

The Southwestern Water Conservation District
West Building, 841 E. 2nd Ave.
Durango, CO 81301

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

Thursday, July 1, 2021
9:00 a.m.-10:30 a.m.

Video: [Click here to join Zoom](#)
Phone Number: (346) 248 7799
Meeting ID: 813 5451 4316
Passcode: 316817

Posted and Noticed Tuesday, June 29, 2021

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 raise your hand by computer, please use Alt+Y (Windows) or Option+Y (Mac). To mute and unmute by phone, dial *6.*

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 direction of the Board.

- 1.0 Call to Order - Roll Call and Verification of Quorum (9:00 a.m.)**
- 2.0 Review & Approve the Agenda (9:02 a.m.)**
- 3.0 Questions/Comments from Audience (9:03 a.m.)**
- 4.0 Executive Session (9:05 a.m.)**
 - 4.1 Proposed Instream Flow Appropriation on Rincon La Vaca Creek in Water Division 7
- 5.0 Summary and Action Items from Executive Session (9:25 a.m.)**
- 6.0 Old Business (9:30 a.m.)**
 - 6.1 State Legislative Session Wrap-Up
 - 6.2 SWCD Strategic Planning Update
 - 6.3 Southern Ute Indian Tribe's Proposed Water Quality Standards
- 7.0 New Business (10:20 a.m.)**
 - 7.1 SWCD Appointment to Southwest Basins Roundtable
 - 7.2 SWCD Checking Account Signatories and Authorities
 - 7.3 2021 Colorado Water Congress Summer Conference
- 8.0 Adjournment (10:30 a.m.)**

Upcoming Meetings

August 11 and August 12, 2021

Time TBD

Regular Board Meeting



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES

West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

MEMORANDUM

June 28, 2021

To: Southwestern Board of Directors
From: Chris Treese, Independent Consultant
RE: **2021 Colorado General Assembly - Summary, wrap up**

This memo provides a review and summary of activities and actions of interest to the SWCD from the 2021 Colorado General Assembly. Some may find an over-emphasis on budget issues; however, I suggest that the budget and budget-related issues perennially have an outsized influence on public policy, including water matters. This year is no exception, unless it's even larger this year because of the rapid economic recovery and the substantial infusion of federal stimulus dollars.

Selected water and water-related legislation on which SWCD adopted positions are addressed individually at the end of this memo. A complete list of bills that SWCD followed accompanies this memo in the detailed bill summaries and status reports that Laura Spann prepared.

Elvis has left the building

The Colorado Senate adjourned its 2021 regular session a little past 4:00pm on Tuesday, June 8, four days prior to the 120-day constitutional deadline. The House followed suit three and a half hours later.

This year's legislative session will be remembered for several unique elements. First was the calendar. The Legislature convened for just three days in January, then recessed for public health precautions until February 16. They were able to do this pursuant to a Colorado Supreme Court ruling that allowed for a special accounting of the 120-day limit during the COVID-declared emergency.

The other remarkable element of the 2021 session was the dramatic turnaround in the state's fiscal condition, both from the constant improvement in revenue forecasts as well as the considerable federal stimulus dollars flowing to Colorado during the session, more on this below.

By the numbers

The Legislature considered 623 bills, 502 of which passed and were sent to the Governor. Now that the Legislature is out of session, the Governor has 30 days to sign, veto or allow to become

law without his signature the bills passed in the last ten days of the session. Governor Polis is expected to sign all pending bills. He vetoed just one bill earlier this session.

The SWCD Board directed positions on 19 bills this session, supporting ten, opposing two and monitoring seven. All of the bills supported by the District passed and most have been signed into law. Of the two bills opposed by the District, one was defeated and one, SB21-087, passed though heavily amended. I address SB 087 later in this memo.

Most importantly, the District made its voice heard during this very different legislative session and boosted its role as a respected resource for legislators on critical water and local government matters.

I will offer recommendations regarding how the District may continue its influence in Denver in a separate memo to the General Manager and Board in July.

Show me the money

Federal dollars and consistent, upward revisions to revenue forecasts made numerous policies and programs possible this session. Last year, with the sudden imposition of COVID quarantines in March, the Legislature was forced to make dramatic cuts to the FY20/21 budget. However, the economy didn't turn out to be as bad as feared and recovery much swifter and more robust than anticipated. The majority-Democrats' agenda was further aided when the state received \$1.2 billion from one of the first COVID-19 relief bills passed by Congress last year after the session ended prematurely and another \$3.8 billion in a similar measure this year.

All that money helped lawmakers look good and their job much easier as they restored nearly all of the \$3.5 billion in cuts they were forced to make in the "COVID massacre" of 2020. The Legislature was able to restore millions of dollars in cuts made to K-12 and higher education, dedicate massive new fees to road and bridge projects, and create generous new grant programs designed to help small businesses and their workers get back on track. It also allowed them to approve several, albeit minor, tax cuts on businesses and homeowners, improve child tax credits for working parents, and lower fees on vehicle registrations.

Additionally, considerable sums were restored or dedicated to wildfire prevention and mitigation, water education, and Colorado's Water Plan, including its statewide and basin grant programs.

However, lawmakers didn't spend all the money. Roughly \$1 billion is still out there, not yet allocated. Three special interim committees were created to address these unallocated funds and resolve spending priorities passed during the session. The federal rules for allowable spending arrived late in the session and have not been fully incorporated into the FY 2021/22 budget. My hope is a good chunk of that money will be dedicated to keeping local government budgets whole that are impacted by SB 293, more on this later.

Water-related appropriations

One of the bills benefitting from this jolt of federal funds was House Bill 1260, which transfers \$15 million in state general funds to the Water Plan Implementation Cash Fund to be spent by the Colorado Water Conservation Board on grants to help meet the plan's goals. The bill was

sponsored by House Speaker Alec Garnett, D-Denver, and Representative Marc Catlin, R-Montrose.

HB 1260 also moves \$5 million into CWCB's Water Supply Reserve Fund for the state's basin roundtables. The House Speaker, Alex Garnett, noted that "this is the biggest investment from the general fund we've ever made in Colorado's Water Plan" and said that it will help move the state toward meeting the annual commitment necessary to avoid future water shortfalls.

Watershed protection and wildfire mitigation

Senate Bill 240, sponsored by Senator Jessie Danielson, D-Wheat Ridge, and Senator Cleave Simpson, R-Alamosa, also takes advantage of stimulus money and transfers \$30 million in general fund revenue to the CWCB Construction Fund for grants to restore, mitigate and protect watersheds from wildfire-induced erosion and flooding.

House Bill 1008, sponsored by former Representative Jeni Arndt, D-Fort Collins, and Representative Catlin, R-Montrose, also helps fund watershed protection efforts by authorizing local governments to band together and form special improvement districts empowered to levy property taxes for wildfire mitigation and forest health projects. It also makes those districts eligible for \$50 million from a Colorado Water Resources and Power Development Authority bond program and expands the program's authorized life another 10 years through 2033. Southwest Colorado is likely to be the first area in the state to take advantage of this expanded authorization. SWCD continues to communicate with advocates of the southwest program, SWIF.

Drought resiliency

Senate Bill 234 creates the Agriculture and Drought Resiliency Fund in the Colorado Department of Agriculture to help the state prepare for and respond to drought. Sponsored by Senator Sonya Jaquez Lewis, D-Lafayette, and Senator Jerry Sonnenberg, R-Sterling, it transfers \$3 million in general fund revenue to the new fund to support agricultural water projects and recovery of grazing lands affected by wildfires.

