several hydroelectric-generating features, most of which were dropped last year to simplify a project fraught with political and environmental complexities.

Drawing on comparisons with other projects, Frankel's group contends the pipeline would cost \$3 billion, which would be financed by Utah taxpayers and paid back by the water district through a combination of water rate hikes, property tax revenues and impact fees.

Critics also argue the analysis fails to adequately consider how the warming climate and persistent drought are expected to reduce flows on the Colorado.

"It's appalling that Utah officials and the Trump administration are willing to suck the Colorado River basin dry to water lawns and golf courses in St. George," said Ryan Beam, a campaigner at the Center for Biological Diversity. "Clearly these rivers are drying up, and we must protect declining river flows to sustain fish, wildlife and downstream communities. But instead Utah wants to spend billions to support sprawl while ignoring the mega-drought, climate change and overallocation of the river."

The 313-page EIS, along with hundreds of pages of supporting documents, analyzes impacts tied to the pipeline and its associated facilities. These include the intake apparatus at Glen Canyon Dam; four booster pumping stations to propel the water up 2,000 feet of elevation; six inline hydropower stations needed to lower pressures as water tumbles downhill at speeds of 5.5 feet per second, or 3.8 mph; 71 miles of transmission lines; a 1 million gallon storage tank to help regulate pressures; and “turnouts” near Johnson Canyon in Kane County and near Hildale to offload water at future times if needed by those communities.

Marked as confidential and redacted are 36 pages from an EIS appendix that details the project’s plan of development.

The two alternative alignments both begin at an intake on the bottom of Lake Powell near Page, Ariz., and end at Sand Hollow Reservoir near St. George.

The routes

The preferred “southern alternative” would travel south of the Kaibab Indian Reservation outside Fredonia, Ariz., while the “highway alternative” would take a more direct route through the reservation inhabited by the Kaibab Band, following Arizona 389.

The latter route might be seven miles shorter and \$100 million less costly to build, but it also would disturb areas where Native Americans historically buried their dead, said Brock Belnap, associate general manager for the Washington County Water Conservancy District. The southern path would avoid thorny jurisdictional issues that would arise from crossing 15 miles of tribal land.

“The highway alignment, which goes right through the middle of the reservation, is more likely to have us encounter potential gravesites,” Belnap said Monday. “So even though there may be increased numbers of other types of ethnographic resources on

the southern [alignment], the type on the highway alignment, where you actually may disturb graves or [human] remains, are far more expensive, difficult and time consuming to mitigate.”

SUBSCRIBE DONATE NEWSLETTERS

The soils along the southern route are better suited for burying a pipeline, said Joel Williams, who oversees the project for the Division of Water Resources.

“There’s actually fewer plant species impacts by going around [the reservation]. There are some endangered plants that are only found along the highway alignment,” Williams said. “There are so many unknowns. A highway has gone through there, but now we’re going to put in a pipeline. To bury a 69-inch-diameter pipeline, you need a pretty deep trench. And we know that as you excavate, you’re going to find more things.”

While it avoids the reservation, however, the southern alignment would disturb sites holding spiritual importance to the Southern Paiutes, according to the tribe’s filings. These locations, such as the Ghost Dance site, Elephant Foot, Indian Knoll, which features a solar observatory, a “prophecy area,” and Moonshine Spring, are woven together in the designated Kanab Creek Traditional Cultural District. The Paiutes’ Milk Mountain pilgrimage route passes through the area affected by the project.

The proposal has caused “continued psychological stress” to the Southern Paiutes, who are concerned construction could harm their religion and society. A key worry is that it could block access to some places and disrupt transmission of cultural practices and identity from older to younger generations.

“These are the lands of Creation where the Southern Paiute people were placed in mutual relationships with the world around them,” the tribe wrote, “and given a birthright responsibility to use appropriately the natural resources and protect them and themselves from harm.”



bmaffly@sltrib.com



Follow @brianmaffly



[Donate to the newsroom now.](#)

SUBSCRIBE

DONATE

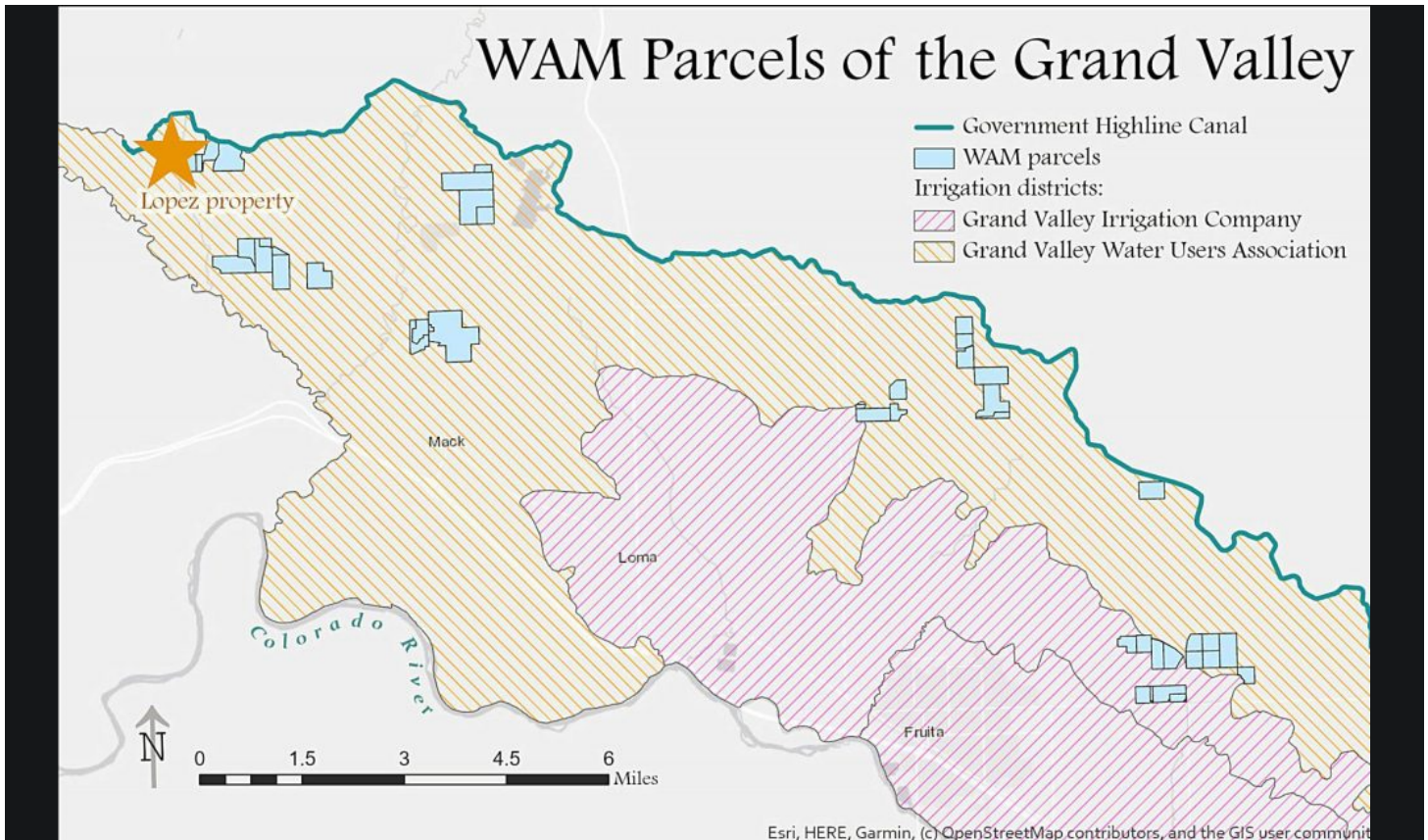
NEWSLETTERS

Western Colorado water purchases elicit worry about future of farming

June 7, 2020

Heather Sackett Aspen Journalism Luke Runyon KUNC

MACK — For five years, Zay Lopez tended vegetables, hayfields and cornfields, chickens, and a small flock of sheep here on the western edge of Colorado's Grand Valley — farming made possible by water from the Colorado River.



and cornfields, chickens, and a small flock of sheep here on the western edge of Colorado's Grand Valley — farming made possible by water from the Colorado River.

Lopez has a passion for agriculture, and for a while, he carved out a niche with his business, The Produce Peddler, trucking veggies seven hours away to a farmers market in Pinedale, Wyoming.

Lopez also moonlights as a realtor, with his finger on the pulse of the local real estate market. A few years ago, he noticed a strange new phenomenon. Much of the irrigated agricultural land sold in the valley — such as parcels just down the road from his farm — wasn't being bought by another farmer. Instead, his new neighbor was Water Asset Management, a New York City-based hedge fund with deep pockets.

When Lopez and his wife Leah grew tired of trying to make ends meet, they decided to pack up and move to southern Colorado to grow hemp. They, too, sold their 26-acre farm to WAM.

"It was hard to make the mortgage payment plus all of our other payments, and I didn't see — with our current model of what we were doing — how we could get out of that hole," he said. "Selling the farm wasn't really a choice. We had to do it."

Lopez's recent sale is the continuation of a trend that has made some in the agricultural communities west of Grand Junction nervous, has created a buzz among water managers and has led state lawmakers to pass a bill looking at strengthening Colorado's anti-water-speculation law.

WAM is buying irrigated land as an investment in the future potential value of the water. Although the company isn't doing anything illegal, its actions have rekindled deep-seated and long-held fears about water in the West — that it could hasten the death of agricultural communities' way of life and create an unregulated market for water that would drive up prices and drive out family farms.

Because of these sensitive issues, many people in the Grand Valley are reluctant to talk about WAM and what it is doing. Meetings have erupted in anger, some who have sold have become social pariahs, and top water officials from the valley's canal companies refuse to talk to reporters on the record. For a while, a local rancher was actively updating a website "wall of shame" for people involved in Grand Valley water deals.

"They are the same concerns that have existed since the 1930s," said Anne Castle, a senior fellow at the University of Colorado's Getches-Wilkinson Center. "The east slope municipal diverters or an investment firm — it doesn't matter who it is — are going to be able to offer more money for water than you could derive from farming or ranching. The concern is that if that becomes a trend, then the whole economy of the Western Slope changes and the agriculture economy will be very different and smaller than it is now."

The Walton Family Foundation provides funding to KUNC and partial funding for Castle's work. A member of the Walton family currently provides funding to Aspen Journalism via the Catena Foundation.

WATER ASSET MANAGEMENT

Since 2017, WAM has spent \$16.6 million buying up 2,222 acres of irrigated agricultural land in the communities of Fruita, Loma and Mack, west of Grand Junction. The company is now the largest landowner in the Grand Valley Water Users Association, the nonprofit canal company that delivers water to many Grand Valley irrigators.

WAM now owns 1,659 acres in the GVVUA delivery area, which according to its website has 23,341 irrigated acres. That means the hedge fund owns about 7% of the land irrigated by the Government Highline Canal.

WAM, whose headquarters is on Madison Avenue in Manhattan, says it "seeks to be a leader in managing global water investments that solve water quality and availability issues," according to its website. WAM is run by co-founder and principal Disque Deane Jr., while Matthew Ketellapper has been doing much of the "boots on the ground" work in the Grand Valley as the company's Colorado asset manager.

Deane has been involved in water markets in the West for years, buying water and land tied to water rights. He doesn't give many interviews, but according to a 2016 ProPublica article, "debt, death and divorce" has become his sort of motto, because those circumstances drive people to sell.

WAM are cash buyers — a rare offer in this rural area. In many cases, WAM makes improvements to irrigation infrastructure, such as adding center pivots and lining ditches, and leases the land back to farmers to keep it in agricultural production.

Grand Valley's farmland is expansive, with views stretching west to Utah, north to the Book Cliffs and south to Colorado National Monument. It also is exceedingly dry. The area where Lopez's former farm is

located was once a community of homesteaders known as New Liberty, who eked out a living by dryland farming before the construction of irrigation infrastructure, a notion at which Lopez marvels.

Not much would grow here without the region's two main irrigation canals, which draw water from the Colorado River: Government Highline Canal and Grand Valley Irrigation Canal. The bigger of the two, the 55-mile-long Government Highline, snakes through the northern part of the valley and is managed by GVWUA. One hundred and fifty miles of ditches known as laterals bring water from the main canal to individual farms.

In mid-March, before the water began flowing in the canals and bringing the annual green return of irrigated agriculture to this valley, the air was thick with smoke as farmers burned their ditches and the earth was dusty, brown and parched.

What leaves people scratching their heads is this: How does a New York City investment firm plan to make money from marginal desert land in western Colorado?

"Everyone is very cautious about what these guys from New York are doing out here buying up our ground," Lopez said. "I mean, honestly, it's still kind of a mystery what their overall vision is."

'TEMPORARY, VOLUNTARY, COMPENSATED'

The key to WAM's overall vision may lie in demand management, a state program still in the investigation and feasibility stage.

At the heart of such a program envisioned by state officials — and designed to be "temporary, voluntary and compensated" — is the concept of paying irrigators to use less water by fallowing fields. By doing so, there will be more water in the Colorado River flowing downstream to be stored in Lake Powell in an effort to bolster reservoir levels and help Colorado meet its Colorado River Compact obligations.

The future of the demand management feasibility investigation is unclear because the state cut its budget by \$750,000 on May 1 due to the COVID-19-caused state financial crisis.

The thing many water managers and users in Colorado fear most is what's known as a compact call. Under the terms of the 1922 Colorado River Compact, the Upper Basin states (Colorado, Utah, Wyoming and New Mexico) are required to deliver 75 million acre-feet of water over 10 years to the Lower Basin states (California, Nevada and Arizona). If the Upper Basin can't deliver because of drought, climate change or any other reason, it could lead to a compact call, triggering involuntary cutbacks and an interstate legal quagmire that could drag on for decades.

A new demand management program would allow Colorado to send water to a 500,000-acre-foot pool in Lake Powell that would act as a modest insurance policy to help protect the Upper Basin against a compact call.

The Grand Valley, which takes its name from the "Grand River," the historical name for the Colorado River, is well-positioned for a demand management program. Water left in the river at this location is almost certain to reach Lake Powell because there are few major diversions between here and the giant reservoir.

And entities in the Grand Valley have rights to a lot of water. With 1912 adjudication dates, Grand Valley irrigation districts are some of the most-senior water rights on the Colorado River and can call about 2,200 cubic feet per second down through the river system.

There is some precedent that a demand management program would work in the Grand Valley, as some irrigators here have participated in two different experimental pay-to-fallow programs undertaken by the Upper Colorado River Commission and the GVWUA. These types of programs have intense interest from many sectors, including municipalities, which often see transferring water from agriculture as a viable way to increase their supplies, as well as from environmental organizations that would like to see more water stay in the river.

RETURNS ON WATER

Since 2017, WAM has made investments in Grand Valley agriculture, choosing to make purchases of parcels in batches every few months. But in the past six months, the hedge fund has taken one step that signals what could be a renewed effort to sway Western water rules in its favor.

WAM recently brought onto its team a heavy hitter in the world of Colorado River politicking: Denver-based attorney James Eklund.

Eklund is the former director of the state's top water policy agency, the Colorado Water Conservation Board, and served as the state's representative to the Upper Colorado River Commission, another powerful policymaking agency on the river. He was one of the architects of the Drought Contingency Plan, the document that made the case for a demand management program throughout the Upper Basin. Soon after he left these public posts, he began representing WAM as counsel.

