

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 Zoom only**

Monday, October 4, 2021
8:30 a.m. - 3:00 p.m.

Tuesday, October 5, 2021
8:30 a.m. - 11:00 a.m.

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

Posted and Noticed Friday, October 1, 2021

Tentative Agenda

*In adherence with state and local health recommendations, **public participation in this meeting is available via Zoom only** using the connection information above. A few members of the board and staff may meet in person at SWCD's office at 841 E 2nd Avenue, Durango, Colorado. Remaining participation will be via Zoom only.*

*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.

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.

Monday, October 4, 2021

- 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 Approve and/or Remove Consent Agenda Items (8:33 a.m.)**
- 4.0 Consent Agenda (8:34 a.m.)**

- 4.1 Approval of Minutes (August 11, 2021; September 8, 2021; September 13, 2021)**

4.2 Acceptance of Treasurer's Report (August 2021)

5.0 Questions and Comments from Audience (8:35 a.m.)

6.0 Reports (8:40 a.m.)

- 6.1 Director Reports
- 6.2 Water Information Program Report
- 6.3 Southwest Basins Roundtable Report
- 6.4 Colorado River Basin Hydrologic Conditions

7.0 Staff Reports (9:20 a.m.)

- 7.1 Virtual Meeting Protocols
- 7.2 Proposed 2022 SWCD Employee Health Plans
- 7.3 Proposed 2022 SWCD Meeting & Holiday Schedule
- 7.4 Proposals for Professional Auditing Services
- 7.5 Proposed Scope of Work with Hydros Consulting for Downscaling of Phase III Risk Study Modeling within southwest Colorado
- 7.6 SWCD Letter of Support for Colorado Aerial Snow Observatory's Request for CWCB Funding
- 7.7 SB20-048 Anti-Speculation Workgroup Report
- 7.8 SWCD's Strategic Plan Discussion
- 7.9 General Manager Activities Report

Break (10:20 a.m.)

8.0 Old Business (10:30 a.m.)

- 8.1 Federal Affairs Update
- 8.2 Proposed Consulting Services Contract for State Legislative Representation & Lobbying
- 8.3 Congressional Redistricting
- 8.4 Water Quality Updates
 - Outstanding Waters Candidate Streams in Southwestern Colorado
 - Southern Ute Indian Tribe's Water Quality Standards
 - Bonita Peak Community Advisory Group
- 8.5 Proposed Legislation to Establish Dolores River National Conservation Area

9.0 New Business (11:30 a.m.)

- 9.1 Tri-State Generation & Transmission Association's San Miguel River Enhancement Program and Case No. 21CW3039
- 9.2 Science on the Fly: Water Quality Sampling Sites in Southwest Colorado

Lunch Break (12:15 p.m.)

10.0 New Business (continued) (1:15 p.m.)

- 10.1 Review of SWCD's Draft FY2022 Budget, Draft Budget Message, and Related Topics
- 10.2 2022 Proposed Scope of Work for Water Information Program Independent Contractor

11.0 Engineering Report (2:00 p.m.)

- 11.1 Upper Colorado & San Juan River Basin Recovery Implementation Programs
- 11.2 Animas Watershed Partnership - Proposed Animas River Stream Management Plan

12.0 General Counsel Legal Report (2:30 p.m.)

- 12.1 Proposed Second Amendment to IGA with La Plata County for the Animas Service Area Conditional Water Right
- 12.2 Proposed Property Tax Increment Revenue Agreement with the Durango Urban Renewal Authority
- 12.3 Guideline 2021-1- State Engineer's Procedure to Confirm the Extent of Claimed Unadjudicated Uses or Exchanges of Water Being Made on the Date of Appropriation of an Instream Flow Water Right
- 12.4 August Water Court Resume Review (Divisions 3, 4, 7)
 - 12.4.1 Case No. 21CW3039, Tri-State Generation & Transmission Association, Div. 4