Revenue outlook

One week after the Legislature's adjournment, economists for the Legislative Council released the quarterly revenue forecast on Friday, June 18. Simultaneously, the Governor's Office of State Policy & Budget released its forecast. Uniquely, the two are very similar this time. Revenue is forecast to be approximately 11% to 12% higher through the end of this fiscal year (e.g., the end of this month) than was forecast in the preceding report just three months ago.

The general fund growth leaves lawmakers with \$3.2 billion to spend in the 2022 session for the following fiscal year budget, but similar to this year, much of that is one-time money, however, that won't be available in future years.

Sports Betting

Less than two years ago, voters approved sports betting by enacting Proposition DD. The nearly \$249 million bet last month was up 1.9% from April and nearly 10 times the \$25.6 million bet in May 2020. Sports wagering in Colorado totaled \$1.39 billion in the first five months of 2021.

Betting did not begin until March 2020 – which unfortunately coincided with the onset of COVID and the shutdown of both the gaming industry and the events sports betting relies on. The data are too limited for the economists to base a forecast on, but conversations with the Finance section of CWCB suggest early revenue numbers are better than initially forecast. The September 2021 revenue forecasts are likely to include sports betting revenues. Ultimately, net revenues, after directed payment to certain committed uses, will flow to the CWCB for the state water plan. However, sports betting revenues will not come close to the \$100 million average annual investment called for in the 2015 Water Plan.

No good deed . . .

Colorado's economy is in such good health that taxpayers are likely to see refunds and a temporary income tax cut through 2023. The growth is projected to continue with a nearly 4% improvement next year and more than \$3 billion more in General Fund revenue by the 2022-23 fiscal year. However, as the Board knows well, the TABOR amendment constrains budget growth. In good times, the government is required to refund to taxpayers — likely \$440 million this year, \$658 million in 2021-22 and \$909 million in 2022-23, according to Legislative Council projections. Those would be the largest refunds in the state since 2001. Those savings would be split into three categories: a sales tax refund, a temporary cut to the state's flat income tax rate (from 4.55% to 4.5%) and reimbursements to local governments (for certain property tax exemptions).

Cold dose of reality

Restoration of last year's cuts and infusion of new funds is always welcome, especially to Colorado's Water Plan. However, while the House Speaker praised the investment, he pointed out the plan to manage, conserve and store the state's most valuable resource calls for an estimated \$100 million a year. The state has never hit that benchmark since the plan was approved in 2015. Senator Bob Rankin, R-Carbondale, a member of the Joint Budget Committee, cautioned, "The one thing to keep in mind with HB 1260 and other bills like it is that they are one-time funding. What comes next, what's our long-term plan? We should have sustainable programs." With no dedicated funding source for the Plan and the CWCB's reliance on severance tax, it's difficult to be overly optimistic at least for the Water Plan and associated water programs.

The recently released June revenue forecast portrays the continuing volatility of severance tax revenues. It notes that current severance tax revenues are down nearly 50% from the previous year and are not only expected to decline further through the end of this fiscal year but that they might actually go negative. Noting the notoriously inaccurate forecast on energy prices, the state's economists indicated that severance taxes are projected to rebound significantly in each of the next two fiscal years.

Waters of the U.S. redux

As reviewed at every special, legislative SWCD board meeting this winter, the ever-changing, always-challenging (and challenged) definition of "waters of the U.S." is once again (still) at issue. The U.S. Environmental Protection Agency (EPA) published a revised Waters of the United States rule that took effect on June 22, 2020 — the "Navigable Waters Protection Rule" or "Trump-era rule." This rule substantially rolls back federal protections established in 2015 (the "Obama-era rule") and even some protections established prior to that time. An estimated 25% to 50% of

Colorado streams, lakes, and wetlands are excluded from federal Clean Water Act protections under the 2020 rule.

Colorado has historically relied on the federal government through §404 permitting to protect these waters since Colorado does not have existing laws or regulations that allow state streams, lakes, and wetlands to be filled. Colorado does, however, have its own definition of “waters of the state.”

On June 9, 2021, the EPA and Army Corps of Engineers announced their intent to initiate a new rulemaking process that would restore the protections in place prior to the 2020 Navigable Waters Protection Rule and to develop a new rule defining Waters of the United States. Until then, the Colorado Department of Public Health and Environment (CDPHE) has advocated for state protection of the so-called “Gap Waters.” However, CDPHE was not successful in seeking legislation this session authorizing rulemaking and granting funding to protect and enforce these “Gap Waters.”

CDPHE, having not gotten legislation giving them authority and funding to enforce unpermitted dredge and fill activity, subsequently sought a roughly \$14 million supplement appropriation after the session from the Joint Budget Committee. However, based on JBC preliminary feedback, the department recently withdrew its request. At a stakeholders’ meeting just last week, the department indicated it plans to exercise whatever flexibility it has within existing spending authorities and available cash balances to provide at least partial funding to protect the “Gap Waters” of the state. The department also committed to continuing its stakeholder outreach through the summer as it develops a proposal for the Water Interim Committee.

New Maps

Colorado voters passed Amendments Y and Z last year, establishing non-partisan redistricting and reapportionment commissions. The amendments added a goal of creating as many competitive districts as possible (i.e., roughly evenly split party affiliations) to the already long list of criteria required in drawing federal and state district boundaries.

All states are required to review their Congressional and legislative districts every ten years using the decennial Census data. Colorado will have an eighth Congressional district in 2022. Based on 2019 estimated Census data, staff to the Redistricting Committee released a preliminary Colorado Congressional map last week. The 3rd Congressional District is expected to, once again, comprise all of Western Colorado, but the San Luis Valley, Pueblo and southeastern Colorado have been moved to the 4th CD, currently held by Ken Buck (R-Greeley). It is still early in the redistricting process, and the maps will change once public input has been received and final 2020 Census data are released.

New state House and Senate districts will also be drawn but no change in Colorado’s number (65 and 35, respectively) of seats will occur.

Interim Water Comm.

Leadership only announced after the legislative session that there will be a few interim committees this summer. Legislative leadership confirmed that the Water Resources Review

Committee will meet but not until August, likely in association with the Water Congress' summer meeting in Steamboat Springs, August 24-26. Members of the Interim Water Committee are

Senator Kerry Donovan (D-Vail)*
Senator Jeff Bridges (D- Greenwood Village)
Senator Don Coram (R-Montrose)

Representative Marc Catlin (R-Montrose)
Representative Hugh McKean (R-Loveland)
Representative Barbara McLachlan (D-Durango)
Representative Dylan Roberts (D-Eagle).

Senator Jerry Sonnenberg (R-Sterling)
*Presumptive chair

Noteworthy is the fact that three of the eight members of the committee represent SWCD. Interestingly the chair of the House Ag Committee, Karen McCormick (D-Longmont), is not among the membership. Representative McCormick was appointed chair in early April when Representative Jeni Arndt (D-Fort Collins) resigned to assume her newly elected position as mayor of Ft. Collins.

I anticipate that the so-called "Gap Waters" under the 2020 WOTUS rule will be a major focus of the water interim this summer. I also anticipate that proponents of expanding recreational water rights will also secure agenda time. Additionally, the special task force created last year examining water speculation and related legislation is required to report to the Interim Committee this fall.