Eklund, who comes from a Western Slope ranching family, says WAM's strategy is to buy irrigated land and then pump money into cutting-edge technology and practices, thereby increasing irrigation efficiency and crop yield. The leftover water could be, in exchange for payment, sent downstream under a demand management program.

"I definitely think that if there's a program that pays farmers, (WAM is) interested in it — and for good reason," Eklund said. "They want to make sure their investment is generating the types of returns that their investors expect."

That strategy doesn't sit well with Andy Mueller, general manager of the Colorado River Water Conservation District. His organization's mission is to protect water interests on the Western Slope, which often means protecting agricultural interests. He worries that WAM's land buys are being done with the intent to separate the water from the land and that the private equity fund does not have the community's best interest at heart.

"I think a charitable view would be that they are engaging in the acquisition of private property in a capitalistic society, and they have the right to do that," Mueller said. "And that might be as charitable as I could get with them."

So far, WAM has been keeping the land in agricultural production, much the same as it had been with previous owners. According to Colorado water law, to retain its agricultural water rights, the company must continue to put the water to "beneficial use," or, in other words, utilize the water to keep growing crops.

And Mueller's fear of separating water from land isn't currently possible under the rules of GVWUA, where three-quarters of the land purchased by WAM sits. Under that organization's rules, the water cannot be sold separately from the land; you must own the land to get the associated water.

Without access to GVWUA records, it is difficult, if not impossible, to figure out exactly how much water WAM has the rights to. Class 1 land irrigated by GVWUA comes with 4 acre-feet of water per acre each irrigation season.

There is not a way to tell from publicly available property records how much of the land WAM has purchased is irrigated Class 1 land. But if all the land WAM has purchased is Class 1, then it would have at least 6,636 acre-feet of water.

Eklund said the amount of water held by WAM is akin to financial information, which the hedge fund, per its policy, won't disclose. GVWUA director Mark Harris and the organization's counsel, Kirsten Kurath have both repeatedly declined to be interviewed on the record for this story. However, Kurath, said in an email that GVWUA is aware of and monitoring activities within its district.

Another lingering, hard-to-answer question is how much WAM's water is worth. Under the System Conservation Pilot Program, run by the Upper Colorado River Commission, Grand Valley farmers were paid \$200 for every acre-foot of water they left in the river. Using this number as a benchmark, WAM's 6,636 acre-feet of water could currently be worth more than \$1.3 million. But that price the program paid to farmers was to lease it for only one year, which could bring the true value of the transferred water to tens of millions of dollars, experts say. How much it could be worth in a hotter, drier future is unknown.

"A lot of the crops we grow are not very profitable, so I think they are projecting, hey, this water is going to be more valuable than even the crops they are growing with it," Lopez said.

PREVENTING SPECULATION

WAM's land buys have not escaped the attention of Colorado lawmakers, who say what the company is doing is legally dubious. State Sen. Kerry Donovan is a rancher who represents District 5, a stretch of rural mountains, agricultural valleys and ski towns on the Western Slope.

In the 2020 legislative session, before the coronavirus pandemic slowed legislative activity, she sponsored Senate Bill 48, which Gov. Jared Polis recently signed into law. The new legislation directs Colorado's Department of Natural Resources to convene a workgroup to explore ways to strengthen the state's anti-speculation law.

"I also hope (this bill) sends a message to people that might be looking to Colorado to make a quick buck that we're not interested in that type of behavior in our state," Donovan said. "If you're just coming up here to buy up water to turn into a profit in the years to come for your clients, like, 'No, thank you.'"

Colorado's current anti-speculation doctrine is based on case law that says those seeking a water right must have a vested interest in the lands to be served by the water and must have a specific plan to put the water to beneficial use.

"(WAM's) goal is to buy assets, to make money — and as much money as they can," Donovan said. "I don't want that type of player in the prior appropriation system, just full stop."

WAM attorney Eklund says the investment firm's directors are not speculators; they are farmers.

"The characterization of any farming or ranching operation that is putting water to a beneficial use as a speculator, that's just plain-and-simple wrong," he said. "In light of Colorado water law, this is not accurate as a description that they're speculating here."

Eklund sees a bigger role for WAM and other similar players in a potential future water market. He would like to see Colorado fill up that insurance pool in Lake Powell as quickly as possible and said WAM can help the state do that.

“(WAM is) looking at how they can move water down to Lake Powell to avert a crisis,” Eklund said. “And they’re trying to make sure that we’re becoming more resilient in the agricultural economy in the Grand Valley by strategically planning for how that water gets into the account in Lake Powell.”

A SHIFT?

The type of land purchase that WAM usually pursues has recently shifted. All of the Grand Valley land that the company bought up until this year had been irrigated with water from the Government Highline Canal, where the right to water depends on how much irrigated acreage someone has and where water is tied to the land.

But WAM’s most recent purchase in January was a \$6 million deal on 541 acres in Fruita and irrigated by the Grand Valley Irrigation Company Canal, the other big player in Grand Valley agriculture. In its delivery system, shares of water can be bought and sold, and the amount of water is not tied to the land. It marks a departure from the company’s previous purchases, even as Eklund maintains it’s not a change in WAM’s strategy.

“I would say it’s very significant,” Mueller said. “Land that is irrigated under a private water right like the GVIC, that becomes more challenging and more threatening from a permanent-dry-up perspective.”

But even as suspicion and skepticism run high, some Grand Valley farmers, including Lopez, say WAM has been a good neighbor so far.

“Absolutely, they are committed to the future of agriculture in the Grand Valley. They are fronting a lot of money to do these irrigation projects and leasing the ground back to the farmers who had farmed it already,” Lopez said. “Now, is that just to look good to the community and their investors? I have no idea.”

This story is part of a series on water investment in the West, produced by KUNC, Aspen Journalism, KJZZ in Arizona and the Nevada Independent.



SOUTHWESTERN WATER CONSERVATION DISTRICT

2020 State Legislative Update: [June 22, 2020](#)

Below is a summary of 2020 water-related legislation considered by the Colorado General Assembly. These summaries apply to the bills as introduced, unless otherwise noted, and are pulled directly from the bill text [online](#).

Click on the bill number to view the most recent bill language and other information.

The Colorado Water Congress (CWC) State Affairs Committee met on June 11th and June 15th. The Colorado General Assembly adjourned on June 15th.

THE FOLLOWING BILLS PASSED.

[SCR20-001](#)

(Passed) Repeal Property Tax Assessment Rates

SWCD Position: Discussion.

CWC Position: Discussion.

Sponsors: Senate (Tate/Hansen), House (Esgar/Soper)

Committee of Reference: Finance

Reference:

Bill Status: Passed on June 12th.

Title: Submitting to the registered electors of the state of Colorado an **amendment to the Colorado constitution to repeal the requirement that the general assembly periodically change the residential assessment rate** in order to maintain the statewide proportion of residential property as compared to all other taxable property valued for property tax purposes and repeal the nonresidential property tax assessment rate of twenty-nine percent.

Summary: Property tax in Colorado is generally equal to the actual value of property multiplied by an assessment rate, and the resulting assessed value is multiplied by each applicable local government's mill levy. The assessment rate for residential real property is established by the general assembly in accordance with a provision of the state constitution that is commonly known as the "Gallagher Amendment" and is limited by section 20 of article X of the state constitution (TABOR). Under the Gallagher Amendment, there are 2 important classes of property for the purposes of determining the residential assessment rate: residential property and nonresidential property. The assessment rate for most nonresidential property is fixed in the state constitution at 29%. The residential assessment rate was initially set at 21%, but the rate has been adjusted prior to each 2-year reassessment cycle to keep the percentage of aggregate statewide assessed value attributable to residential property the same as it was in the year immediately preceding the new reassessment cycle. Currently, the residential assessment rate is 7.15%.

The concurrent resolution **repeals the Gallagher Amendment** so that the general assembly will no longer be required to establish the residential assessment rate based on the formula expressed in the Gallagher Amendment. The resolution also repeals the reference to the residential rate of 21%, which last applied in 1986, prior to the first adjustment required by the Gallagher Amendment. Finally, the resolution repeals the 29% assessment rate that applies for all nonresidential property, excluding producing mines and lands or leaseholds producing oil or gas.

Comments:

<u>SB20-048</u>	(Passed & Signed by Governor) Study Strengthening Water Anti-Speculation Law
SWCD Position:	Discussion
CWC Position:	No position taken, CWC will continue to monitor the bill's progress.
Sponsors:	Senate (Donovan/Coram), House (Roberts/Catlin)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Passed out of the House and Senate. Signed into law by the governor on March 11, 2020.
Title:	Concerning a study to consider the strengthening of the prohibition on speculative appropriations of water
Summary:	<p>Water Resources Review Committee.</p> <p>Current law specifies that an appropriation of water cannot be based on speculation, as evidenced by either of the following:</p> <ul style="list-style-type: none"> • The applicant does not have either a legally vested interest or a reasonable expectation of procuring such an interest in the lands or facilities to be served by the appropriation, unless the appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by the appropriation; or • The applicant does not have a specific plan and intent to divert, store, or otherwise capture, possess, and control a specific quantity of water for specific beneficial uses. <p>The bill requires the executive director of the department of natural resources to convene a work group to explore ways to strengthen current anti-speculation law and to report to the water resources review committee by August 15, 2021, regarding any recommended changes.</p>
Comments:	
<u>SB20-155</u>	(Passed & Awaiting Governor's Consideration) Keep Presumption Noninjury Well on Divided Land
SWCD Position:	Discussion
CWC Position:	No position.
Sponsors:	Senate (Sonnenberg), House (Pelton)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	No amendments. Passed and awaiting governor's consideration.
Title:	Concerning the continued presumption of noninjury to water rights regarding the use of an exempt well for domestic purposes after the land on which the well is located has been divided into multiple parcels.
Summary:	Under current law, a well that is exempt from the state engineer's administration and is used for domestic purposes is afforded a rebuttable presumption that the use of the well will not cause material injury to others' vested water rights or to any other existing well. If the land on which the exempt well is located is later divided into multiple parcels, the well loses that presumption. The bill maintains the presumption of noninjury to vested water rights or other wells when the land on which the well is located is later divided and use of the well continues to meet certain requirements.
Comments:	

<u>SB20-201</u>	(Passed & Awaiting Governor's Consideration) Species Conservation Trust Fund Projects
SWCD Position:	Discussion.
CWC Position:	Support.
Sponsors:	Senate (Donovan), House (Roberts)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Passed as amended on June 12th. Awaiting governor's consideration.
Title:	Concerning support for species conservation trust fund projects, and, in connection therewith, making an appropriation.
Summary:	<p>The bill appropriates \$4 million <i>\$1.5 million</i> from the species conservation trust fund for programs submitted by the executive director of the department of natural resources that are designed to conserve native species that state or federal law list as threatened or endangered or that are candidate species or are likely to become candidate species as determined by the United States fish and wildlife service, allocated as follows:</p> <ul style="list-style-type: none"> • Native terrestrial wildlife conservation, \$1,107,505 <i>\$454,505</i> ; • Native aquatic wildlife conservation, \$892,495 <i>\$295,495</i> ; • Platte river recovery implementation program, \$1,900,000 <i>\$670,000</i> ; and • Selenium management, research, monitoring, evaluation, and control, \$100,000 <i>\$80,000</i> . <p><i>(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)</i></p>
Comments:	
<u>SB20-214</u>	(Passed & Awaiting Governor's Consideration) Suspend 2020 Legislative Interim Committees
SWCD Position:	Discussion.
CWC Position:	Monitor for any possible amendments.
Sponsors:	Senate (Fenberg/Holbert), House (Garnett/Neville)
Committee of Reference:	State, Veterans & Military Affairs
Bill Status:	Passed as amended (see summary below) on June 12 th . Awaiting governor's consideration.
Title:	Concerning legislative interim committee activities, and, in connection therewith, suspending legislative interim activities during the 2020 interim and changing the minimum number of meetings that the early childhood and school readiness legislative commission must hold to be the maximum number of meetings annually that the commission may hold.
Summary:	<p>Executive Committee of the Legislative Council. The bill suspends legislative interim committee activities during the 2020 interim. Specifically, the bill:</p> <ul style="list-style-type: none"> • Prohibits the legislative council of the general assembly from prioritizing any requests for legislative interim committees, including task forces, for the 2020 interim; and • Prohibits meetings, field trips, and legislative recommendations and reports by, and suspends for one year certain reports required to be submitted to, existing legislative interim committees, including the Colorado youth advisory council review committee; wildfire matters review committee; statewide health care review

committee; Colorado health insurance exchange oversight committee; pension review commission and pension review subcommittee; early childhood and school readiness legislative commission; **water resources review committee**; and transportation legislation review committee.

Additionally, the bill removes the requirement that the early childhood and school readiness legislative commission meet at least 4 times each year and instead limits the commission to up to 4 meetings per year.

The bill also reduces the general fund appropriation to the general assembly by \$100,867, to reflect the savings resulting from the suspension of interim committee activities in the 2020 interim.

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

SB20-218	(Passed & Awaiting Governor's Consideration) CDPHE Hazardous Substances Response
-----------------	---

SWCD Position: Discussion.

CWC Position: **Discussion.**

Sponsors: Senate (Fenberg/Lee)

Committee of Reference: Finance

Reference:

Bill Status: Passed with four amendments (see summary below) on June 15th.

Title: Concerning measures by the department of public health and environment to protect the public from certain hazardous substances.

Summary: The bill requires the executive director of the department of revenue to **collect a fee equal to \$25 per truckload for every manufacturer of fuel products** who manufactures such products for sale within Colorado or who ships such products from any point outside of Colorado to a distributor within Colorado and every distributor who ships such products from any point outside of Colorado to a point within Colorado. This fee is used primarily to:

- **Fund the perfluoroalkyl and polyfluoroalkyl substances cash fund;**
- Support the department of transportation in functions related to the administration of hazardous materials *and safe and efficient* freight movement and infrastructure in the state as well as infrastructure projects that enhance the safety of movement of hazardous materials; and
- Support the Colorado state patrol in the regulation of *freight and* hazardous materials on highways in the state.

The executive director of the department of revenue stops collecting the fee for a fiscal year once he or she has collected \$8 million of these fees for that fiscal year.

The bill **creates the perfluoroalkyl and polyfluoroalkyl substances cash fund**, which is used to fund the perfluoroalkyl and polyfluoroalkyl substances grant program, fund the perfluoroalkyl and polyfluoroalkyl substances takeback program, and provide technical assistance in locating and studying perfluoroalkyl and polyfluoroalkyl substances to communities, stakeholders, and regulatory boards or commissions.

The bill **creates the perfluoroalkyl and polyfluoroalkyl substances grant program**. The grant program provides funding for the sampling, assessment, and investigation of perfluoroalkyl and polyfluoroalkyl substances in ground or surface water; water system infrastructure used for the treatment of identified perfluoroalkyl and polyfluoroalkyl substances; and emergency assistance to communities and water systems affected by perfluoroalkyl and polyfluoroalkyl substances.

The bill **creates the perfluoroalkyl and polyfluoroalkyl substances takeback program**. The takeback program is used to purchase and dispose of eligible materials that contain perfluoroalkyl and polyfluoroalkyl substances.

The bill also requires the department of public health and environment to report to the general assembly annually on the use of the perfluoroalkyl and polyfluoroalkyl substances cash fund and the administration of the perfluoroalkyl and polyfluoroalkyl substances grant program and takeback program.

The bill also creates new civil penalties for owners or operators of storage tanks at gasoline dispensing facilities who violate requirements to maintain a vapor collection system and for owners and operators of gasoline dispensing facilities who violate requirements to maintain records.