Tuesday, October 5, 2021

13.0 Call to Order – Roll Call, Verification of Quorum (8:30 a.m.)

14.0 Review and Approve Agenda (8:32 a.m.)

15.0 Executive Session (8:35 a.m.)

- 15.1 Montezuma Valley Irrigation Company, Case No. 18CW3052, Division 7
- 15.2 San Miguel River Basin Water Supply Planning
- 15.3 Use of Transmountain Water Rights Originating within the District
- 15.4 Colorado River Compact, Interstate and Intrastate negotiation matters, including re-negotiation of the interim guidelines

16.0 Summary and Action Items from Executive Session (10:50 a.m.)

17.0 Adjournment (11:00 a.m.)

Upcoming Meetings

Wednesday, December 8 and Thursday, December 9 (if needed), 2021

Regular Board Meeting

Southwestern Water Conservation District
Budget Comparison Summary
January through August 2021

	Jan - Aug 21	Budget	\$ Over Budget	% of Budget
Income				
4 · SWCD INCOME				
4.1 · Property Tax	1,533,819	1,588,850	(55,031)	97%
4.2 · Specific Ownership Tax	87,455	130,000	(42,545)	67%
4.3 · Interest, PILT & Other Taxes	30,103	35,500	(5,397)	85%
4.4 · Other Income				
4.4.1 · Interest Earned	33,367	40,000	(6,633)	83%
4.4.2 · Loan Interest	139	139	0	100%
4.4.3 · Miscellaneous Income	3,739	5,000	(1,261)	75%
4.4.4 · Water Seminar Registration	0	2,000	(2,000)	0%
4.4.5 · ALP/WIP Cost Sharing	390	100	290	390%
4.4.7 · SJRBRIP Water User Committee	0	50,873	(50,873)	0%
4.4.8 · Stream Gaging Reimbursement	26,125	28,656	(2,532)	91%
4.4.9 · Water Info Program	45,938	35,100	10,838	131%
Total 4.4 · Other Income	109,697	161,868	(52,171)	68%
4.5 · County Treasurer Fees	(44,702)	(52,631)	7,928	85%
Total 4 · SWCD INCOME	1,716,373	1,863,588	(147,215)	92%
Total Income	1,716,373	1,863,588	(147,215)	92%
Gross Profit	1,716,373	1,863,588	(147,215)	92%
Expense				
5 · SWCD EXPENSES				
5.1 · DISTRICT ADMINISTRATION				
5.1.1 · Management				
51101 · Wages - Executive Director	0	0	0	0%
51102 · Wages - General Manager	23,250	130,000	(106,750)	18%
51103 · Wages - Programs Coordinator	33,748	50,393	(16,645)	67%
51104 · Wages - Overtime, Pgm Coord.	264	0	264	100%
51105 · Wages - Payroll Taxes	4,412	16,235	(11,823)	27%
51106 · Wages - Retirement Benefit	0	9,020	(9,020)	0%
51107 · Wages - Health & Life Insurance	14,256	29,350	(15,094)	49%
51108 · Wages - GM Bonus	0	0	0	0%
51109 · Wages - Coordinator Bonus	0	0	0	0%
51110 · Recruitment	41,888	0	41,888	418,877,400%
Total 5.1.1 · Management	117,817	234,998	(117,181)	50%
5.1.2 · Legal				
51201 · Attorney Fees - General Counsel	134,364	180,000	(45,636)	75%
51202 · Travel Exps - General Counsel	2,798	15,000	(12,202)	19%
51203 · Litigation - General Counsel	21,762	40,000	(18,238)	54%
51204 · Co River Litigation- General Co	0	40,000	(40,000)	0%
51205 · Attorney Fees - Special Counsel	22,700	45,000	(22,300)	50%
51206 · Attorney Exps - Special Counsel	0	5,000	(5,000)	0%
Total 5.1.2 · Legal	181,623	325,000	(143,377)	56%
5.1.3 · Engineering				
51301 · Engineering - General	16,585	45,000	(28,415)	37%
51302 · Engineering - Special Projects	34,922	25,000	9,922	140%
Total 5.1.3 · Engineering	51,508	70,000	(18,492)	74%