In addition, there will be three special, interim committees that will address and advise on the expected federal stimulus package and how that money should be allocated by the State among allowable uses. The three special committees will address the three priority areas announced by the Polis administration following a statewide "listening session." The three priority areas are behavioral and mental health, affordable housing, and economic recovery.

Initiatives:

There are no ballot questions currently certified for Colorado's November 2021 ballot. There are (or were) two proposed initiatives of potential concern to SWCD. The first is Amendment 27, a statutory initiative, that would permanently reduce the residential property tax assessment rate from 7.15% to 6.5% and reduce the property tax assessment rate for all other property from 29% to 26.4%.

By lowering property tax assessment rates, the measure would decrease property tax revenue to local governments statewide by an estimated \$1.03 billion beginning in 2023. The impact will vary among local governments across the state depending on several factors including mill levies and the composition of properties in each jurisdiction. It would have a profound and detrimental effect on SWCD finances and other districts that rely predominantly on property tax revenues for operations.

Amendment 27 is currently in the signature-gathering phase. Proponents need roughly 126,000 valid Colorado signatures by August 2. This amendment is discussed more fully in the review of Senate Bill 293 below.

The second initiative of concern was mooted by the Colorado Supreme Court last week when it rejected a proposed ballot measure that would have placed substantial limits on the state's ranching and other meat-producing industries. The Court ruled that proposed Initiative 16 violates the state's single-subject requirement. Initiative 16 would have gone on the 2022 ballot.

Initiative 16 or the Protect Animals from Unnecessary Suffering and Exploitation (PAUSE Act) would have established a "safe haven" for some livestock, mandating that they live a certain percentage of their natural life span before slaughtered. The measure also would have expanded the definition of "sexual act with an animal," criminalizing conduct and methods commonly used in animal breeding. The seven-member high court unanimously ruled that combining both subjects was a violation of the Colorado Constitution. This is a huge relief to much of Colorado's ranching community but may be short lived as proponents are likely to return with a revised initiative or two separate initiatives in the future.

It is imperative SWCD continue to monitor citizens' initiatives, whether proposing constitutional changes or initiated laws, to ensure the continued health of the District's finances and the integrity of Colorado's Prior Appropriation Doctrine. The Colorado Water Congress is an excellent first line of defense and information on initiatives.

2021 Water Bills, highlighted:

SB21-087 Going right down to the adjournment wire, the House amended and then passed Senate Bill 21-087 on a party-line vote. The Senate adopted the amendments and re-passed the bill, also on a party-line vote, just before adjourning. SB 087 allows farm workers, including temporary and seasonal workers, to unionize. It also dictates numerous farm laborer workplace conditions. Rules and regulations implementing SB 087 are to be promulgated by the Department of Labor and Employment.

SWCD opposed SB 087 and supported most of the clarifying and corrective amendments. The Governor signed the bill into law over the strenuous objections of the ag community.

SB21-189 Senate Bill 21-189 is the annual CWCB projects' authorization bill. Among other things, it provides for a grant of \$3 million to support the San Luis Valley's confined aquifer recovery program. It also reinstated \$550,000 funding for the water efficiency grant program. One amendment of note was the restoration of Water Education Colorado's annual financial support. The bill passed the Senate with the WECO amendment and passed the House without further amendment.

Governor Polis signed this bill into law last week. SWCD supported SB 189.

SB21-220 Senate Bill 220 returned funding to CWCB that were previously transferred to natural resources and energy grant programs. In order to avoid early-in-the-session projections of a fund deficit in the CWCB's operational fund, this JBC bill reverses five transfers made including nearly \$2 million for the Species Conservation Trust Fund (SCTF), \$1.6 for aquatic nuisance species (ANS), and nearly \$4 million for the water supply reserve fund (WSRF).

SB21-240 SB 240 was one of a handful of bills providing wildfire prevention and post-wildfire mitigation. This bill transfers \$20.0 million from the General Fund to the CWCB Construction Fund, appropriating the money for watershed restoration and flood mitigation grants. Grants will support work to restore, mitigate, and protect streams and riparian areas susceptible to flooding and erosion following a wildfire, including installation or repair of water and debris control structures. The majority of the grants are designated for restoration efforts associated with the largest wildfires from 2020.

SB 240 was signed by the Governor. SWCD supported passage of SB 240.

SB21-293 This bill creates a complex set of changes to Colorado's system of property taxation, adding new property classifications to the current binary, residential and non-residential classifications. It also lowers for the next two years the assessment ratios for the various classes. The fiscal note projects a roughly \$200 million hit to local governments statewide per year for two years. I am working on quantifying the impact on SWCD.

SB 293 was introduced on June 2 late in the day, passing the Senate on June 7. It was introduced in the House on the same day, passed two committees and second reading that same day, and then received final passage in the House on the last day of the session, June 8. The hasty passage reflects the Legislature's concern with citizens' Initiative 27, which would permanently lower the assessment ratios for non-residential property from 29% to 26.45% and the residential assessment rate from 7.15% to 6.5%. The projected fiscal impact of #27 on local governments is projected to exceed \$1 billion annually, five times the impact of SB 293.

SB 293 amends the underlying statutes that the initiative proposes to change. Because of SB 293 the initiative would affect only lodging and multi-family housing, such as apartments, condos, town homes and duplexes. Bottom line, the two are not compatible, and if both pass and become law, the Supreme Court will have to resolve the differences.

Given the late date of introduction and fast-moving passage of the bill, SWCD did not weigh in on SB 293. The Governor signed the bill late last week. I have begun working on securing stimulus money to offset local governments' revenue losses due to SB 293.

HB21-1043 This bill, sponsored by Representative Holtorf (R-Akron), sought to fund a review of existing studies of aquifer storage and retrieval. It did not propose a project, just a review of studies. Implementation would be by the CWCB in consultation with the State Engineer. Together they would select a Colorado institution of higher education to accomplish the review. The report on the work would be submitted to the Water Resources Review Committee.

As anticipated, this bill did not survive the process. It died upon adjournment having not gotten out of House Appropriations. SWCD supported passage.

HB21-1226 This bill enhances the state surveillance program to interdict invasive aquatic nuisance species by enlisting CDOT and the Colorado State Patrol to make inspections along the highways of the state. Of particular benefit to SWCD, one of the first roadside inspection stations will be on US Highway 160 close to the state line.

SWCD supported HB 1226. The bill was signed by the Governor on May 20.

HB21-1260 This bill is sponsored by Representative Garnett with Representative Catlin and Senator Donovan with Senator Simpson. The bill proposes to inject some \$20 million into water-related programs. A total of \$15 million would be transferred from the general fund to the state water plan. Another \$5 million would be transferred to Water Supply Reserve Fund. Both funds are under the CWCB.

SWCD supported HB 1260. It is still pending signature by Governor; his signature is expected.

HB21-1268 This bill proposes a study of emerging technologies for water management. It originated in the Water Resources Review Committee in 2019. That bill passed its committee actions and was poised to pass the House when COVID shut down the 2020 session.

This year's bill is identical to the one that was shelved in 2020. HB 1268 directs the University of Colorado in collaboration with Colorado State University (Water Institute) to conduct feasibility studies and pilot deployments of new and emerging technologies that have the potential to improve water management.

SWCD adopted an official position of monitor on HB 1268 but was successful in advocating for an amendment ensuring that the bill did not provide an unintended endorsement of speculation in water or water rights. The Governor signed HB 1268 into law on June 18.