Lastly, the bill requires stakeholders from gasoline dispensing facilities and gasoline transport truck companies to collaborate with the division of administration in the department of public health and environment in creating maintenance guidelines to assist owners and operators of gasoline dispensing facilities and gasoline transport trucks in complying with the requirements of air quality control commission regulations.

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

<u>SIR20-003</u>	(Passed & Signed by Governor) Water Projects Eligibility Lists
SWCD Position:	Support.
CWC Position:	Support.
Sponsors:	Senate (Donovan), House (Roberts)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Passed and signed by the governor on March 4, 2020.
Title:	Concerning approval of water project revolving fund eligibility lists administered by the Colorado water resources and power development authority.
Summary:	Pursuant to C.R.S. 37-95-107.8 (4)(b), this bill codifies additions, modifications, or deletions to the Drinking Water Project Eligibility List and Water Pollution Control Project Eligibility List, as developed by the Water Quality Control Commission.
Comments:	

<u>HB20-1037</u>	(Passed & Signed by Governor) Augmentation of Instream Flows
SWCD Position:	Discussion
CWC Position:	Support conditioned upon forthcoming amendment.
Sponsors:	House (Arndt), Senate (Coram)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Passed, with amendments, and signed into law by the governor on March 24, 2020.
Title:	Concerning the CWCB's authority to augment stream flows with acquired water rights that have been previously decreed for augmentation use.
Summary:	The bill authorizes the CWCB to augment stream flows to preserve or improve the natural environment to a reasonable degree by use of an acquired water right that has been previously quantified and changed to include augmentation use, without a further change of the water right being required.
Comments:	

<u>HB20-1042</u>	(Passed & Signed by Governor) PFAS Polyfluoroalkyl Substances Manufacturer Notice Requirements
SWCD Position:	Discussion
CWC Position:	Monitor
Sponsors:	House (Valdez, McKean), Senate (Moreno/Tate)
Committee of Reference:	Transportation & Local Government
Bill Status:	Passed & signed by governor on March 24, 2020.
Title:	Concerning a modification of the notice requirements for manufacturers of perfluoroalkyl and polyfluoroalkyl substances.
Summary:	Statutory Revision Committee. House Bill 19-1279, enacted in 2019, requires manufacturers of class B firefighting foam that contains intentionally added polyfluoroalkyl substances to notify, in writing, sellers of their products about the state's new regulations of these products "no less than one year prior to the effective date of section 25-5-1303", which is impossible because the notice requirements did not exist prior to the bill's effective date on August 2, 2019. The bill addresses this error by modifying the effective date of the required notice to prior to August 2, 2020.
Comments:	

<u>HB20-1094</u>	(Passed & Signed by Governor) Repeal Fee Cap On-site Wastewater Treatment System
SWCD Position:	Discussion
CWC Position:	Support.
Sponsors:	House (Catlin/Arndt), Senate (Ginal/Coram)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Passed, with amendment, and signed into law on March 11th.

Title: Concerning a repeal of the dollar limitation on the fee that a local board of health may set for on-site wastewater treatment system permits.

Summary: Current law requires that a local board of health set the permit fee for on-site wastewater treatment system permits in an amount to recover the actual indirect and direct costs associated with the permit and sets a \$1,000 cap on the fee. The bill repeals the dollar limitation on the fee.

Comments:

[HB20-1095](#) (Passed & Signed by Governor) Local Governments Water Elements in Master Plans

SWCD Position: Discussion

CWC Position: Monitor.

Sponsors: House (Arndt), Senate (Bridges)

Committee of Reference: Rural Affairs & Agriculture

Bill Status: Passed, with amendments, and signed by the governor on March 24, 2020.

Title: Concerning the authority of a local government's master plan to include policies to implement state water plan goals as a condition of development approvals.

Summary: The bill authorizes a local government master plan to include goals specified in the state water plan and to include policies that condition development approvals on implementation of those goals.

Comments:

[HB20-1119](#) (Passed & Awaiting Governor's Consideration) State Government Regulation of Perfluoroalkyl and Polyfluoroalkyl Substances

SWCD Position: Support.

CWC Position: Monitor.

Sponsors: House (Exum/Landgraf), Senate (Hisey/Lee)

Committee of Reference: Energy & Environment

Finance

Appropriations

Bill Status: Passed as amended on June 10th. Awaiting governor's consideration.

Title: Concerning the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances.

Summary: The bill addresses the authority of the state government to regulate perfluoroalkyl and polyfluoroalkyl substances (PFAS).

Section 1 of the bill addresses when PFAS may be used for firefighting foam system testing both in general and in certain aircraft hangars.

Section 2 grants the department of public health and environment the power to adopt and enforce standards and regulations that require public drinking water systems to sample drinking water supply sources and finished drinking water for PFAS.

Section 3 clarifies that the water quality control commission may set standards related to PFAS in surface water and groundwater and may require wastewater systems to collect PFAS data relevant to the commission setting PFAS standards.

Section 4 requires the solid and hazardous waste commission to promulgate rules for *both* a certificate of registration for any facility, or fire department, ~~or lessee subject to federal rules and regulations~~ that possesses uses or stores PFAS in firefighting agents or firefighting equipment its operations and for standards for the capture and disposal of PFAS. ~~in firefighting agents or firefighting equipment.~~

Section 3 prohibits the use of class B firefighting foam that contains intentionally added PFAS in certain aircraft hangars beginning January 1, 2023.

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

HB20-1143

(Passed & Awaiting Governor's Consideration) Environmental Justice and Projects Increase Environmental Fines

SWCD Position:	Discussion
CWC Position:	Discussion.
Sponsors:	House (Jackson/Gonzales-Gutierrez), Senate (Winter)
Committee of Reference:	Energy & Environment
Bill Status:	Several amendments (see summary below). Passed on June 10 th .
Title:	Concerning additional public health protections regarding alleged environmental violations, and, in connection therewith, raising the maximum fines for air quality and water quality violations and allocating the fines to environmental mitigation projects.
Summary:	<p>Current state law sets the maximum civil fine for most air quality violations at \$15,000 per day and most water quality violations at \$10,000 per day, but federal law allows the federal environmental protection agency to assess a <i>higher</i> maximum daily fine fines per violation. of \$47,357 for these violations. Sections 1 and 2 and 4 of the bill raise the maximum fine to \$47,357 per day <i>for air quality violations</i> and \$54,833 per day <i>for water quality violations</i> and direct the air quality control commission and the water quality control commission in the department of public health and environment (department) to annually adjust the maximum fine based on changes in the consumer price index.</p> <p>Current law allocates all water quality fines to the water quality improvement fund; section 4 authorizes the use of money in that fund to pay for projects addressing impacts to environmental justice communities. Section 4 2 also extends the repeal date for the water quality improvement fund to September 1, 2025.</p> <p>Current law allocates all air quality fines to the general fund; section 3 allocates them to the newly created community impact cash fund. Section 3 also:</p>

- ~~Specifies that the department is to use money in the community impact cash fund for environmental mitigation projects (EMPs);~~
- ~~Defines an EMP as a project that avoids, minimizes, or mitigates the adverse effects of a violation or alleged violation of the air quality or water quality laws;~~
- ~~Creates the environmental justice advisory board to recommend EMPs in response to violations or alleged violations that affect environmental justice communities; and~~
- ~~Creates an environmental justice ombudsperson position within the department, who serves as chief staff to the advisory board and advocates for environmental justice communities.~~

~~Section 3 also requires the department to post proposed EMPs on the department's website in a format that allows the public to submit comments on the proposed EMP, not approve an EMP until at least 45 days after the EMP has been posted on its website, and include a description of all approved EMPs in its departmental SMART Act presentations.~~

Section 1 sunsets the advisory board on September 1, 2025.

Current law specifies that a person who commits criminal pollution of state waters that is committed:

- *With criminal negligence or recklessly is subject to a maximum daily fine of \$12,500; and*
- *Knowingly or intentionally is subject to a maximum daily fine of \$25,000.*

Section 3 makes a:

- *Criminally negligent or reckless violation a misdemeanor and increases the penalty to \$25,000, imprisonment of up to 364 days, or both; and*
- *Knowing or intentional violation a class 5 felony and increases the penalty to \$50,000, imprisonment of up to 3 years, or both.*

*Current law specifies that a person who knowingly makes any false representation in a required record or who knowingly renders inaccurate any required water quality monitoring device or method is guilty of a misdemeanor and is subject to a fine of not more than \$10,000, imprisonment in the county jail for not more than 6 months, or both. **Section 4** makes these violations a class 5 felony and specifies that if 2 separate offenses occur in 2 separate occurrences during a period of 2 years, the maximum fine and imprisonment for the second offense are double the default amounts.*

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

HB20-1157 **(Passed & Signed by Governor)** **Loaned Water for Instream Flows to Improve Environment**

SWCD Position: Discussion
CWC Position: Support with amendment.
Sponsors: House (Roberts/Will), Senate (Donovan)
Committee of Reference: Rural Affairs & Agriculture

Bill Status: Passed and signed into law by the governor on March 20, 2020.

Title: Concerning the Colorado water conservation board's authority to use water that a water right owner voluntarily loans to the board for instream flow purposes.

Summary: Under current law, the Colorado water conservation board (board), subject to procedural requirements established to prevent injury to water rights and decreed conditional water rights, may use loaned water for instream flows if the loaned water is used for preserving the natural environment of a stream reach that is subject to a decreed instream flow water right held by the board.

The bill expands the number of years within a 10-year period that a renewable loan may be exercised from 3 years to 5 years, but for no more than 3 consecutive years, and allows a loan to be renewed for up to 2 additional 10-year periods. The bill limits the duration that an expedited loan may be exercised for up to one year and prohibits an applicant from seeking additional expedited loans regarding a water right following an approved expedited loan of that water right.

The bill also expands the board's ability to use loaned water for instream flows to improve the natural environment to a reasonable degree pursuant to a decreed instream flow water right held by the board.

In considering whether to accept a proposed loan, the board must evaluate the proposed loan based on biological and scientific evidence presented, including a biological analysis performed by the division of parks and wildlife.

The state engineer will review a proposed loan and must consider any comments filed by parties notified of the application in determining whether the loaned water will not cause injury to other vested or conditionally decreed water rights. The filing fee is increased from \$100 to \$300.

The board is required to promulgate rules regarding the necessary steps for reviewing and accepting a loan for instream flow use to improve the natural environment to a reasonable degree.

The state engineer's decision to approve or deny a proposed loan may be appealed to a water judge, who is required to hear and determine the matter on an expedited basis using the procedures and standards established for matters rereferred to the water judge by a water referee.

Comments:

<u>HB20-1159</u>	(Passed & Signed by Governor) State Engineer Confirm Existing Use Instream Flow
SWCD Position:	Support.
CWC Position:	Support.
Sponsors:	House (Roberts/Catlin), Senate (Donovan/Coram)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Passed and signed into law by the governor on April 1, 2020.
Title:	Concerning the authority of the state engineer to confirm the extent of uses of water in existence on the date of an instream flow appropriation.

Summary: Current law specifies that the Colorado water conservation board's appropriation of water for instream flow purposes is subject to existing uses and exchanges of water. The bill directs the state engineer, in administering current law, to confirm a claim of an existing use or exchange if the use or exchange has not previously been confirmed by court order or decree. The person making the claim may also seek confirmation by the water judge.

Comments:

HB20-1215 **(Passed & Awaiting Governor's Consideration) Sunset Water Wastewater Facility Operators Certification Board**

SWCD Position: Discussion

CWC Position: Support conditioned upon amendment to the bill, which would replace the language that was stricken from the definition of "industrial wastewater treatment facility" in the introduced bill.

Sponsors: House (Valdez, Froelich), Senate (Foote)

Committee of Energy & Environment

Reference: Appropriations

Bill Status: Passed with amendments on June 10th.

Title: Concerning the continuation of the water and wastewater facility operators certification board, and, in connection therewith, implementing the recommendations contained in the 2019 sunset report by the department of regulatory agencies and making an appropriation.

Summary: **Sunset Process - House Energy and Environment Committee.** The bill implements the recommendations of the department of regulatory agencies' sunset review of the water and wastewater facility operators certification board by:

- Extending the repeal date of the board until September 1, 2031 (sections 1 and 2 of the bill);
- Amending the definition of "domestic wastewater treatment facility" to exclude only those small on-site wastewater treatment systems with a design capacity of 2,000 gallons or less per day, unless the system discharges directly to surface water (section 3);
- Repealing the exclusion of facilities designed to operate for less than one year and facilities with in-situ discharges from the definition of "industrial wastewater treatment facilities" (section 3);
- Creating a water and wastewater facility operators fund for fees that the board receives directly and uses for the exclusive use of the regulatory program (section 4); and
- Repealing an obsolete provision of law relating to a reorganization of the board on July 1, 2004 (section 2).

The bill appropriates \$24,815 from the water and wastewater facility operators fund to the department of public health and environment for use by the drinking water program.

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

HB20-1265 **(Passed & Awaiting Governor's Consideration) Increase Public Protection Air Toxics Emissions**

SWCD Position: Discussion. SWCD will not monitor, given limited water nexus.

CWC Position: Discussion.

Sponsors: House (Benavidez/Valdez), Senate (Gonzales/Moreno)

Committee of Energy & Environment

Reference: Finance

Appropriations

Bill Status: Passed as amended (see summary below) on June 12th. Awaiting governor's consideration.
Title: Concerning increased public protections from emissions of air toxics.

Summary: The bill creates a new program to regulate emissions of a subset of hazardous air pollutants, referred to as defines "covered air toxics" which are defined as hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, and benzene, and other hazardous air pollutants specified by the air quality control commission by rule. A stationary source of air pollutants that reported in its federal toxics release inventory filing at least one of the following amounts of a covered air toxic in one for the year 2017 or later is defined as a "covered facility":

- For hydrogen cyanide, 10,000 pounds;
- For hydrogen fluoride, 10,000 pounds;
- For hydrogen sulfide, 5,000 pounds; and
- For benzene, 1,000 pounds.

At least every 5 years beginning in 2026, the commission will review the best available science and adjust, as necessary to protect public health, the list of covered air toxics and their associated emission levels. The commission will:

- Regulate covered air toxics more strictly than is required by the federal clean air act;
- Require covered facilities to monitor their emissions of covered air toxics;
- Set health-based emission limits for covered air toxics if no such limit exists under state or federal law; and
- Establish a real-time community alert system for "incidents", which are unauthorized emissions of an air pollutant from a covered facility.

The division of administration in the department of public health and environment will:

- Consider and prevent adverse cumulative impacts from covered facilities' emissions of hazardous air pollutants when processing air pollution permits for covered facilities that are located in or near disproportionately impacted communities, as determined by the commission by rule;
- Approve a new or amended permit for a covered facility only if there is no net increase in the adverse cumulative impacts of hazardous air pollutant emissions above existing levels in each disproportionately impacted community affected by the emissions; and
- If existing emissions of hazardous air pollutants exceed the health-based emission limits or have unacceptable adverse cumulative impacts on any disproportionately impacted community, require a decrease or cessation in the applicable emissions over the shortest practicable time until the emissions comply with the health-based emission limits and no longer have unacceptable adverse cumulative impacts on any disproportionately impacted community.

"Incidents" are defined as unauthorized emissions of an air pollutant from a covered facility. Each covered facilities facility will:

- Monitor their covered air toxics emissions and make the monitoring data widely available, including to the public; and

- ~~Promptly disseminate information regarding an incident pursuant to the commission's real-time community alert system to the public, affected local governments and other community entities, and local emergency planning and response organizations.~~
- *Conduct outreach to representatives of the community surrounding the covered facility to discuss communications regarding the occurrence of an incident;*
- *Use reverse-911 to communicate with, and make data available to, the community surrounding the covered facility regarding the occurrence of an incident;*
- *Implement reverse-911 within 6 months; and*
- *Pay all costs associated with its use of reverse-911.*

~~The bill specifies violations for a covered facility that is covered by specified federal regulations based on the unauthorized emission of an air pollutant from a flare or pressure relief device and any uncontrolled atmospheric release of an air pollutant from an organic hazardous air pollutant pressure relief device. The commission will review its rules for these facilities and specifically consider adopting more stringent provisions, including:~~

- ~~A requirement that leak detection and repair inspections occur at these facilities on, at a minimum, a semiannual basis or that an alternative approved instrument monitoring method is in place pursuant to existing rules; and~~
- ~~Reductions in fugitive emissions from equipment leaks and wastewater at these facilities.~~

(Note: Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.)

Comments:

[HB20-1403](#) **(Passed & Awaiting Governor's Consideration) Colorado Water Conservation Board Construction Fund Project**

SWCD Position: *Support.*

CWC Position: *Support, as amended in the House Committee on Rural Affairs & Agriculture, to reinstate after one-year of defunding in the 2020-2021 fiscal year, the Water Education Colorado's annual, continuous funding.*

Sponsors: House (Roberts/Catlin), Senate (Donovan/Sonnenberg)

Committee of Reference: Rural Affairs and Agriculture
Appropriations

Bill Status: Passed as amended to strike Water Education Colorado's annual appropriation on June 13th. Awaiting governor's consideration.

Title: Concerning the funding of Colorado Water Conservation Board projects, and, in connection therewith, making an appropriation.

Summary: The bill appropriates the following amounts from the Colorado Water Conservation Board construction fund to the CWCB or the division of water resources in the department of natural resources for the following projects:

- Continuation of the satellite monitoring system operation and maintenance, \$380,000 (section 1 of the bill);

- Continuation of the Colorado floodplain map modernization program, \$500,000 (section 2);
- Continuation of the weather modification permitting program, \$350,000 (section 3);
- Continuation of the Colorado Mesonet project, \$150,000 (section 4);
- Acquisition of LIDAR data, \$200,000 (section 5)
- Continuation of the Arkansas river decision support system, \$500,000 (section 6);
- Continuation of the Colorado decision support system operation and maintenance, \$500,000 (section 7);
- Continuation of the water forecasting partnership project, \$350,000 (section 8);
- Continuation of the Colorado water loss control initiative, \$1,000,000 (section 9);
- Continuation of the watershed restoration program, \$4,000,000 (section 10); and
- Continuation of the alternative agricultural transfer methods grant program, \$750,000 (section 11).

The state treasurer will make the following transfers from the CWCB construction fund:

- Up to \$2,000,000 on July 1, 2020, to the litigation fund (section 12); and
- \$1,000,000 on July 1, 2020, to the fish and wildlife resources fund (section 13).

Section 14 appropriates \$7,500,000 to the CWCB to continue implementation of the state water plan from the CWCB construction fund to be used as follows:

- Up to \$3,000,000 to facilitate the development of additional storage, artificial recharge into aquifers, and dredging existing reservoirs;
- Up to \$1,000,000 for grant funding to implement long-term strategies for conservation, land use, and drought planning;
- Up to \$500,000 for grants for water education, outreach, and innovation efforts;
- Up to \$1,500,000 for agricultural projects; and
- Up to \$1,500,000 for environmental and recreational projects.

The CWCB is authorized to make loans from the severance tax perpetual base fund or the CWCB construction fund:

- In an amount up to \$23,230,000 to the Pueblo conservancy district to bring levees up to federal emergency management agency standards (section 15);
- In an amount up to \$17,250,800 to the Tunnel Water Company to rehabilitate the Laramie-Poudre tunnel (section 16); and
- In an amount up to \$90,000,000 to the southeastern Colorado water conservancy district to provide nonfederal cost-sharing funding for the Frying Pan-Arkansas project.

\$10,000,000 is also transferred from the severance tax perpetual base fund to the CWCB construction fund and then appropriated from the CWCB construction fund for the 2020-21 state fiscal year to the CWCB to grant money to the southeastern Colorado water conservancy district for the Frying Pan-Arkansas project (section 17).

Current law prohibits the CWCB from recommending treated water distribution systems to the general assembly, and section 18 removes the prohibition.

Section 19 extends the CWCB's water efficiency grant program to June 30, 2030.

Section 20 reduces the \$1,700,000 appropriation made to the CWCB in the 2019-20 state fiscal year for stakeholder outreach and technical analysis regarding the development of a water resources demand management program to \$833,258, which amount is available to the CWCB through the 2020-21 state fiscal year.

Current law authorizes an annual, continuous appropriation of \$150,000 from the CWCB construction fund to the Colorado water conservation board for the ongoing operations of a water education foundation, which is currently known as Water Education Colorado.

Section 21 ~~repeals the continuous~~ *suspends the appropriation for the 2020-21 state fiscal year.*
(Note: *Italicized words indicate new material added to the original summary; dashes through words indicate deletions from the original summary.*)

Comments:

THE FOLLOWING BILLS HAVE BEEN POSTPONED INDEFINITELY OR LAID OVER.

SB20-008 (Postponed Indefinitely) Enhance Penalties Water Quality Criminal Violations

SWCD Position: Discussion.

CWC Position: **Support.**

Sponsors: Senate (Winter), House (Jackson/Hooton)

Committee of Reference: Agriculture & Natural Resources

Bill Status: Postponed indefinitely (House Energy & Environment, May 28th).

Title: Concerning the enhancement of penalties for criminal violations of water quality laws.

Summary: Current law specifies that a person who commits criminal pollution of state waters that is committed:

- With criminal negligence or recklessly is subject to a maximum daily fine of \$12,500; and
- Knowingly or intentionally is subject to a maximum daily fine of \$25,000.

Section 1 of the bill makes a:

- Criminally negligent or reckless violation a misdemeanor and increases the penalty to \$25,000, imprisonment of up to one year, or both; and
- Knowing or intentional violation a class 5 felony and increases the penalty to \$50,000, imprisonment of up to 3 years, or both.

Current law specifies that a person who knowingly makes any false representation in a required record or who knowingly renders inaccurate any required water quality monitoring device or method is guilty of a misdemeanor and is subject to a fine of not more than \$10,000, imprisonment in the county jail for not more than 6 months, or both.

Section 2 makes these violations **a class 5 felony** and specifies that if 2 separate offenses occur in 2 separate occurrences during a period of 2 years, the maximum fine and imprisonment for the second offense are double the default amounts.

Comments:

SB20-024	(Postponed Indefinitely) Require Public Input on Water Demand Management Program
SWCD Position:	Discussion
CWC Position:	Monitor.
Sponsors:	Senate (Coram/Donovan), House (Arndt/Catlin)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Postponed indefinitely (Senate Agriculture & Natural Resources, January 30th)
Title:	Concerning the inclusion of public input in the development of a state water resources demand management program.
Summary:	<p>Water Resources Review Committee.</p> <p>The bill requires the CWCB and the water resources review committee to involve the public and provide opportunities for public comment, using procedures similar to those used for initial adoption of the state water plan, before adopting any final or significantly amended water resources demand management program as part of the Colorado upper basin states' drought contingency plan.</p>
Comments:	
SB20-153	(Postponed Indefinitely) Water Resource Financing Enterprise
SWCD Position:	Discussion
CWC Position:	Oppose.
Sponsors:	Senate (Coram)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Postponed indefinitely (Senate Agriculture & Natural Resources, February 13th).
Title:	Concerning the creation of an enterprise that is exempt from the requirements of section 20 of article X of the state constitution to administer a fee-based water resources financing program.
Summary:	<p>The bill creates the water resources financing enterprise (enterprise). The board of the enterprise (board) consists of the board of directors of the Colorado water resources and power development authority and the Colorado water conservation board. The enterprise will provide financing to "water providers", defined to include drinking water suppliers, wastewater treatment suppliers, and raw water suppliers. Raw water suppliers are limited to those that provide raw water for treatment and use as drinking water.</p> <p>Customers of drinking water suppliers will pay a fee to the supplier, who will transmit it to the enterprise to be used for the financing. The fee is 25 cents per 1,000 gallons of drinking water delivered per month to each metered connection in a drinking water supplier's public water system, collected after the first 4,000 gallons of drinking water delivered per month to an individual metered connection. The board may adjust the fee based on inflation and equity concerns for large nonresidential customers and customers who pay tiered rates that start higher than 4,000 gallons per month.</p> <p>The enterprise can provide financing for grants, loans, and in-kind technical assistance in arranging third-party financing. In determining whether to provide financing, the board shall consider the following factors:</p>

- A water provider's ability to pay, including whether the water provider has sought or received other financial assistance;
- Whether a water provider is subject to noncompliance or increased requirements related to the provision of raw water, drinking water, water treatment, or wastewater treatment;
- Whether the proposed use of financing relates to a project identified in and in furtherance of the state water plan; and
- The geographic location and demographic characteristics of the water provider and its customers.

The enterprise shall provide, and a water provider may use, the financing only:

- In connection with the provision of raw water, drinking water, water treatment, or wastewater treatment; and
- For feasibility studies, consulting, planning, permitting, and construction of infrastructure and water conservation projects and related recreational, hydroelectric, and flood control facilities, including necessary enlargement and rehabilitation of facilities but excluding maintenance and operation.

Comments:

[SB20-159](#)

(Laid Over to Dec 31, 2020) Global Warming Potential for Public Project Materials

SWCD Position: Monitor.

CWC Position: Monitor.

Sponsors: Senate (Hansen), House (N/A)

Committee of Reference: Transportation & Energy

Reference:

Bill Status: Laid over to 12/31/2020 on Senate Second Reading.

Title: Concerning measures to limit the global warming potential for certain materials used in public projects.

Summary: The department of personnel (department) is required to establish a maximum acceptable global warming potential for each category of eligible materials used in a public project. The bill specifies which building materials are eligible materials.

The department is required to set the maximum acceptable global warming potential at the industry average of facility-specific global warming potential emissions for that material and to express it as a number that states the maximum acceptable facility-specific global warming potential for each category of eligible materials.

The department is required to submit a report to the general assembly regarding the method it used to develop the maximum global warming potential for each category of eligible materials and may make periodic downward adjustments to the number to reflect industry improvements.

For invitations for bid for public projects issued after a certain date, the contractor that is awarded the contract is required to submit to the contracting agency of government a current facility-specific environmental product declaration for each eligible material proposed to be used in the public project.

A contracting agency of government is required to include in a specification for bids for a public project that the facility-specific global warming potential for any eligible material that

will be used in the project shall not exceed the maximum acceptable global warming potential for that material determined by the department.

A contractor that is awarded a contract for a public project is prohibited from installing any eligible material on the project until the contractor submits a facility-specific environmental product declaration for that material.

The bill specifies that in administering the requirements of the bill, an agency of government is required to strive to achieve a continuous reduction of greenhouse gas emissions over time.

The department is required to submit a report to the general assembly regarding the implementation of the bill.

The bill includes the facility-specific global warming potential for each eligible material that will be used in the project and the cost of avoided emissions for the project in the factors to be considered when making an award determination for a competitive sealed best value bid.

Comments:

<u>SB20-189</u>	(Postponed Indefinitely) Local Government Pesticide No Preemption
SWCD Position:	Discussion.
CWC Position:	Discussion.
Sponsors:	Senate (Fenberg), House (Cutter, Duran)
Committee of Reference:	Agriculture & Natural Resources
Bill Status:	Postponed indefinitely (Senate Agriculture & Natural Resources, May 27th).
Title:	Concerning provisions that preempt a local government's authority to regulate the use of pesticides within the local government's jurisdiction.
Summary:	<p>Current state law prohibits local governments from substantively regulating the use and application of pesticides. The bill authorizes local governments to regulate pesticide use and application. In connection with this authorization, the bill:</p> <ul style="list-style-type: none">• Declares pesticide regulation a matter of both statewide and local concern;• Repeals provisions that prohibit local regulation of pesticide use and application and explicitly authorizes a county to enact this type of regulation;• Permits local governments to regulate pesticide use and application except in connection with the cultivation of marijuana and the production of agricultural products;• Clarifies that a local government must meet the requirements of state and federal law; and• Gives state courts exclusive jurisdiction to review local pesticide laws.

Comments:

<u>HB20-1069</u>	(Laid Over Daily) Add Water Well Inspectors Identify High-Risk Wells
SWCD Position:	Discussion
CWC Position:	Support
Sponsors:	House (Saine/Titone), Senate (Sonnenberg/Coram)
Committee of Reference:	Rural Affairs & Agriculture

Bill Status: Passed out of House Rural Affairs & Agriculture Committee, House Finance Committee, and House Appropriations Committee with several amendments. Laid over daily on House Second Reading (June 1st).

Title: Concerning the inspection of water wells.

Summary: **Water Resources Review Committee.**

The bill requires the state engineer to employ a minimum of 4 water well inspectors in the state's water well inspection program.

The bill requires the state board of water well construction and pump installation contractors, on or before November 1, 2020, to promulgate rules for identifying high-risk water wells that should be prioritized for inspection. Thereafter, the state engineer shall use the rules to identify high-risk water wells and shall prioritize the inspection of high-risk water wells.

The bill clarifies that money in the well inspection cash fund shall be appropriated to and expended by the state engineer only for the well inspection program.

(Note: This summary applies to this bill as introduced.)

Comments:

HB20-1072 **(Postponed Indefinitely)** **Study Emerging Technologies for Water Management**

SWCD Position: Discussion

CWC Position: Support

Sponsors: House (Arndt/Saine), Senate (Sonnenberg/Bridges)

Committee of Reference: Rural Affairs & Agriculture

Bill Status: Postponed indefinitely (Senate Agriculture & Natural Resources, May 27th).

Title: Concerning a requirement that the university of Colorado study potential uses of emerging technologies to more effectively manage Colorado's water supply, and, in connection therewith, making an appropriation, conditioned on the receipt of matching funds from gifts, grants, and donations.

Summary: **Water Resources Review Committee.**

The bill declares that new technologies, such as blockchain, telemetry, improved sensors, and advanced aerial observation platforms, can improve monitoring, management, conservation, and trading of water and enhance confidence in the reliability of data underlying water rights transactions. To advance the potential use of these new technologies, the bill:

- Authorizes and directs the University of Colorado, in collaboration with the Colorado Water Institute at Colorado State University, to conduct feasibility studies and pilot deployments of these new technologies to improve water management in Colorado; and
- Appropriates \$40,000 from the general fund, contingent on the university of Colorado's receipt of a matching \$40,000 in gifts, grants, and donations, for the purpose of funding the studies and pilot programs.