SOUTHWESTERN WATER CONSERVATION DISTRICT

2021 State Legislative **Final Report**: June 28, 2021

The first regular session of the 73rd Colorado General Assembly adjourned on June 8, 2021. Below is a summary of 2021 state water-related legislation.

These summaries generally apply to the bills as introduced. Click on the bill number to view the most recent bill language and other information.

THE FOLLOWING BILLS PASSED.

[SB21-054](#) **Transfers for Wildfire Mitigation and Response (Passed & Signed by Governor)**

SWCD Position: Support

CWC Position: Support

Sponsors: Senate (Hansen/Rankin) House (McCluskie)

Committee of Reference: Senate Appropriations

Bill Status: Passed and signed into law.

Title: Concerning transfers from the general fund to cash funds to be used to address wildland fires, and, in connection therewith, making an appropriation.

Summary: SB 54 transfers from the General Fund \$13 million to three cash funds for wildfire preparedness and post-fire mitigation.

- Section 1 transfers \$6 million to the forest restoration and wildfire risk mitigation grant program cash fund.
- Section 2 transfers \$3 million from the general fund to the wildfire preparedness fund. The division of homeland security and emergency management will use these funds as
 - State match for federal hazard mitigation assistance grants to local governments that are used to mitigate wildland fire hazards; and
 - To provide local governments that are eligible to receive the federal grants with strategic planning assistance for wildland fire hazard mitigation.
- Section 3 transfers \$4 million to CWCB construction for the watershed restoration program.

Comments:

[SB21-087](#) **Agricultural Workers' Rights (Passed & Signed by Governor)**

SWCD Position: Oppose

CWC Position: Not discussed

Sponsors: Senate (Danielson), House (McCormick, Caraveo)

Committee of Reference: Senate Business, Labor & Technology; Senate Appropriations

Bill Status: Passed as amended and signed into law.

Title: Concerning agricultural workers' rights.

Summary: This lengthy and detailed bill removes the historical exemption of agricultural labor from state and local labor and minimum wage laws. It also provides detailed directions and limitations on farm-labor operations including, among others:

- Specifies meal breaks and rest periods,
- Even specifically prohibits use of the short-handled or long-handled hoes,
- Creates an agricultural work advisory committee to study and analyze agricultural wages and working conditions and
- Creates an appeal process and enforcement actions, including minimum penalties, for aggrieved agricultural employees, whistleblowers, and key service providers.

Comments:

SB21-189 **Colorado Water Conservation Board Construction Fund Project**
(Passed & Signed by Governor)

SWCD Position: Support
CWC Position: Support
Sponsors: Senate (Donovan), House (Arndt)
Committee of Reference: Senate Agriculture and Natural Resources

Bill Status: Passed as amended and signed into law.

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

Summary: SB 189 is the annual construction fund bill for CWCB projects' authorizations. In addition to a pared-down list of authorized operations expenditures (e.g., weather modification, flood plain mapping), this year's bill allows a transfer of up to \$2,000,000 to the interstate litigation fund. It also authorizes the CWCB to make a loan up to \$3,000,000 to assist the confined aquifer recovery project in the San Luis Valley. Finally, in a much shorter than normal projects' bill, Section 7 conditionally reinstates funding for the water efficiency grant program with \$550,000 annually if the general assembly chooses not to spend 100% of the money in the operational fund on core departmental programs.

Comments:

SB21-220 **Reverse Transfers from Severance Tax Operational Fund**
(Passed & Signed by Governor)

SWCD Position: Support
CWC Position: Discussion
Sponsors: Senate (Hansen, Rankin), House (Herod)
Committee of Reference: Senate Appropriations

Bill Status: Passed and signed into law.

Title: Concerning the stabilization of revenue in the severance tax operational fund by returning money that was transferred to natural resources and energy grant programs.

Summary: Money in the severance tax operational fund is primarily used for two purposes. The General Assembly annually appropriates money from the operational fund for several core departmental programs. If money remains after these core appropriations and the reserve requirement for the core programs is met, then the state treasurer transfers money to several

funds that support natural resources and energy grant programs. (These used to be called “Tier II” programs.)

Based on recent forecasts, there will be insufficient revenue in the operational fund for even the core departmental programs. To avoid a fund deficit in the operational fund, this JBC bill reverses five transfers made in the following amounts:

\$1,998,205 for the Species Conservation Trust Fund (SCTF);
\$1,600,964 for CPW’s aquatic nuisance species (ANS) fund;
\$219,803 for the CWCB’s water efficiency grant program cash fund;
\$297,759 for the Inter-Basin Compact Committee’s (IBCC) operating fund; and
\$3,996,410 for the water supply reserve fund (WSRF).

Comments:

[SB21-234](#) **General Fund Transfer Agriculture and Drought Resiliency
(Passed & Signed by Governor)**

SWCD Position: **Support**

CWC Position: **Discussion**

Sponsors: Senate (Lewis, Sonnenberg), House (Cutter, Holtorf)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Passed as amended and signed into law.

Title: Concerning creation of the agriculture and drought resiliency fund, and, in connection therewith, transferring money from the general fund to the fund and making an appropriation.

Summary: SB 234 creates a short-lived agriculture and drought resiliency fund in the Colorado Department of Agriculture with a one-time \$3 million General Fund transfer from the current fiscal year’s budget. The Department of Agriculture would use the fund to anticipate, prepare for, mitigate, adapt to, or respond to events, trends, or climatological disturbances related to drought or climate.” The bill directs the development of a “hay bank” to provide “adequate resources for livestock in times of drought” and “supporting recovery of grazing lands following wildfire(s).” The fund is repealed September 1, 2022.

Comments:

[SB21-237](#) **Create Forest Health Council in Department of Natural Resources
(Passed & Signed into Law)**

SWCD Position: **Monitor**

CWC Position: **Discussion**

Sponsors: Senate (Donovan), House (McCluskie)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Passed as amended and signed into law.

Title: Concerning creation of the Colorado Forest Health Council in the Department of Natural Resources, and, in connection therewith, repealing the forest health advisory council within the state forest service.

Summary: Under current law, the forest health advisory council was created within the state forest service, which is within Colorado state university. Section 4 of the bill repeals the forest health advisory council and section 2 creates the Colorado forest health council within the division of forestry within the department of natural resources and specifies the new council's membership and duties. Section 1 schedules the new council for sunset review in 2026.

Comments:

SB21-240 Watershed Restoration Grant Program Stimulus (Passed & Signed by Governor)

SWCD Position: Support

CWC Position: Support

Sponsors: Senate (Danielson, Simpson), House (Kipp, Catlin)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Passed as amended and signed into law.

Title: Concerning the transfer of money from the general fund to the Colorado water conservation board construction fund for watershed protection programs, and, in connection therewith, making an appropriation.

Summary: The bill transfers \$15 million from the general fund to the Colorado Water Conservation Board construction fund for use by the Colorado water conservation board (CWCB) to protect watersheds against the impacts of wildfires through the existing watershed restoration grant program and for conducting a statewide watershed analysis to investigate the susceptibility of life, safety, infrastructure, and water supplies to wildfire impacts. The CWCB can use up to 5% of the money to administer the grant program and up to 10% to provide technical engineering services to grantees. The CWCB is directed to:

- Spend up to \$500,000 by December 31, 2022, to conduct the analysis; and
- Award at least \$10 million dollars in grants under the grant program by July 1, 2022, and award the remaining money, less the money the CWCB uses to administer the grant program and provide technical engineering services, in grants by December 31, 2022.