Comments:

<u>HB20-1097</u>	(Postponed Indefinitely) Connected Municipal Use No Change If Already Quantified
SWCD Position:	Discussion
CWC Position:	Postponed, CWC formed a subcommittee, which met and collected a lot of good input. The group has decided to shift its approach on an amendment from a subcommittee to a more engaged discussion process this summer.
Sponsors:	House (Young, Arndt)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Postponed indefinitely (House Rural Affairs & Agriculture, February 13th).
Title:	Concerning the ability to use water that has been adjudicated for municipal use in an interconnected treated municipal water supply system if the historical consumptive use of the water right has already been quantified in a previous change of the water right.
Summary:	<p>Current law limits the place of use of water subject to a changed water right that has been decreed for use in a treated domestic or municipal water supply system to only that system. The bill authorizes the use of that water in an interconnected treated domestic or municipal water supply system if:</p> <ul style="list-style-type: none"> • The water is attributable to a water right for which the historical consumptive use has previously been quantified, diverted from a point of diversion that has already been decreed for that water right, and delivered from the decreed treated system to the interconnected treated system without the water being returned to the natural stream; and • The owner of the water right has given written notice to the division engineer that identifies the proposed accounting for the use of the water right and the division engineer has approved the accounting. <p>The owner of the water right must give notice to all persons on the substitute water supply plan notification list for the applicable water division. The division engineer will review any comments received on the proposed accounting and make a determination whether the accounting is adequate. This determination may be appealed to the water judge. Other than the place of use, all of the terms and conditions of the previous change of water right decree continue to apply to the water right. A claim to any return flows from the use of the water right in the interconnected treated domestic or municipal water supply system must be approved by the water judge.</p>
Comments:	
<u>HB20-1138</u>	Public Real Property Index
SWCD Position:	Oppose.
CWC Position:	Monitor.
Sponsors:	House (Coleman/Larson), Senate (Bridges/Gardner)
Committee of Reference:	Transportation & Local Government Appropriations
Bill Status:	Passed out of House Transportation and Local Government Committee, with amendments, on February 19 th . Assigned to House Appropriations Committee.
Title:	Concerning supplementing the centralized inventory of state-owned real property maintained by the office of the state architect to include all publicly owned real property.

Summary: Not later than December 31, 2020, the bill requires each state agency, state institution of higher education, and political subdivision of the state to submit to the office of the state architect (office) a list of all usable real property owned by or under the control of the agency, institution, or political subdivision of the state. This list must include, if applicable:

- The address where the real property is located;
- The size of the real property;
- How the real property is zoned;
- Contact information for the state agency, institution, or political subdivision of the state that owns or controls the real property;
- The plan, if one is available, for the use, development, or sale of the real property; and
- A description that includes the condition of the real property and a measurement of total area of the real property that is vacant, unused, or underdeveloped.

Not later than December 31 of each subsequent year, each state agency, state institution, and political subdivision of the state must submit to the office any updates to the information the agency, institution, or political subdivision of the state originally submitted to the office about the usable real property the agency, institution, or political subdivision of the state owns or controls.

Beginning July 1, 2021, whenever any state agency, state institution of higher education, or political subdivision of the state plans to offer any usable real property for sale, or otherwise plans to solicit any offer to purchase real property, the agency, institution, or political subdivision of the state shall notify the office.

Not later than July 1, 2021, the office must establish and maintain a current database that includes the information listed above. This database must be available free of charge to the public on the office's website.

(Note: This summary applies to this bill as introduced.)

Comments: Amendment to exempt municipal water utilities.

HB20-1164 **(Laid Over to 12/31/20)** **Housing Authority Exemptions from Water Fees**

SWCD Position: Oppose.

CWC Position: Oppose.

Sponsors: House (Rich/Becker), Senate (Zenzinger)

Committee of Reference: Transportation & Local Government

Bill Status: Laid over to December 31, 2020 (House Second Reading).

Title: Concerning the exemption of a housing authority from certain fees imposed by a water conservancy district.

Summary: The bill specifies that housing authorities are exempt from tap fees and development impact fees imposed by a water conservancy district.

Comments:

HB20-1172	(Postponed Indefinitely) No Abandonment of Water Rights for Efficiencies
SWCD Position:	Support.
CWC Position:	Discussion.
Sponsors:	House (Arndt), Senate (N/A)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Postponed indefinitely (House Rural Affairs & Agriculture, March 2nd).
Title:	Concerning protecting the water rights of persons who implement efficiencies that reduce their water usage.
Summary:	<p>Current law provides that a period of nonuse of a portion of a water right is tolled, and no intent to discontinue permanent use is found for purposes of determining an abandonment of a water right, for the duration that the nonuse of the water right by its owner is a result of any of certain conditions. The bill adds a condition that applies when the nonuse of a portion of a water right is a result of the implementation of efficiency improvement projects or methods that result in a reduction of the amount of water diverted for the decreed beneficial use. In such case:</p> <ul style="list-style-type: none"> • For the period of nonuse to be tolled, the owner of the water right must submit written notice of the efficiency improvement project or method to the division engineer, on a form prescribed by the division engineer, within one year of the date that the efficiency improvement project or method is first implemented; and • The nonuse of the portion of the water right is tolled for a maximum of 20 years.
Comments:	
HB20-1233	(Postponed Indefinitely) Basic Life Functions in Public Spaces
SWCD Position:	Oppose.
CWC Position:	Oppose.
Sponsors:	House (Melton, Benavidez)
Committee of Reference:	Transportation & Local Government
Bill Status:	Postponed indefinitely (House Committee on Transportation & Local Government, February 26th).
Title:	Concerning constitutional protections for conducting basic life functions in public spaces.
Summary:	<p>The bill prohibits the state and any city, county, city and county, municipality, or other political subdivision (government entity) from restricting any person from:</p> <ul style="list-style-type: none"> • Conducting basic life functions in a public space unless the government entity can offer alternative adequate shelter to the person and the person denies the alternative adequate shelter; and • Occupying a motor vehicle, provided that the motor vehicle is legally parked on public property or parked on private property with the permission of the property owner.
Comments:	
HB20-1287	(Postponed Indefinitely) Colorado Rights Act
SWCD Position:	Discussion
CWC Position:	Discussion.
Sponsors:	House (Soper), Senate (Marble/Lee)

Committee of Reference:	Judiciary, Appropriations
Bill Status:	Postponed indefinitely (House Judiciary Committee, March 5th).
Title:	Concerning enforcement of Colorado constitutional rights in Colorado state courts.
Summary:	The bill allows a person who has a right, privilege, or immunity secured by the Colorado constitution that is infringed upon to bring a civil action for the violation. The attorney general can also bring an action under the same circumstances. A plaintiff who prevails in the lawsuit is entitled to reasonable attorney fees, and a defendant in an individual suit is entitled to reasonable attorney fees for defending any frivolous claims. Qualified immunity and a defendant's good faith but erroneous belief in the lawfulness of his or her conduct are not defenses to the civil action. The civil action has a two-year statute of limitations. The bill requires a public entity to indemnify its public employees in a claim unless the employee is convicted of a crime related to the claim.
Comments:	

HB20-1327	(Postponed Indefinitely) Water Diversions from Rio Grande Basin
SWCD Position:	Discussion
CWC Position:	Oppose.
Sponsors:	House (Valdez, Will), Senate (Coram)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Bill postponed indefinitely by House Rural Affairs & Agriculture (March 9th).
Title:	Concerning additional requirements applicable to diversions of water from water division 3.
Summary:	<p>The bill prohibits each state agency or instrumentality from approving or assisting any project that diverts water from water division 3, which consists of the Rio Grande river basin, for export to another basin in Colorado or export to any portion of another state unless the state engineer determines, after due consideration of all findings provided by the Colorado water conservation board, that the project will not:</p> <ul style="list-style-type: none"> • Increase the costs or negatively affect operation of the federal closed basin project; • Adversely affect the purposes of any national wildlife refuge or federal wildlife habitat area withdrawal located in water division 3; • Adversely affect the purposes of the Great Sand Dunes national park and Great Sand Dunes national preserve; or • Increase the costs or negatively affect operation of any state parks, state wildlife areas, or lands administered by the state board of land commissioners located in water division 3.
Comments:	

HB20-1338	(Postponed Indefinitely) Operational Severance Tax Transfer to Agriculture Value-Added
SWCD Position:	Oppose.
CWC Position:	Discussion
Sponsors:	House (Arndt), Senate (Donovan)
Committee of Reference:	Rural Affairs & Agriculture Appropriations

Bill Status:	Postponed indefinitely (House Rural Affairs & Agriculture, May 27th).
Title:	Concerning the transfer of money from the severance tax operational fund to the agriculture value-added cash fund to be used to promote agricultural energy-related projects.
Summary:	<p>If there is money in the severance tax operational fund (operational fund) after funding core departmental programs and a reserve requirement, then the state treasurer makes transfers to the natural resources and energy grant programs (grant programs). The agriculture value-added cash fund (cash fund), which was used to promote agricultural energy-related projects, was one of these grant programs in prior fiscal years.</p> <p>The bill recreates the agriculture value-added cash fund as a grant program by requiring the state treasurer to transfer \$500,000, or so much as may be available, for the next 9 state fiscal years, from the operational fund to the cash fund to be used to promote agricultural energy-related projects. The transferred money in the cash fund is continuously appropriated to the department of agriculture for allocation to the Colorado agricultural value-added development board for this purpose only.</p>
Comments:	

<u>HB20-1344</u>	(Postponed Indefinitely) Study Artificial Recharge Max Beneficial Use Water
SWCD Position:	Discussion
CWC Position:	Discussion
Sponsors:	House (Holtorf)
Committee of Reference:	Rural Affairs & Agriculture
Bill Status:	Postponed indefinitely (House Rural Affairs & Agriculture, May 27th).
Title:	Concerning a study of artificial recharge to maximize the beneficial use of water within Colorado.
Summary:	<p>The bill directs the Colorado Water Conservation Board, in consultation with the state engineer and the Colorado Water Institute, to conduct a study to:</p> <ul style="list-style-type: none"> • Evaluate ways to maximize the beneficial use of water within Colorado by recharging aquifers when surplus or excess water is available; • Evaluate ways to minimize the amount of water that flows out of Colorado to downstream states, without risking noncompliance with applicable interstate compacts, United States supreme court decrees, and other federal law; • Identify: <ul style="list-style-type: none"> ○ Specific aquifers that are hydrologically and legally available to be used for artificial recharge and conveniently located for both artificial recharge and subsequent releases; ○ Sources of revenue that could be used to pay for the artificial recharge; and ○ Particular potential or existing artificial recharge projects that would meet the objectives identified in the study; • Examine the role that various water entities might play in financing and implementing artificial recharge projects; and • Recommend legislative or regulatory changes needed to implement the particularly identified artificial recharge projects.

The bill directs the Colorado Water Conservation Board to submit a report summarizing the results of the study to the committees of the general assembly with jurisdiction over water resources by January 1, 2022.

Comments:

Monitoring legislation is integral to keeping a finger on the pulse of dynamic water policy in the state. On behalf of its diverse constituents in southwestern Colorado, the Southwestern Water Conservation District (SWCD) tracks state water legislation closely, specifically through participation in the Colorado Water Congress State Affairs Committee. Beth Van Vurst, SWCD General Counsel, participates in the State Affairs Committee meetings weekly during the legislative session (January-May) to help ensure southwestern Colorado is considered as the State legislature enacts new laws affecting water management.

SWCD staff provides this written summary of water-related legislation, updated throughout the session via email to interested stakeholders and public. To be added to the list, please contact lauras@swwcd.org. We hope that you find the updates beneficial and informative.

Colorado regulators' efforts to fast-track Clean Water Act replacement legislation fails

by [Jerd Smith](#) | Jun 17, 2020 | [Environment](#), [Land Use](#), [Law and Policy](#), [Water Legislation](#), [Water Quality](#) |



The Colorado Department of Public Health and Environment, Sept. 10, 2019. Credit: Jerd Smith

Colorado water quality regulators' attempt to fast-track new rules shielding streams left unprotected by changes to the Clean Water Act was abandoned earlier this month after it failed to win support from lawmakers.

The proposed legislation, never formally introduced, sought to give the state limited authority to review major homebuilding and road projects, among others, that could have harmed streams formerly protected under the Clean Water Act.

But the Colorado Department of Public Health and Environment, after consulting with legislative leaders as well as environmental, water and construction interests, said it could not meet the requirements lawmakers asked of any new legislation proposed during the session, which was cut short by the COVID-19 shutdown.

“Legislative leadership said [any proposed laws] needed to be fast, friendly and free,” said John Putnam, environmental programs director at the CDPHE. “We did a lot of engagement but we did not get to that place that it was going to be perfectly friendly,” he said. “We could not get across the line.”

The CDPHE’s effort drew widespread support from environmental groups and the Colorado Department of Transportation, among others, but it triggered concern among some construction and water interests.

“I thought the issue merited more discussion than was going to be possible during this COVID-compromised session,” said John Kolanz, a Loveland attorney who represents developers and who works on Clean Water Act issues.

Northern Water, one of the state’s largest water providers, said it worked with regulators to try to draft an acceptable bill, but there wasn’t enough time to resolve all the questions the effort generated.

“Other states have taken a year or years to do this,” said Peggy Montaña, Northern Water’s general counsel. “We were trying to get this done in weeks. We could see that it wasn’t going to work. But we intend to continue working with them.”

Only a handful of states have ever sought to assume what’s known as 404 dredge and fill authority, and Colorado officials said they were seeking something less ambitious, regulations that would fill a narrow regulatory gap, rather than the much broader, more complex 404 authority.

“It raises a lot of tough issues,” Kolanz said. “It will be interesting to see where this goes next.”

The 1972 Clean Water Act, among other things, defines which streams and waterways are subject to federal regulation, but those definitions have been fiercely contested in the courts for decades, in part because the United States is home to a wide variety of waterways and wetlands.

Major rivers, such as the Mississippi and the Ohio, carry barge and shipping traffic and are clearly “navigable,” the term early courts used to determine how water would be regulated. If a stream was considered navigable, it was subject to federal law.

But Colorado and other Western states rely on shallow streams that don’t carry traditional commercial traffic. Over the years those streams too became protected by the Clean Water Act, with the Obama Administration issuing a controversial expansion of the act.

Though development and environmental interests have said that a “durable” middle ground must be found to better define protected streams, the political tug-of-war has continued under the Trump Administration, with its officials fighting successfully to roll back measures put in place by the Obama Administration.

Now, under the new Waters of the U.S. rule, or WOTUS, as it is known, thousands of miles of streams in Colorado and other Western states will lose protected status June 22 when the new rule takes effect, with no permitting mechanism to ensure damage to unprotected streams caused by construction and road projects is minimized and repaired.

CDPHE officials are hopeful that a legal challenge issued on May 22 by Colorado Attorney General Phil Weiser to at least temporarily stop the federal rule will be successful, which would give the state more time to design and gain support for its own “Waters of the State” rule.

Putnam said regulators plan to make another effort at the State Capitol next year.

“There was a big push and a lot of time and effort put into this,” Putnam said. “But we just didn’t have the time to get it done.”

Jerd Smith is editor of Fresh Water News. She can be reached at 720-398-6474, via email at jerd@wateredco.org or [@jerd_smith](https://twitter.com/jerd_smith).

Fresh Water News is an independent, nonpartisan news initiative of Water Education Colorado. WEco is funded by multiple donors. Our editorial policy and donor list can be viewed at wateredco.org



<input type="text"/>	Search
----------------------	--------

News Digest

Nevada groundwater regulator rules in favor of fish; decision could threaten major development

Colorado’s oddball June snows will continue, but for how long?

Whiz college kids invent device that will allow a beloved Colorado community well to remain open

Wyoming joins other states backing new rollback of Clean Water Act stream protections



More than 68 percent of voters in Eagle County approved Greater Eagle Fire Protection District's ballot initiative seeking relief under the Gallagher Amendment. (Jason Blevins, The Colorado Sun)

POLITICS AND GOVERNMENT

Gallagher led to \$35 billion in residential property tax cuts. Now Colorado lawmakers want voters to repeal it.