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

Comments:

SB21-248 Loan Program for Colorado Agriculture (Passed & Awaiting Governor's Consideration)

SWCD Position: Monitor

CWC Position: Discussion

Sponsors: Senate (Donovan/Simpson), House (McCormick/Holtorf)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Passed as amended and awaiting governor's consideration.

Title: Concerning assistance for agriculture in Colorado, and, in connection therewith, establishing a loan program in the Department of Agriculture and transferring money from the general fund to a new agricultural future loan program cash fund to be used for the loan program.

Summary: The bill creates the Colorado agricultural loan program in the Department of Agriculture to provide: Farm-to-market infrastructure loans to eligible applicants and low-interest loans to eligible farmers or ranchers and eligible ag-related businesses in Colorado. It funds the

program with a one-time \$30 million General Fund transfer to the Dept. of Ag. with direction to provide:

- Ag processor loans; and
- Low-interest loans to eligible farmers, ranchers and ag businesses.

The Department is directed to award:

- At least \$5 million but no more than \$10 million in loans to ag processors by June 30, 2022; and
- At least \$10 million but no more than \$20 million in the form of low-interest loans to eligible farmers, ranchers, and ag-related businesses by December 31, 2022.

After January 1, 2023, the Department is directed to prioritize loans to farmers or ranchers who have owned or operated a farm or ranch for less than 10 years or represent a population that is underserved or underrepresented in Colorado agriculture.

Comments:

SB21-258 Wildfire Risk Mitigation (Passed & Signed by Governor)

SWCD Position: Monitor

CWC Position: Support

Sponsors: Senate (Ginal/Rankin), House (Snyder/Hanks)

Committee of Reference: Senate Local Government

Bill Status: Passed and signed into law.

Title: Concerning the administration of state assistance programs to mitigate the risk of wildfire, and, in connection therewith, creating the wildfire mitigation capacity development fund and the hazard mitigation fund; transferring money into specially designed wildfire funds; and making an appropriation.

Summary: The bill creates two funds. First is the wildfire mitigation capacity development fund. Money for this fund is continuously appropriated to the DNR for a number of wildfire related programs. The second is the hazard mitigation fund to assist local jurisdictions in obtaining the matching funds required for certain federal grants.

The bill directs the following transfers and appropriations:

- \$5 million from the General Fund to the healthy forests and vibrant communities fund;
- \$2.5 million from the General Fund to the wildfire risk mitigation revolving fund for loans issued by the wildfire risk mitigation loan program;
- \$17.5 million from the General Fund to the wildfire mitigation capacity development fund;
- \$3 million from the wildfire preparedness fund to the hazard mitigation fund; and
- \$600,000 from the wildfire preparedness fund and \$1.2 million from the Colorado firefighting air corps fund to the wildfire emergency response fund.

Additionally, the bill allows the state forest service to issue forest restoration and wildfire risk mitigation grants for projects on federal lands. The bill also generously expands the allowable uses of the forest restoration and wildfire risk mitigation grant program by allowing the program to fund capacity-building efforts for local governments, community groups, and collaborative forestry efforts.

Comments:

HJR21-1002 Water Projects Eligibility Lists (Passed & Signed by Governor)

SWCD Position: Support

CWC Position: Support

Sponsors: House (Arndt), Senate (Donovan)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed and signed into law.

Title: Concerning approval of water project revolving fund eligibility lists administered by the Colorado water resources and power development authority.

Summary: See bill text for full fund eligibility lists.

Comments:

HB21-1008 Forest Health Project Financing (Passed & Signed by Governor)

SWCD Position: Support as amended

CWC Position: Support

Sponsors: House (Arndt/Catlin), Senate (Cooke/Hansen)

Committee of Reference: House Agriculture, Livestock & Water, House Finance

Bill Status: Passed as amended and signed into law.

Title: Concerning increased options for financing forest health projects, and, in connection therewith, financing wildfire mitigation treatments.

Summary: HB 1008 provides additional options for financing forest health projects by authorizing:

- Creation of special improvement districts by a combination of local governments,
- Special assessments on property specially benefited by the improvement district, including forest health projects,
- Specifically authorizing counties, municipalities, special districts, water conservancy districts, the Colorado River District, and the Southwestern Water Conservation District to participate in and finance forest health projects; and
- A forest improvement district to use sales tax revenue for forest health projects.

The bill also extends the statutory sunset of the Colorado Water Resources Power and Development Authority to issue bonds to fund watershed protection and forest health projects from July 1, 2023, to July 1, 2033.

Comments:

HB21-1046 Water Share Right Mutual Ditch Corporation (Passed & Signed by Governor)

SWCD Position: Monitor

CWC Position: Support

Sponsors: House (Arndt/Catlin), Senate (Fields/Sonnenberg)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed as amended and signed into law.

Title: Concerning the use of a water right obtained through a mutual ditch corporation.

Summary: The House Ag. Committee unanimously voted to adopt the sponsors' amendment rewriting the entirety of HB21-1046. The strike below (SBEC) amendment resulted from extensive stakeholder outreach and collaboration at the State Affairs Committee of CWC. The resulting SBEC amendment reflects a consensus compromise for a workable bill addressing the most troubling elements of recent water court rulings. The amended bill clarifies that, subject to the Articles of Incorporation and Bylaws of the corporation:

- When stockholder demand exceeds supply, mutual ditch corporations may limit or otherwise rotate delivery of water ratably among the stockholders;
- When a stockholder is not using some of or all of the available water under the stockholder's shares, the remaining stockholders taking delivery of water through the ditch may use any unused portion of the water that would otherwise have been available to that stockholder's shares, absent certain exceptions; and
- The provision is not intended to prevent a stockholder from changing the use of the water rights represented by the stockholder's shares, create any impediments to changes in use, affect storage water rights, or change the standards for water court approval to change a water right.

Comments:

HB21-1105 **Low-Income Utility Payment Assistance Contributions**
(Passed & Awaiting Governor's Signature)

SWCD Position: Support
CWC Position: No action
Sponsors: House (Kennedy), Senate (Hansen)
Committee of Reference: House Finance

Bill Status: Passed as amended and awaiting the governor's consideration.

Title: Concerning utility customers' financial contributions for low-income utility assistance.

Summary: This 17-section bill has several water-related elements. Section 1 removes the low-income energy assistance program (LEAP) from the "tier 2" severance tax operational fund money, something the water community has advocated for years. Later sections provide for voluntary, opt-in charges that a water utility may offer its customers to help finance a water utility bill payment assistance program. Alternatively, HB 1105 allows a water utility to implement its own water utility bill payment assistance program.

Comments:

HB21-1226 **More Robust Check Station Aquatic Nuisance Species** **(Passed & Signed by Governor)**

SWCD Position: Support

CWC Position: Support

Sponsors: House (Esgar, Will), Senate (Coram, Donovan)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed as amended and signed into law.

Title: Concerning additional measures to control aquatic nuisance species, and, in connection therewith, prohibiting a person from refusing to stop at a check station and directing the division of parks and wildlife to report to the general assembly regarding implementation of the act.