A measure at the Capitol to put the question on the 2020 ballot appears fast-tracked for passage with bipartisan support

JUN 3, 2020 3:32AM MDT



Brian Eason

In a desperate attempt to stave off [further budget calamity](#), state lawmakers are fast-tracking a landmark ballot measure that would ask voters to repeal the

I [Gallagher Amendment](#) — the property tax-limiting constitutional provision that has provided an estimated \$35 billion in tax relief to Colorado homeowners since 1983.

The bipartisan proposal — which requires a legislative supermajority to pass — represents the nuclear option for tackling Gallagher, a sign that the growing economic crisis is upending long-held assumptions about what is politically feasible in tax-averse Colorado. It is also an indication of just how desperate state lawmakers have become as they face an economic abyss unlike any other in their lifetimes.



Last week, state budget writers put the finishing touches on a proposed spending plan that cuts \$3 billion this year and next. And earlier in May, [lawmakers learned that Gallagher](#) could trigger an 18% residential property tax cut, which would mean an additional \$491 million in cuts to schools and \$204 million in cuts to county governments starting in July 2021.

After years of [political hand-wringing](#) over Gallagher's effects on public services across the state, lawmakers said the possibility of a massive tax cut in the middle of a pandemic finally represented a bridge too far.

"We're in an unprecedented moment," said Sen. Chris Hansen, a Democrat from Denver. "And when that happens, some of the business-as-usual hurdles often fall away."

In this case, each side has been energized by different threats. For Democrats, it's the prospect of deep cuts to local funding for public education, with no assurance there will be any state funding to fall back on. For Republicans, the lower property taxes from Gallagher means another round of cuts to fire and

hospital services in the rural communities many of them represent. It also means a potential round of local tax hikes on businesses across the state that are already reeling from the coronavirus shutdown this spring.

Already registered? [Log in here](#) to hide these messages.

Stay on top of it all.

Let us bring Colorado's best journalism to you. Get our free newsletters

Your Email Address

SIGN UP!

A day after the measure's introduction, lawmakers on Tuesday passed the [resolution](#) unanimously out of the Senate Finance Committee, sending it straight to the Senate floor. And after years of inaction, the rapid pace has caught a number of key stakeholders off guard.

A number of local chambers of commerce across the state are in support, but Colorado Counties Inc., a long-time proponent of Gallagher reform that advocates on behalf of county governments, hasn't taken a position.

Scott Wasserman, who runs the left-leaning Bell Policy Center and supports repealing Gallagher, said he has "concerns" about the measure's timing. On the political right, the Independence Institute hasn't taken a stance, while another conservative group, Colorado Rising State Action, opposes it on the grounds that repealing Gallagher won't address broader inequities in the school finance system.

Moreover, like the failed Proposition CC campaign from a year ago, the subject matter is complicated for voters — with huge implications for public services as well as taxpayers' wallets. Gallagher affects different communities in different ways, pitting the financial interests of Front Range homeowners

against rural fire services, business owners and school funding needs that will trickle up to the state budget.

Nonetheless, policymakers say now is the time to try — if only because they can't afford to wait any longer. “We're at the end of the line now,” said Sen. Jack Tate, a Centennial Republican who is co-sponsoring the repeal effort. “We can't be punishing businesses. We can't ... have them continue to p higher and higher tax burden” during an economic downturn.

Want exclusive political news and insights first? Subscribe to **The Unaffiliated**, the political newsletter from The Colorado Sun. [Join now](#) or [upgrade your membership](#).

How the Gallagher Amendment works when it comes to property taxes

Adopted by voters in 1982, the Gallagher Amendment is designed to provide ongoing tax relief to homeowners by limiting residential property to no more than 45% of the total property tax base statewide. It required businesses to pick up the remaining 55% share of the tax burden.

Over time, it has accomplished just what it set out to do — and then some. The residential assessment rate, which is used to calculate property taxes, has fallen from 21% when Gallagher was adopted to 7.15% today. Business property is assessed at 29% — meaning businesses pay four times the property tax rate that homeowners do. If the residential rate is cut to 5.88% in 2021 [as projected](#), businesses would be on the hook for five times the residential tax rate.

It helps to imagine Gallagher as a balancing scale, with residential property values on one side, and non-residential property, such as commercial buildings and oil and gas, on the other. Usually, rapidly rising home values are what disrupts the 45% to 55% split, triggering a residential tax cut. This time,

home values are indeed on the rise — but it's a precipitous drop in business values and oil and gas from the current economic downturn that's expected to tip the scale out of balance.

Even though Gallagher gets less attention than another tax-limiting constitutional provision — the Taxpayer's Bill of Rights — it has arguably had just as significant an impact on governance in Colorado.



The Colorado Capitol. (Jesse Paul, The Colorado Sun)

When Gallagher was first adopted in the early 1980s, residential properties were valued at \$35 billion, a figure that represented 53% of all the value in the state, according to [state property tax records](#). Nonetheless, businesses still paid 55% of the state's property taxes, because residential properties were assessed at a slightly lower rate.

Now, amid explosive population growth and rising home prices, Colorado's residential properties in 2019 had a total market value of \$874 billion, or nearly 80% of the statewide total. But thanks to Gallagher, homeowners still pay just 45% of the state's property taxes.

The tax shift away from homeowners has been staggering. The state [Division of Property Taxation estimates](#) that Gallagher has saved homeowners \$35.3 billion in property taxes since 1983. In 2019 alone, homeowners paid \$2.8 billion less than they would have if the Gallagher Amendment had never reduced the assessment rate from 21%. For context, the state's [school funding shortfall](#) — the so-called negative factor — has never exceeded \$1.1 billion in a single year.

But while Gallagher has been a boon to homeowners, who now pay among the lowest [effective property tax rates](#) in the country, it has steadily increased the tax burden on businesses, whose 29% assessment rate is set in the constitution.

Many communities have responded to Gallagher-initiated cuts by raising mill levies — the part of the property tax equation that people are more familiar with. In some places, this happens automatically through what's known as a “floating” mill levy. Each new tax hike now hits businesses four times as hard as residential taxpayers.



Sen. Jack Tate, R-Centennial, delivers his idea — tax incentives for private businesses that offer student loan repayment assistance to employees — to the audience at The Colorado Sun's Big Ideas 2020 Forum at the Cable Center on the University of Denver campus on Jan. 14, 2020. (Eric Lubbers, The Colorado Sun)

Gallagher's impact varies greatly across the state

Part of what has made Gallagher so resistant to political change is that it affects different communities in wildly different ways, distributing its benefits and its downsides unequally across the state.

That's because the Gallagher formula triggers tax cuts based on a statewide calculation, without consideration to what's actually happening to individual taxpayers or specific government agencies.

In metro Denver, for instance, home prices have more than doubled since 2010, rising to \$424,051 from \$202,896. But Gallagher has triggered only two tax cuts in that period, worth about a 10% tax reduction in total.

For the metro area homeowners, Gallagher hasn't provided much relief because the rate cut hasn't come close to offsetting a 109% increase in property values.

From the local governments' perspective, rising property values in many Front Range communities have largely compensated for any cuts to revenue Gallagher could have caused. In 2019 alone, residential values in Denver increased by 20% — more than offsetting Gallagher's 10% assessment rate cuts over the past decade. On top of that, commercial property values have risen steadily, resulting in even more funding for public coffers.

But in some rural areas, the opposite has occurred. Homeowners have been the beneficiaries of Gallagher's tax cuts even when their property values may be stagnant or rising slowly. Meanwhile, small [public agencies](#) that rely on property taxes, like rural [fire departments](#), hospital districts and county governments, have been hard hit as it squeezes public coffers in places that were already struggling financially.

Complicating matters further, some taxing districts don't have much commercial property at all, making a residential tax cut that much harder to cope with financially.



Lawmakers are looking at a four-year freeze for property taxes

While the repeal effort has wide bipartisan support at the legislature — and supporters believe it will win the two-thirds supermajority needed for passage — a companion effort to enact a four-year statutory freeze on assessment rates faces a less certain path.

That bill, which has not yet been introduced, would freeze the residential assessment rate at 7.15% and the business rate at 29% for four years. The rates

can't go up without voter approval under the Taxpayers' Bill of Rights, so this would effectively limit property tax cuts — at least on paper.

This is largely a symbolic gesture because the legislature could repeal the statutory freeze in the future and approve a new rate. Nonetheless, some county commissioners are pushing for it as a condition of their support, saying it would provide some comfort that their revenue streams won't be cut out from under them after the immediate crisis has passed.

The reason: In the long-term, repealing Gallagher could have a downside for local governments. The business tax rate, long enshrined in the constitution, would suddenly be a matter of statute, subject to the whims of the state legislature.

“I think there will be enormous pressure on the legislature — and in some respects rightfully so — to reduce the commercial tax rate down from 29%,” said John Messner, a Gunnison County commissioner, in an interview. “It could put local governments in a worse situation than if we did nothing.”



Our articles are free to read, but not free to report

Support local journalism around the state.
Become a member of The Colorado Sun today!

\$5/month

\$20/month

\$100/month



NATIONAL WATER RESOURCES ASSOCIATION

Presents

NWRA WESTERN WATER TABLE TALK

A unique series of targeted discussions on NWRA's priority issues

Dear NWRA Members,

NWRA has been closely monitoring the evolving situation in Spokane, Washington with respect to the 2020 Western Water Seminar as we continue to prioritize the health and safety of our members.

We have determined that it is not feasible to hold the 2020 Western Water seminar in Spokane as planned because of ongoing limitations on gatherings, travel restrictions, and concerns about COVID-19.

In lieu of the seminar, NWRA will hold a six-part series of virtual, interactive sessions, which will be held on August 6, 13, 20, and 27 and September 10 and 17 (all of them Thursdays). Each session will begin at 2 p.m. EDT and run from one and a half to two hours in length. The events will be recorded and provided to

registrants, so if you are unable to attend a session live, you will still be able to access this top-notch content.

**PLEASE MARK YOUR CALENDAR AND
REGISTER TODAY**

2020 is a financially challenging year for all organizations that rely on conferences revenues, including ours.

However, we at NWRA have not missed a beat in continuing our advocacy with congressional and administration policymakers. The challenges we face in creating more opportunity for infrastructure development and rehabilitation, reducing regulatory burdens, and building partnerships with organizations that understand the importance of a healthy western water system remain considerable. It is *critical* that we have the resources to meet those challenges.

Your support for NWRA is greatly appreciated, and it continues to be needed as we work through the constraints COVID-19 has placed on us and on our valued membership.

Registration for NWRA Western Water Table Talk is \$350.

This format and fee drastically reduce the costs of participation, eliminating travel and hotel costs. It allows you to learn more about the current climate for infrastructure and regulatory reform and how fellow NWRA members are approaching current issues without leaving home.

And, because the cost is so much less than attending the traditional summer seminar, we hope you will register folks in your organization or agency who might never have previously attended an NWRA event. ***To further encourage new participants, we are offering a \$300 registration for first-time NWRA member attendees.***

In other words, you can register two people for less than it would have cost for one to attend the event in person!

We are working very hard to make up for the financial impact of cancelling the April conference in Washington, D.C. With the loss of the Western Water Seminar in its traditional form, staying within our annual budget is even more complicated.

The support you provide for NWRA and our federal advocacy efforts by registering for NWRA Table Talk is your commitment to sustain us as the key voice for all western water providers and users.

PLEASE REGISTER TODAY

Again, these 1.5-2 hour sessions will be held *August 6, 13, 20, and 27 and September 10 and 17 at 2:00pm Eastern*. Additional details on topics and presenters will be forthcoming. The series will feature senior administration officials and congressional leaders and will involve in-depth discussion of pressing policy and legal matters as well as infrastructure funding opportunities.

We look forward to joining you in this new format for sharing information and supporting the western water community.

NWRA | (202) 698-0693 | nwra@nwra.org | nwra.org
STAY CONNECTED





The Time is Now to Invest in Western Water Infrastructure – Let's Do It.

By Christine Arbogast and Patrick O'Toole

The coronavirus crisis reminds those of us in the water world of the importance of the systems which sustain us.

Our water systems are among the very most important. The need for effective planning, preparation and implementation of water policy and infrastructure is critical, as we manage the engines which drive our economy, our health and our safety. It is most certainly a primary focus of the Western water community, which develops and manages the water infrastructure so critical to every individual and every economic sector.

Our organizations and other industry leaders have long anticipated the potential crisis if we fail to invest soon in the aging systems which store and deliver water for safe drinking, for agriculture production and for industry. We will face another crisis if we fail to invest in new water storage infrastructure to save water for use in dry years. Years of recurring drought conditions in Western states, and the economic and human impacts of drought, require us to look ahead.

But as we have seen in the health crisis of the spring of 2020, anticipation on paper isn't enough. We must prepare, and we must invest.

An investment in water infrastructure is a powerful investment in our economy, our communities and our health. Since 1902, the investment in Bureau of Reclamation infrastructure has been about \$20 billion. Annually, this infrastructure spurs \$62 billion in direct and associated economic activity. Between 2010 and 2013, every dollar invested in Army Corps of Engineers civil works generated sixteen dollars in economic benefits. Every year, our economy recoups its investment in water infrastructure multiple times over.

For the 17 Western states studied in a 2015 Family Farm Alliance economic report, the total household income impacts from irrigated agriculture, associated service industries, and food processing sectors was \$172 billion annually. Irrigated farming and ranching is a huge economic driver in the West, particularly in rural communities. However, this economic force would virtually disappear, along with the rural American communities dependent on farming and ranching, if the water infrastructure that supports it crumbles.

Infrastructure needs offer an immediate and long-lasting way to stimulate our deeply troubled economy. We saw the positive impact of such investment after the recession of 2008.

Across the West, there are hundreds of small non-federal dams which store water for domestic and irrigation purposes in rural areas. Many are under state restrictions and cannot store water to capacity because they are not safe. In Colorado, for instance, the cost of many of these dam repairs is \$1-3 million each. That infrastructure investment is one-time and would not require ongoing federal cost.

Let's do it.

Many existing storage facilities, federally owned and provider owned, could easily be expanded to store more water when the semi-arid West is blessed with good precipitation. Enlarging existing facilities has a more immediate impact on supplies, is an affordable way to expand supplies, and enjoys significant public support.

Let's do it.

We've seen technologies develop which increase the efficiency of water delivery for both domestic and irrigation purposes. Increasing the manufacture of these technologies and providing incentive for applying them to municipal water systems and agricultural production can conserve finite water resources. In this way, they can be made available in drought periods and can be used for economic development across the board.

Let's do it.

And we know that, while we are unlikely to building another Hoover or Grand Coulee Dam, the long term value of developing more storage is certain. It must be done in an environmentally sensitive and strategic way. And it must be done cooperatively between the federal, state and local water agencies which ensure the water supply which absolutely is our lifeblood.

Crisis—be it a health crisis, a drought crisis, a flood crisis—compels us to work together.

Partnerships are a critical piece of infrastructure investment, and can reach beyond the three levels of government to private sector involvement as well. Policies on infrastructure investment would be most effective if a cooperative development and management structure were a requirement.

The infrastructure investment conversation has been loud and clear in recent years. But the actual infrastructure investment has not been made.

The time is now. Let's do it.

We understand the fiscal difficulty of a large infrastructure stimulus package. But we also understand the historical proof of its effectiveness

If indeed our leaders are unable to reach consensus on a large-scale infrastructure investment plan, we have other specific opportunities for the Administration and Congress to invest in Western water infrastructure. Bills like S. 1932 the *Drought Resiliency and Water Supply Infrastructure Act*, and S. 2044 the *Water Supply Infrastructure Rehabilitation and Utilization Act* address needs long anticipated by Western water resource managers. The biannual Water Resources Development Act, currently teed up in the House and the Senate, affords the opportunity to anticipate and act on Western water needs if it includes a title for Bureau of Reclamation programs and projects, as it has in recent years.

The importance of anticipating a potential crisis, and effectively preparing for it with solid planning and investment, can mitigate or even avert the crisis. We in Western water have done that. The federal government needs to be our partner.

Let's do it.

Christine Arbogast is President of the National Water Resources Association, which represents state water associations, irrigation districts, municipal water providers, end water users and their collective interests in the management of irrigation and municipal water supplies throughout the Western U.S. and portions of the South.

Patrick O'Toole, a cattle and sheep rancher from Wyoming, is President of the Family Farm Alliance, which advocates for family farmers, ranchers, irrigation districts, and allied industries in sixteen Western states. The Alliance is focused on one mission – to ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers.

The NWRA and the Alliance are organizations that represent the water users that are the cornerstone of western communities and their economies.

MEMO

Southwestern Water Conservation District

From: Laura Spann
To: SWCD Board
Date: June 19, 2020
Subject: SWCD Funding Recipients, COVID-19 Program Modifications

The constantly shifting circumstances during the COVID-19 pandemic have prompted a few recipients of SWCD funding to reach out for permission to shift their allocation from what the SWCD board originally funded to new or re-envisioned programs.

We imagined this might be a widespread issue, so after guidance from the Finance Committee, I emailed all 2020 SWCD grant recipients and entities that receive annual funding from SWCD requesting a brief letter if they've had any major COVID-19 related adjustments or budgetary changes.

- No grant recipients responded back with major project or budgetary adjustments. I asked them to stay in touch and provide a written request if programs or budgets change dramatically in the fall.
- The Watershed Education Program, which conducts field trips with 5th graders in the San Miguel basin, may not know until late summer whether fall field trips can move forward, so their potential funding adjustment request will likely be presented at the August board meeting.
- Water Education Colorado has submitted a written request (see enclosed) to reallocate \$1,500 of SWCD's sponsorship originally slated for the June basin tour, which was cancelled, to update two publications: the Citizen's Guide to Water Law and the Citizen's Guide to Interstate Compacts. Of all the Citizen's Guides, these two are the most often used by the Water Information Program for events and the most sought after by constituents. Having them updated with the most recent and relevant information seems like a good use of SWCD dollars to benefit southwestern Colorado and contribute to an educational effort of statewide value. I would recommend the board consider approving this request for the reallocation of SWCD's sponsorship of Water Education Colorado.



June 16, 2020

Southwestern Water Conservation District
Board of Directors
841 E. 2nd Ave.
Durango, CO 81301

Dear SWCD Board of Directors:

I am writing this program support adjustment proposal in response to the request sent via Laura Spann on May 26, 2020. As you have already recognized, the pandemic has significantly impacted our ability to continue with in-person programming that was originally planned, and generously supported by SWCD. As a reminder, your partner support for WEco this year was dedicated as follows:

\$2,500 Basin-level membership

\$2,500 Water Fluency dinner sponsorship (Southwest Basin program)

\$1,500 Annual River Basin Tour Bus sponsorship (Lower Arkansas Basin tour)

\$3,000 Headwaters magazine sponsorship (\$1,000 x 3 issues)

\$1,000 President's Reception Cascade-level sponsorship

The most significant adjustment we've made that pertains to a program sponsored by SCWD was the cancellation of the 2020 Annual River Basin Tour, planned for June 2-3 and now postponed until 2021. SWCD was committed as a bus sponsor for \$1,500. We are proposing that this support be shifted toward publication support for the Citizen's Guide to Colorado Water Law, which will be updated and published as a 5th edition this fall, as well as the Citizen's Guide to Interstate Compacts, which will be updated and published as a 3rd edition in spring 2021.

This Water Law guide explores the basics of Colorado water law—including its origins, evolution over time, and current applications. Year after year, this guide is continuously our best-seller!

1600 Downing Street, Ste. 200, Denver CO 80218 :: P (303) 377-4433 :: F (303) 377-4360 :: WaterEducationColorado.org

BOARD MEMBERS

Lisa Darling
President

Gregory Hobbs
Vice President

Gregg Ten Eyck
Secretary

Alan Matlosz
Treasurer

Eric Hecox
Past President

Perry Cabot
Greg Johnson
Lauren Ris

Nick Colglazier
Julie Kallenberger
Rep. Dylan Roberts

Sen. Kerry Donovan
David LaFrance
Travis Robinson

Paul Fanning
Dan Luecke
Laura Spann

Jorge Figueroa
Kevin McBride
Chris Treese

Matt Heimerich
Amy Moyer
Brian Werner

The Interstate Compacts guide covers the development and parameters, as well as the successes and challenges, of Colorado's nine interstate compacts and two equitable apportionment decrees, which govern how we share water with downstream states. This is also one of our most popular guides!

Sponsorship support will be used toward the production, printing and distribution of the Citizen's Guides.

Your benefits as a Distribution-level sponsor (valued at \$1,000 for each guide) include:

- 10 free copies of the guide to distribute to your networks
- Logo featured on the back cover of the guide, in print and digital versions*
- Logo on the website store page for the guide
- Logo and sponsor thank you in promotional materials for the guide
- Invitation to submit a Your Water Colorado blog post (subject to WEco editorial rules)

We hope that this adjustment will be amenable to you, and that by offering a substitution of a higher value sponsorship (two guides at \$1,000 each compared to \$1,500 for the tour sponsorship) will also help offset any further adjustments that may limit participation in the 2020 President's Reception or 2020 Water Fluency program.

At this time, the Water Fluency program's first session, planned for June 23-24, will be held as a virtual session, and we still hope to hold an in-person second session on Sept. 2-3 in Durango or Cortez, at which time we would also hold your sponsored dinner.

Our President's Reception has been postponed from May 8 to Sept. 18, and we are actively exploring a virtual contingency plan. We will be sure to keep you updated as details come together.

Thank you for considering how you can consider to support our efforts during this challenging time. I am ever so grateful for your longstanding and loyal support in making our work possible!

Sincerely,

A handwritten signature in black ink, reading "Jayla Poppleton". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Jayla Poppleton
Executive Director

Hydrologic Conditions June 2020

Southwestern Water Conservation District

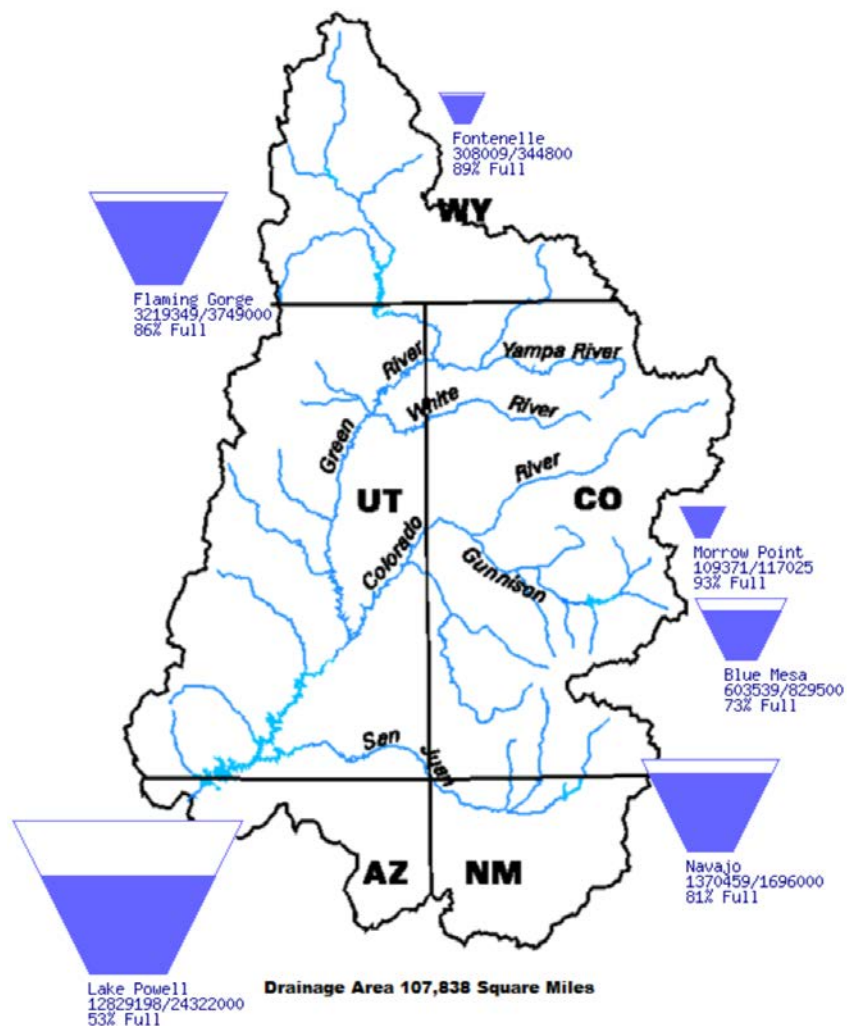


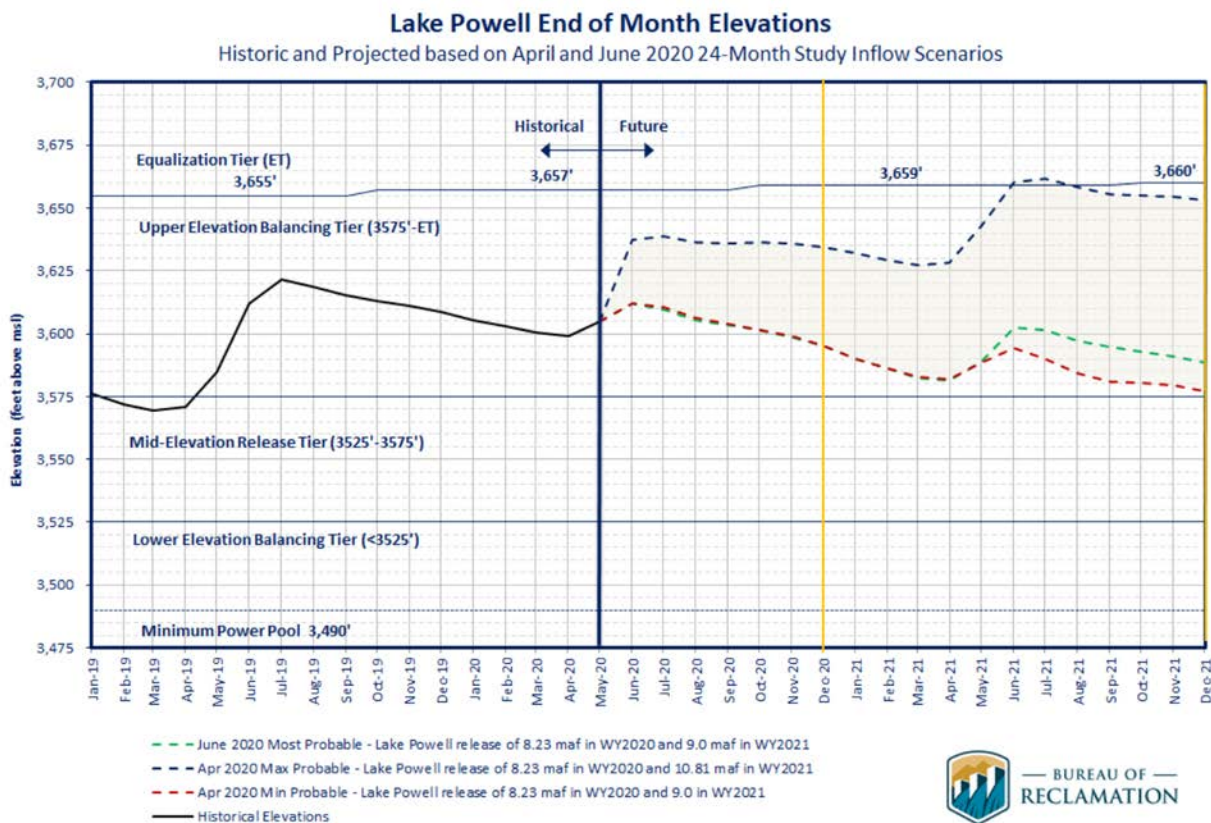
THE COLORADO RIVER

COLORADO RIVER HYDROLOGY & STORAGE CONDITIONS The period 2000-2019 was the lowest 20-year period since the gates were closed at Glen Canyon Dam in 1963, with only 5 of the 19 years yielding above average hydrology. **Lake Powell** levels were at 53% of capacity with 12.8 maf in storage on June 21st and the content at **Lake Mead** was 41% of capacity with 10.7 maf in storage. **For Water Year 2020**, coordinated reservoir operations are in the Upper Elevation Balancing Tier. Under this Tier the initial annual water year release volume is 8.23 maf.