Summary: Current law allows qualified peace officers to stop a conveyance, including a boat trailer and a boat, and inspect the conveyance for the presence of aquatic nuisance species before the boat is launched onto waters of the state and before departing from the waters of the state or a vessel staging area, and to impound and quarantine a conveyance that is contaminated until it is decontaminated. Authorized agents can detain and inspect conveyances but cannot impound or quarantine conveyances. Section 1 of the bill directs the division of parks and wildlife in the department of natural resources to investigate the methods that other states are using with respect to the location and operation of check stations and report regarding its investigation and the operation of check stations pursuant to the bill to the general assembly's committees with jurisdiction over wildlife. Section 2 authorizes a qualified peace officer to stop and inspect for the presence of aquatic nuisance species a conveyance that has encountered an aquatic nuisance species check station. Section 3 prohibits a person who encounters a check station from failing or refusing to stop at the check station while transporting a conveyance during the check station's hours of operation without presenting the conveyance for inspection.

Comments:

HB21-1233 **Conservation Easement Tax Credit Modifications**

(Passed & Awaiting Governor's Consideration)

SWCD Position: Monitor

CWC Position: Discussion

Sponsors: House (Roberts, Will), Senate (Donovan, Winter)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed as amended and awaiting the governor's consideration.

Title: Concerning modifications to the requirements for claiming an income tax credit for the donation of a perpetual conservation easement.

Summary: HB 1233 makes numerous changes affecting claims for an income tax credit for the donation of a perpetual conservation easement. The proposed changes are generally favorable and clarifying for potential easement donors.

Comments:

[HB21-1260](#) **General Fund Transfer Implement State Water Plan
(Passed & Awaiting Governor's Consideration)**

SWCD Position: Support
CWC Position: Support
Sponsors: House (Garnett/Catlin), Senate (Donovan/Simpson)
Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Passed as amended and awaiting the governor's consideration.

Title: Concerning transfers of money from the general fund to implement the state water plan, and, in connection therewith, making an appropriation.

Summary: The bill allocates \$20 million from the general fund to the Colorado water conservation board (CWCB) to be spent to implement the state water plan as follows:

- \$15 million, which is transferred to the water plan implementation cash fund for expenditures and grants administered by the CWCB to implement the state water plan; and
- \$5 million, which is transferred to the water supply reserve fund for CWCB to disperse to the basin roundtables.

Comments:

[HB21-1266](#) **Environmental Justice Disproportionate Impacted Community
(Passed & Awaiting Governor's Consideration)**

SWCD Position: Monitor
CWC Position: Discussion
Sponsors: House (Jackson), Senate (Winter, Buckner)
Committee of Reference: House Energy & Environment

Bill Status: Passed as amended and awaiting the governor's consideration.

Title: Concerning efforts to redress the effects of environmental injustice on disproportionately impacted communities.

Summary: Section 3 of the bill defines "disproportionately impacted community". Section 4 requires the air quality control commission to promote outreach to and engage with disproportionately impacted communities by creating new ways to gather input from communities across the state, using multiple languages and multiple formats, and transparently sharing information about adverse effects resulting from its proposed actions. Section 5 creates the environmental justice action task force (task force) in the department of public health and environment (department), the goal of which is to propose recommendations to the general assembly regarding practical means of addressing environmental justice inequities. The task force will:

- Hold meetings to solicit public comment concerning the development of a state agency-wide environmental justice strategy and a plan to implement that strategy, including ways to address data gaps and data sharing between state agencies and the engagement of disproportionately impacted communities;
- Evaluate and propose recommended revisions to the definition of "disproportionately impacted community" and the state agencies and their proposed actions that are subject to section 3; and

- File a final report by November 14, 2022, regarding its recommendations. The department will report on the task force during the department's "SMART Act" presentations.
(Note: This summary applies to this bill as introduced.)

Comments:

HB21-1268 Study Emerging Technologies for Water Management (Passed & Signed by Governor)

SWCD Position: Monitor
CWC Position: Discussion
Sponsors: House (Titone), Senate (Will)
Committee of Reference: House Agriculture, Livestock and Water

Bill Status: Passed as amended and signed into law.

Title: Concerning a requirement that Colorado institutions of higher education 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: 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 and Colorado state university, 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 \$20,000 to each university from the general fund, contingent on the universities' receipt of a matching \$40,000 in gifts, grants, and donations, for the purpose of funding the feasibility studies and pilot deployments.

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

Comments:

THE FOLLOWING BILLS WERE LOST.

SB21-034 Water Resources Financing Enterprise (Postponed Indefinitely)

SWCD Position: Monitor
CWC Position: No Position
Sponsors: Senate (Coram)
Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Postponed indefinitely by the Senate Agriculture and Natural Resources Committee.

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: This bill creates the water resources financing enterprise. The board of the enterprise would consist of the combined boards of the Colorado Water Resources and Power Development Authority and the Colorado Water Conservation Board. The enterprise will provide financing (including grants and low interest loans) to drinking water suppliers, wastewater treaters, and raw water suppliers. "Raw water suppliers" are limited to those providing raw water for treatment and use as drinking water.

The enterprise would be funded with a \$0.25/1000 gal. fee above 4,000 gal./mo. minimum on drinking water bills. The fee would be collected by drinking water utilities and remitted to the state. As a fee-based enterprise, new revenues collected would not be included in any TABOR calculations for state budget caps. Fees may be adjusted annually for inflation and to address "certain equity concerns."

Although clearly established as an enterprise fund, voters will be asked in November 2022 to authorize the creation of the enterprise.

Comments:

[SB21-164](#) Uniform Easement Relocation Act (Postponed Indefinitely)

SWCD Position: Oppose

CWC Position: Oppose

Sponsors: Senate (Gardner)

Committee of Reference: Senate Agriculture & Natural Resources

Bill Status: Postponed indefinitely by Senate Agriculture and Natural Resources.

Title: Concerning the "Uniform Easement Relocation Act".

Summary: The bill would enact the "Uniform Easement Relocation Act," drafted by the Uniform Law Commission. The bill sets procedures to relocate most easements. Nearly half of this lengthy bill outlines what must not be done in order to relocate an easement.

Comments:

[HB21-1043](#) Study Underground Water Storage Maximum Beneficial Use (Laid Over)

SWCD Position: Monitor

CWC Position: Support

Sponsors: House (Holtorf), Senate (Sonnenberg)

Committee of Reference: House Agriculture, Livestock & Water

Bill Status: Laid over by House Committee on Appropriations.

Title: Concerning a study of underground water storage to maximize the beneficial use of water within Colorado.

Summary: This bill directs the CWCB, in consultation with the state engineer, to sponsor a study of underground water storage for later recovery. The study must identify:

- Specific aquifers that are hydrologically and legally available to be used for underground storage and subsequent beneficial use;
- Sources of revenue that could be used to pay for underground storage projects;

- Planned, potential or existing underground storage projects that meet the objectives identified in the study; and
- Recommend legislative changes needed to implement underground storage projects.

The bill directs the study be submitted to the Water Resources Review Committee by August 1, 2022, including recommended legislation to implement the study's recommendations

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. Beth Van Vurst, SWCD General Counsel, and Chris Treese, lobbyist, ensure the views and priorities of southwestern Colorado are considered as the State legislature enacts new laws affecting water resources.

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@swgcd.org. We hope that you find the updates beneficial and informative.