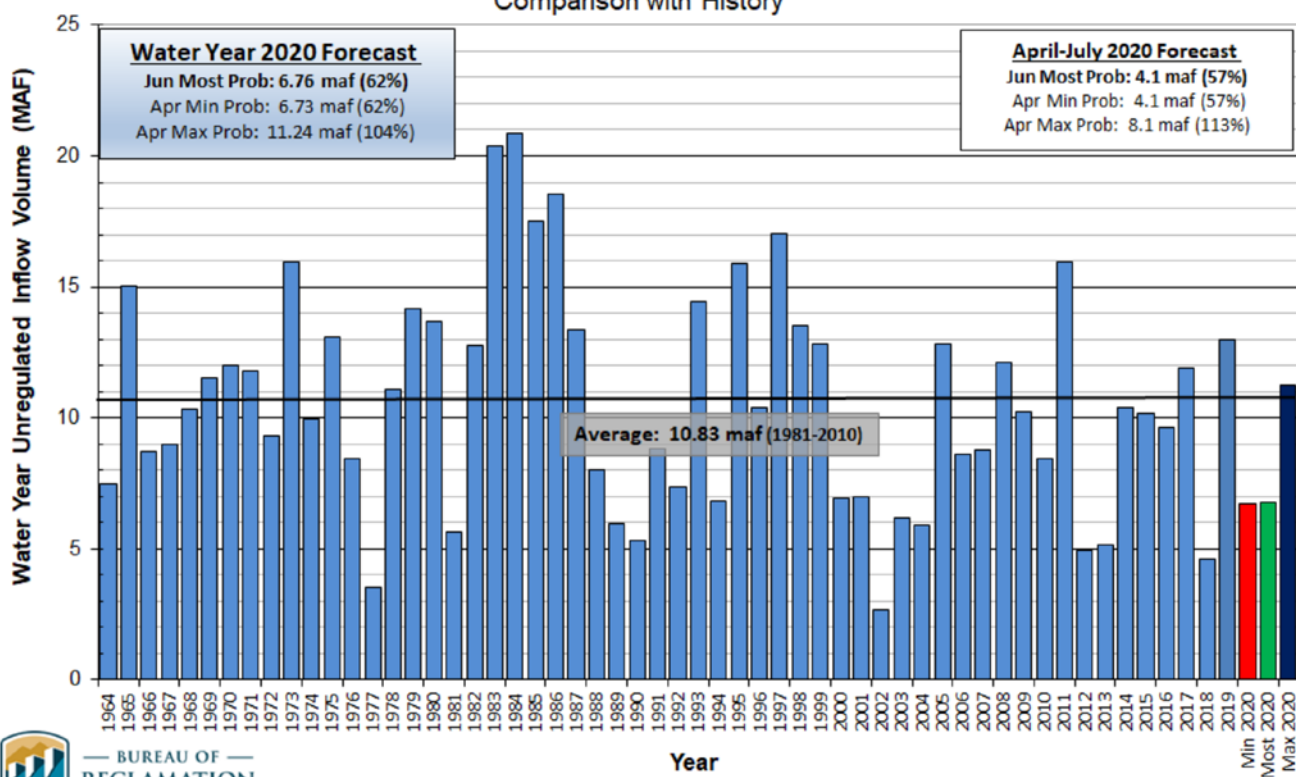
Data Current as of:
06/21/2020

Upper Colorado River Drainage Basin





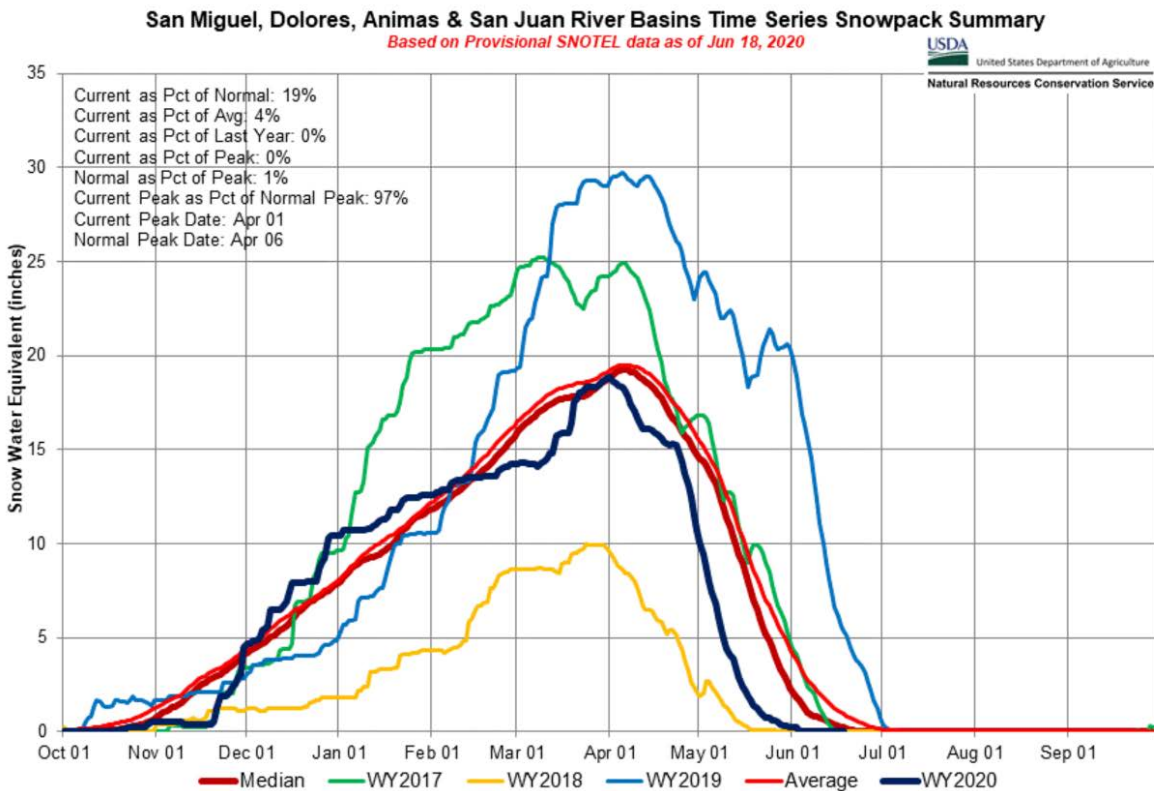
Lake Powell Unregulated Inflow Water Year 2020 Forecast (issued June 3) Comparison with History



HYDROLOGY SNAPSHOT

SNOWPACK/ RUNOFF

As you can see in the graphic below, snowpack rapidly declined. Soils are exceptionally dry throughout the southern half of the state.



Here are stream flows from across our region.

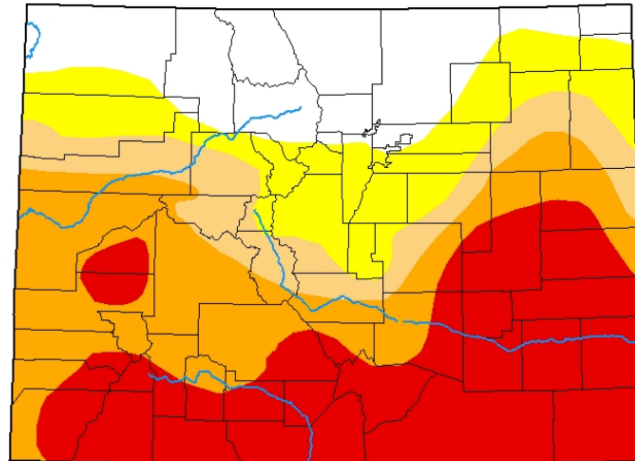
STREAM FLOWS ON 6/22/20

San Juan at Pagosa Springs – 137 cfs
 Piedra at Arboles – 125 cfs
 Pine near Ignacio – .95 cfs
 Animas at Durango – 877 cfs
 La Plata at Hesperus – 25.1 cfs
 Mancos near Towaoc – 0 cfs
 McElmo Creek near Cortez – 17.7 cfs
 Dolores at Dolores – 159 cfs
 San Miguel at Placerville – 253 cfs

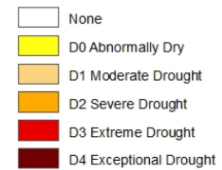
U.S. Drought Monitor Colorado

June 16, 2020
(Released Thursday, Jun. 18, 2020)
Valid 8 a.m. EDT

The latest U.S. Drought Monitor shows deepening drought conditions across the San Juans and Sangre de Cristos as well as southeastern Colorado centered around Lamar. D3 (extreme) conditions first emerged on the Drought Monitor on May 5th.



Intensity:



The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

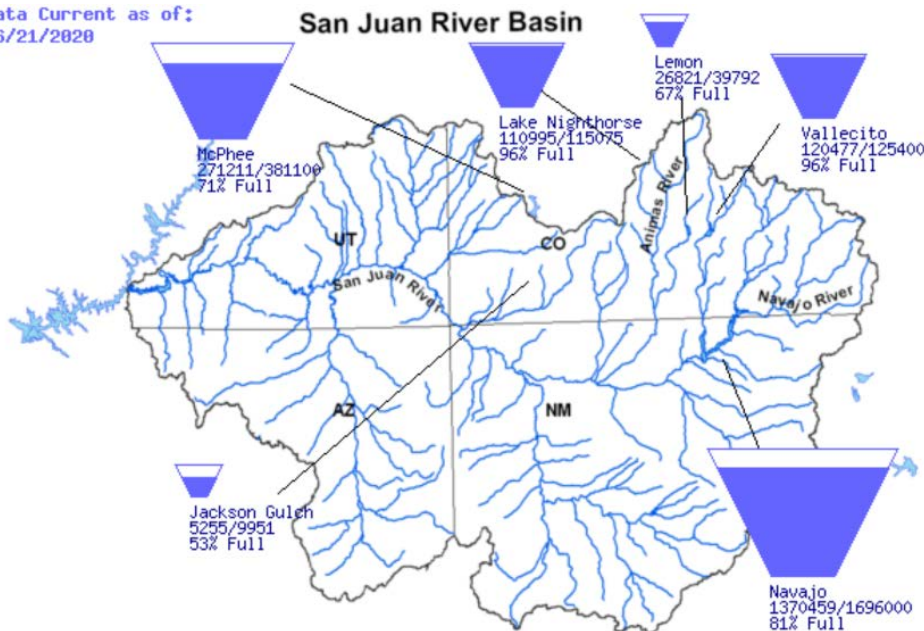
Author:

Richard Tinker
CPC/NOAA/NWS/NCEP



droughtmonitor.unl.edu

Data Current as of:
06/21/2020



Reservoir storage remains just above average for most major basins in Colorado except the southwest reservoirs (95% avg),



2020 Abandonment Timeline with Statutes

April 2019

July 1, 2020: Official Publication Date for the Division Engineer's Proposed Abandonment List per CRS 37-92-401(1)(a).

By July 31, 2020: The Division Engineer shall send by certified mail notices to the owner or last-known owner or claimant (if known) of every water right on the proposed abandonment list per CRS 37-92-401(2)(b).

July-August 2020: Publication shall be made of the respective portion of the abandonment list in each county for four successive weeks per CRS 37-92-401(2)(b).

July 1, 2021: Deadline for filing a written Statement of Objection to the Division Engineer per CRS 37-92-401(3).

July - Dec. 2021: The Division Engineer shall consider the Statements of Objections received and make any revisions to the abandonment that he/she deems proper per CRS 37-92-401(4)(a).

By Dec. 31, 2021: The Division Engineer shall file his or her revised abandonment list in Water Court and make copies available to the public per CRS 37-92-401(4)(c).

By Jan. 31, 2022: The Water Clerk publishes notice of the revised abandonment list in the Water Court resume per CRS 37-92-401(4)(d).

June 30, 2022: Deadline for filing written protests with the [Water Court Clerk](#) (\$45 fee) and with the Division Engineer per CRS 37-92-401(5)(a).

October 2022: The Water Court Judge may begin conducting trials on abandonment cases with opposition after which the Judge enters a ruling and decree confirming the Final 2020 Abandonment List per CRS 37-92-401(6) through (10).

Listing of Abandonment Statutes

37-92-103(2) - "Abandonment of a water right" means the termination of a water right in whole or in part as a result of the intent of the owner thereof to discontinue permanently the use of all or part of the water available there under. Any period of nonuse of any portion of a water right shall be tolled, and no intent to discontinue permanent use shall be found for purposes of determining an abandonment of a water right for the duration that:

- (a) The land on which the water right has been historically applied is enrolled under a federal land conservation program; or
- (b) The nonuse of a water right by its owner is a result of participation in:

- (I) A water conservation program approved by a state agency, a water conservation district, or a water conservancy district;
- (II) A water conservation program established through formal written action or ordinance by a municipality or its municipal water supplier;
- (III) An approved land fallowing program as provided by law in order to conserve water;
- (IV) A water banking program as provided by law;
- (V) A loan of water to the Colorado water conservation board for instream flow use under section 37-83-105 (2); or
- (VI) Any contract or agreement with the Colorado water conservation board that allows the board to use all or a part of a water right to preserve or improve the natural environment to a reasonable degree under section 37-92-102 (3).

37-92-301(5) - In all proceedings for a change of water right and for approval of reasonable diligence with respect to a conditional water right, it is appropriate for the referee and the courts to consider abandonment of all or any part of such water right or conditional water right.... In all such proceedings, no water storage right shall be declared abandoned in whole or in part on account of carrying water over in storage from year to year.

37-92-401(1)(a) - The division engineer of each division with the approval of the state engineer shall also prepare decennially, no later than July 1, 1990, and each tenth anniversary thereafter, a separate abandonment list comprising all absolute water rights that he or she has determined to have been abandoned in whole or in part and that previously have not been adjudged to have been abandoned.

37-92-401(1)(c) - In making his [or her] determinations with respect to abandonment, the division engineer shall investigate the circumstances relating to each water right for which the available water has not been fully applied to a beneficial use and in such cases shall be guided by the criteria set out in section 37-92-402(11). The decennial abandonment list, when concluded by judgment and decree as provided in this section, shall be conclusive as to absolute water rights or portions thereof determined to have been abandoned.

37-92-401(2)(b) - No later than July 31, 1990, and every tenth anniversary thereafter, the division engineer shall mail a copy of the respective decennial abandonment list by certified mail, return receipt requested, to the owner or last-known owner or claimant, if known, of every absolute water right which the division engineer has found to have been abandoned in whole or in part. The division engineer shall make such examination as is reasonably appropriate to determine the owner or claimant of such absolute water rights. He/she shall also cause publication to be made of the respective portion of the decennial abandonment list in each county in which the points of diversion of any absolute water rights on the list are located. Such publication shall be made for four successive weeks and shall be published, if possible, in a newspaper published in the county where the decreed point of diversion of the water right is located. The publication and mailing requirements of this paragraph (b) shall apply only to absolute water rights or portions thereof which previously have not been adjudged to have been abandoned.

37-92-401(2)(c) - ... not later than July 1, 1991, and every tenth anniversary thereafter, any person wishing to object to the inclusion of any absolute water right or portion thereof in the decennial abandonment list must file a statement of objection in writing with the division engineer.

37-92-401(4)(a) - Not later than December 31, 1991, and every tenth anniversary thereafter, the division engineer shall make such revisions, if any, as he deems proper to the decennial abandonment list. In considering the matters raised by statements of objection, the division engineer may consult with any interested persons. The division engineer shall consult with the state engineer and shall make any revisions in the decennial abandonment list determined by the state engineer to be necessary or advisable.

37-92-401(4)(c) - The division engineer shall file the decennial abandonment list, together with any revisions, signed by the division engineer and the state engineer or his or her duly authorized deputy, with the water clerk as promptly as possible, but not later than December 31, 1991, and every tenth anniversary thereafter. Each respective division engineer, water clerk, and the state engineer shall make a copy of the decennial abandonment list, together with any revisions, available for inspection in their offices at any time during regular office hours, as well as on the state engineer's web site, and the division engineer shall furnish or mail a copy to anyone requesting a copy upon payment of a fee in an amount set in section 37-80-110(1)(h).

37-92-401(4)(d) - If the decennial abandonment list is revised, the water clerk, in cooperation with the division engineer, not later than January 31, 1992, and every tenth anniversary thereafter, shall cause notice of the availability of such revision to be included in the resume described in section 37-92-302 (3) of cases filed in the respective water divisions during said month of December stating that the revision may be inspected or a copy thereof obtained as specified in paragraph (c) of this subsection (4). In addition, the water clerk shall cause such publication of the notice as is necessary to obtain general circulation once in each county or portion thereof which is in the division.

37-92-401(5)(a) - Any person who wishes to protest the inclusion of any water right in a decennial abandonment list after its revision by the division engineer shall file a written protest with the water clerk and with the division engineer. All such protests to the decennial abandonment list shall be filed not later than June 30, 1992, or the respective tenth anniversary thereafter. Such protest shall set forth in detail the factual and legal basis therefor. Service of a copy of the protest or any other documents is not necessary for jurisdictional purposes, but the water judge may order service of a copy of the protest or any other document on any person and in any manner which he or she may deem appropriate. The fee for filing such protest with the water clerk shall be forty-five dollars.

37-92-401(7) - If no protests have been filed, then promptly after July 1, 1992, and every tenth anniversary thereafter, the water judge shall enter a judgment and decree incorporating and confirming the decennial abandonment list of the division engineer without modification.

37-92-401(8) - A copy of the judgment and decree entered under subsection (6) or (7) of this section shall be filed with the state engineer and the division engineer and shall be provided by the water clerk to any other person requesting same upon payment of a fee of seventy-five cents per page. Promptly after receiving such judgment and decree, the division engineer and the state engineer shall enter in their records the determinations therein made as to the absolute water rights or portions thereof adjudged to have been abandoned and shall regulate the distribution of water accordingly.

37-92-402(11) - For the purpose of procedures under this section, failure for a period of ten years or more to apply to a beneficial use the water available under a water right when needed by the person entitled to use same shall create a rebuttable presumption of abandonment of a water right with respect to the amount of

such available water which has not been so used; except that such presumption may be waived by the division engineer or the state engineer if special circumstances negate an intent to abandon.