Colorado Water Congress 2021 Bill Status Sheet

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
HB21-1008	Forest Health Project Financing	8-Mar	16-Feb	2/22 Ag	04-Mar F	9-Mar	10-Mar	12-Mar	15-Apr Ag	20-Apr	21-Apr	11-May	11-May	20-May
HB21-1043	Study Underground Water Storage Maximum Beneficial Use	1-Mar	16-Feb	3/1 Ag	01-Apr F									
HB21-1046	Water Share Right Mutual Ditch Corporation	15-Mar	16-Feb	3/17 Ag		22-Mar	23-Mar	24-Mar	15-Apr Ag	21-Apr	21-Apr	11-May	11-May	20-May
HB21-1105	Low-income Utility Payment Assistance Contributions	22-Mar	16-Feb	4/1 F	5/14 Ap	18-May	19-May	19-May	25-May F	28-May	1-Jun	7-Jun		
HB21-1168	Historically Underutilized Businesses Local Government Procurement	29-Mar	4-Mar	3/31 TLG	4/19 F	23-Apr	26-Apr	27-Apr	5-May F	10-May	11-May	27-May	28-May	28-May
HB21-1181	Agricultural Soil Health Program	26-Apr	4-Mar	3/22 Ag	5/4 Ap	7-Apr	8-Apr	9-Apr	13-May Ag	21-May	24-May	7-Jun		
HB21-1226	More Robust Check Station Aquatic Nuisance Species	5-Apr	18-Mar	4/8 Ag		15-Apr	19-Apr	20-Apr	29-Apr Ag	4-May	5-May	11-May	11-May	20-May
HB21-1233	Conservation Easement Tax Credit Modifications		19-Mar	4/5 Ag	4/22 F	19-May	20-May	20-May	25-May F	3-Jun	7-Jun			

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
HB21-1242	Create Agricultural Drought and Climate Resilience Office	12-Apr	24-Mar	4/5 Ag		15-Apr	21-Apr	26-Apr	13-May Ag	21-May	24-May	7-Jun		
HB21-1260	General Fund Transfer Implement State Water	19-Apr	6-Apr	4/19 Ag	4/28 Ap	28-Apr	29-Apr	30-Apr	12-May Ag	3-Jun	4-Jun	8-Jun		
HB21-1266	Environmental Justice Disproportionate Impacted Community	3-May	6-Apr	4/22 EE	5/3 F	12-May	13-May	13-May	7-Jun F	7-Jun	8-Jun			
HB21-1268	Study Emerging Technologies for Water Management	10-May	9-Apr	4/26 Ag	5/11 Ap	11-May	12-May	13-May	19-May Ag	24-May	25-May			
HB21-1292	Report Revenues From Sports Betting Activity	10-May	22-Apr	12-May BAL		18-May	19-May	19-May	24-May F	26-May	27-May			
SB21-028	Promulgation of Public Health Rules and Orders	1-Mar	16-Feb	3/2 SVMA										
SB21-034	Water Resource Financing Enterprise		16-Feb	3/11 Ag										
SB21-054	Transfers for Wildfire Mitigation and Response	1-Mar	16-Feb	2/23 Ap		25-Feb	26-Feb	26-Feb	02-Mar Ap	4-Mar	5-Mar	11-Mar	11-Mar	11-Mar

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
SB21-202	Public School Air Quality Improvement Grants	3-May	31-Mar	4/15 E	4/30 Ap	30-Apr	3-May	5-May	5-May Ed	28-May	1-Jun	2-Jun		
SB21-220	Reverse Transfers From Severance Tax Operational Fund		5-Apr	4/6 Ap		8-Apr	9-Apr	9-Apr	13-Apr Ap	15-Apr	19-Apr	21-Apr	21-Apr	22-Apr
SB21-225	Repay Cash Funds for 2020 Transfers		5-Apr	4/6 Ap		8-Apr	9-Apr	9-Apr	13-Apr Ap	15-Apr	15-Apr	20-Apr	20-Apr	29-Apr
SB21-234	General Fund Transfer Agriculture and Drought Resiliency		6-Apr	5/13 Ag	5/21 Ap	21-May	24-May	24-May	27-May Ag	1-Jun	7-Jun			
SB21-237	Create Forest Health Council in Department of Natural Resources	3-May	6-Apr	4/28 Ag		3-May	4-May	4-May	10-May LC	27-May	28-May	1-Jun		
SB21-240	Waterwhed Restoration Grant Program Stimulus	26-Apr	12-Apr	4/29 Ag	5/14 Ap	18-May	19-May	19-May	24-May Ag	7-Jun				
SB21-249	Keep Colorado Wild Annual Pass	10-May	23-Apr	5/6 Ag	5/12 F	18-May	19-May	19-May	27-May EE	1-Jun	3-Jun			
SB21-258	Wildfire Risk Mitigation	17-May	29-Apr	5/18 LG	5/24 Ap	24-May	25-May	25-May	1-Jun EE	3-Jun	7-Jun			
SB21-262	Special District Transparency		5-May	5/13 LG		19-May	20-May	24-May	2-Jun LG	4-Jun	7-Jun	8-Jun		

Bill No.	Short Title	CWC Position	Introduced	1st Committee	2nd Committee	2nd Reading	3rd Reading	Introduced	1st Committee	2nd Reading	3rd Reading	First House Repass	Conference Committee	Governor
SB21-281	State Severance Tax Trust Fund Allocation		19-May	24-May F	26-May Ap	27-May	28-May	28-May	4-Jun Ap	4-Jun	7-Jun	8-Jun		
HJR21-1002	Water Projects Eligibility Lists	16-Feb	15-Jan	2/18 Ag			24-Feb	23-Feb	04-Mar Ag		10-Mar	11-Mar	11-Mar	21-Mar

BILL STATUS	ABBREVIATIONS
Bill scheduled for action at next SA meeting (yellow)	Ag = Agriculture, Livestock & Water
Bill not calendared (no fill)	Ap = Appropriations Committee
Bill Passed, date of action (green)	BLEW = Business, Labor, Economic and Workforce Development Committee
Bill no longer active (gray)	CC = Conference Committee
Bill did not go to second committee or no action required (black)	F = Finance Committee
CWC POSITION	HIE= Health, Insurance, and Environment

Bill scheduled for activity in CWC State Affairs (yellow)	J = Judiciary
Support (green)	TLG = Transportation & Local Government
Oppose (orange)	SVMA = State, Veterans, and Military Affairs Committee
Amend (blue)	EE = Energy & Environment
Monitor, Neutral, No Position	UA = Upon Adjournment
No Motions Made	UR = Upon Recess
	Ag = Agriculture and Natural Resources Committee
	CD = Capital Development
	TE = Transportation & Energy
	E = Education
	BAL = Business Affairs & Labor



THE SOUTHWESTERN WATER CONSERVATION DISTRICT

Developing and Conserving the Waters in the
SAN JUAN AND DOLORES RIVERS AND THEIR TRIBUTARIES
West Building – 841 East Second Avenue
DURANGO, COLORADO 81301
(970) 247-1302

June 15, 2021

Ms. Alexandra Ratcliff
Environmental Programs Manager
Southern Ute Indian Tribe
P.O. Box 737 MS# 81
Ignacio, Colorado 81137
aratcliff@southernute-nsn.gov

RE: Southern Ute Indian Tribe's Proposed Water Quality Standards

Dear Ms. Ratcliff:

The Southwestern Water Conservation District (SWCD) appreciates the opportunity to comment on the Southern Ute Indian Tribe's (the Tribe) proposed water quality standards for Tribal Waters and Section 401 certification procedures. SWCD is a political subdivision of the State that was established by the Colorado General Assembly in 1941 to protect, conserve, use and develop the water resources of, as relevant here, the San Juan River Basin as well as to safeguard all waters to which the state of Colorado is equitably entitled. The rivers that flow through the Southern Ute Indian Reservation are all located within the San Juan River Basin. Consequently, SWCD has a significant interest in the Tribe's proposed water quality standards.

The Tribe has given parties that commented last year on its Treatment as a State (TAS) application to EPA a thirty-day time period to comment on the Tribe's proposed water quality standards. Thirty days is a short timeframe for SWCD to develop comments, particularly since SWCD's board has regular meetings every two months. Our understanding is that the Tribe will have a general public comment period starting sometime in July. With more time to better understand the implications of the Tribe's proposal, SWCD may provide additional comments during the public comment period.

These comments pertain to how certain water quality protections will be implemented on fee land within the Reservation and how they will affect people upstream of the Reservation boundaries. Most of SWCD concerns center on uncertainties in the implementation of sections of the Clean Water Act (CWA) that are tangential to the proposed water quality standards. In

addition, SWCD seeks further clarification regarding whether the Tribe's proposed water quality standards will apply to the owners of fee land within the Reservation's exterior boundaries.

Implementation of Water Quality Protections

Water quality protection includes more than developing water quality standards. Some of those additional components include the following. An assessment methodology needs to be applied to water quality data to determine if there is a violation of standards. Those assessments are also an integral part of developing impaired waters lists under section 303(d) of CWA. Tribes or states need to certify under section 401 of CWA that activities occurring under a federal license or permit, including under section 404 permits and Federal Energy Regulatory Commission (FERC) licenses, will not violate applicable Tribal and State water quality standards. Anti-degradation reviews must be conducted for the issuance of National Pollution Discharge Elimination System (NPDES) permits. Questions of how these processes will be implemented and who will implement them are potential sources of angst for those needing water-quality related permits on fee lands within the Reservation's exterior boundaries and lands upstream of Tribal Waters.

1. SWCD requests that the Tribe develop a document or tables listing what assessment parameters will be used for each of the water quality standards listed in the Tribe's proposal. The Tribe is adopting EPA criteria for a number of water quality constituents. Those criteria typically include assessment parameters for determining if a violation of the criteria has occurred. (For example, for a chronic criterion, the 85th percentile of data collected may not be higher than the criterion over a thirty-day period). This list will directly help the Tribe in assessing possible violations of its standards. In addition, the Tribe did not apply for, and EPA did not delegate authority, under section 303(d) to develop impaired waters lists. As a result, we presume EPA will develop 303(d) lists for Tribal Waters and possibly for other waters within the exterior boundaries of the Reservation. Clearly, having an assessment document or table would be beneficial in developing an impaired waters list. It will also help those upstream of Tribal Waters in understanding what constituents might be treated differently by the Tribe in comparison to the State. This is important because there are constituents where the State has adopted EPA's numeric criteria, but uses different assessment parameters than what EPA suggests.
2. SWCD requests that the Tribe not adopt water quality standards that are currently not being met because of natural conditions, particularly if it is likely that those standards may need to be revisited at a triennial review in the next few years. Levels of some water quality constituents whose sources are predominately natural currently exceed or may exceed the Tribe's proposed standards. For example, concentrations of manganese in the Animas River on the reservation are 100 to 150 micrograms per liter (ug/l) and most of the manganese originates from naturally mineralized areas upstream in San Juan County. The proposed tribal standard for public water supply is 50 ug/l, far less than existing concentrations in the river. We understand that the La Plata River also has high

manganese concentrations, although we haven't yet seen any data. Our concern is that it is much easier and less resource intensive process to apply stricter standards in the future if needed than to loosen standards in the future if they are determined to be too stringent given natural sources. Temperature, manganese, and aluminum are constituents that we have identified so far where there may be concerns. Although we have not seen aluminum data for the Animas River on the Reservation, EPA's relatively new, chronic aquatic life criteria is far exceeded in the Animas River just below the confluence with Cascade Creek. The State has not adopted EPA's aquatic life aluminum criteria and currently has retained its older standard because of concerns that the criteria does not provide the appropriate level of protection.

3. SWCD requests clarification as to who will do 401 certifications. The Army Corps of Engineers issues 404 permits for Tribal and State waters. Outside of the Reservation boundaries, the State will conduct 401 certifications and consider downstream tribal standards in that process. It is unclear who (Tribe, State, or EPA) will conduct 401 certifications on fee land within the Reservation boundaries. We are also discussing this issue with the State.
4. Similarly, SWCD requests clarification as to who will issue NPDES permits on fee land within the Reservation boundaries and perform anti-degradation reviews.
5. As a corollary, SWCD requests clarification on if the Tribe's described anti-degradation review process in its standards proposal is different than the State's, would the permitting authority for fee land have to use both the State's process on fee land and the Tribe's process on Tribal Waters? We note that the Tribe's anti-degradation policy and the State's appear very similar, but we are not clear they are identical. Again, we are also discussing this issue with the State.

Application of Water Quality Standards

1. It is unclear whether the Tribe's water quality standards will apply to *all* lands within the exterior boundaries of the Southern Ute Indian Reservation or, instead, only to a subset of those lands (*i.e.*, currently held tribal trust lands located within the Reservation's exterior boundaries). On the one hand, EPA only delegated treatment-as-a-state authority to the Tribe for those water bodies located on currently held trust lands. While on the other, the Tribe's proposed water quality standards reference a possible jurisdictional dispute between the State of Colorado and the Tribe over fee land located within the Reservation's exterior boundary and go on to apply to all "Tribal Waters", which is then defined as consisting of "all waters within the exterior boundary of the Southern Ute Indian Reservation over which the Tribe has authority for establishing water quality standards." The question of whether the Tribe's water quality standards will apply to fee lands located within the exterior boundaries of the Reservation should be answered before the Tribe's proposed standards go into effect. Otherwise, the owners of fee land within the Reservation's exterior boundaries are put in the impossible position of not knowing where to apply for a permit and who will be conducting 401 certifications.

We understand that adopting water quality standards for Tribal Waters is a new and complicated process. As noted above, there are a number of implications that are not addressed in the Tribe's proposal that create uncertainty. SWCD would like to see as many of these issues resolved as possible before the Tribe acts on its draft proposal to reduce uncertainty for those on fee lands and others upstream of Tribal Waters. We look forward to working with the Tribe, the State and EPA to reduce uncertainty associated with the Tribe adoption of its own water quality standards and believe that some discussion on these issues would be beneficial before the public comment period begins.

Regards,

A handwritten signature in blue ink that reads "Steve Wolff". The signature is written in a cursive style.

Steve Wolff
General Manager
Southwestern Water Conservation District

SOUTHWESTERN WATER CONSERVATION DISTRICT TRAVEL EXPENSE FORM

Board Member (or Other) Name: _____

Date: From: _____ through _____

Purpose: _____

COST

Directors fees per diem _____ days X \$100 = _____

Mileage: _____ miles X \$0.56 per mile = _____

Air Fare: _____

Car Rental: _____

Parking: _____

Hotel Expenses: _____

Total Meals: _____

Taxi/Shuttle Fares: _____

Tips: _____

Miscellaneous: _____

Registration/Dues: _____

OTHER (Please describe)

TOTAL

Board Member Signature _____

Please attach receipts