Southwestern Water Conservation District

Budget Comparison Summary January through August 2021

	Jan - Aug 21	Budget	\$ Over Budget	% of Budget
5.1.4 · Board of Directors				
51401 · Director Fees	13,350	20,000	(6,650)	67%
51402 · Director Travel	1,999	11,000	(9,001)	18%
Total 5.1.4 · Board of Directors	15,349	31,000	(15,651)	50%
5.1.5 · Office Expenses				
51501 · Accounting	3,225	5,000	(1,775)	65%
51502 · Audit	8,700	8,600	100	101%
51503 · Capital Outlay	2,890	5,000	(2,110)	58%
51504 · Casual Labor	0	200	(200)	0%
51505 · Dues and Memberships	1,238	1,900	(663)	65%
51506 · Equipment Leasing	1,200	1,800	(600)	67%
51507 · Insurance - General Liability	7,577	7,300	277	104%
51508 · Legal Notices	0	600	(600)	0%
51509 · Manager's Discretionary Budget	0	2,000	(2,000)	0%
51510 · Meeting Expenses	1,095	5,000	(3,905)	22%
51511 · Miscellaneous	69	500	(431)	14%
51512 · Office Exps	2,656	6,000	(3,344)	44%
51513 · Postage	2,390	1,500	890	159%
51514 · Registration Fees	3,349	8,500	(5,151)	39%
51515 · Rent	22,515	31,412	(8,897)	72%
51516 · Staff Training/Development	25	2,500	(2,475)	1%
51517 · Staff Travel	2,421	20,000	(17,579)	12%
51518 · Telecommunication	2,423	3,500	(1,077)	69%
Total 5.1.5 · Office Expenses	61,772	111,312	(49,540)	55%
Total 5.1 · DISTRICT ADMINISTRATION	428,070	772,310	(344,240)	55%
5.2 · WATER SUPPLY - QUANTITY QUALITY				
5.2.1 · Regional, Interstate Planning				
52101 · SWCD Water Defense	0	0	0	0%
52102 · SWCD Water Development	0	0	0	0%
52103 · Water Bank Working Group	0	0	0	0%
52104 · Technical Other Expenses	25,460	50,000	(24,540)	51%
Total 5.2.1 · Regional, Interstate Planning	25,460	50,000	(24,540)	51%
5.2.2 · SWCD Project Water Rights	0	10,000	(10,000)	0%
5.2.3 · Data Collection				
52301 · Center for Snow & Avalanche	7,000	7,000	0	100%
52302 · Stream Gaging - Federal	4,016	99,954	(95,938)	4%
52303 · Stream Gaging - Colorado	0	2,640	(2,640)	0%
52304 · Water Quality Studies	1,500	13,000	(11,500)	12%
52305 · SW Colorado Permanent Radar	0	10,000	(10,000)	0%
Total 5.2.3 · Data Collection	12,516	132,594	(120,078)	9%
5.2.4 · Supply Augmentation				
52401 · Weather Modification	22,040	117,000	(94,960)	19%
52402 · Phreatophyte Removal	0	0	0	0%
Total 5.2.4 · Supply Augmentation	22,040	117,000	(94,960)	19%
5.2.5 · Environmental				
52501 · Bonita Peak CAG	5,000	5,000	0	100%
52502 · SJRBRIP Water User Committee	50,873	101,746	(50,873)	50%
Total 5.2.5 · Environmental	55,873	106,746	(50,873)	52%

Southwestern Water Conservation District
Budget Comparison Summary
January through August 2021

	Jan - Aug 21	Budget	\$ Over Budget	% of Budget
5.2.6 · Local Financial Support	162,142	230,000	(67,858)	70%
5.2.7 · Previously Committed Support	81,268	91,294	(10,026)	89%
Total 5.2 · WATER SUPPLY - QUANTITY QUALITY	359,298	737,634	(378,336)	49%
5.3 · WATER POLICY & LEGISLATION				
5.3.1 · Federal Policy/Legislation				
53101 · Federal Lobbying Fees	37,500	50,000	(12,500)	75%
53102 · Federal Lobbying Expenses	0	5,500	(5,500)	0%
Total 5.3.1 · Federal Policy/Legislation	37,500	55,500	(18,000)	68%
5.3.2 · State Policy/Legislation				
53201 · State Lobbying Fees	9,825	10,000	(175)	98%
53202 · State Lobbying Expenses	0	0	0	0%
Total 5.3.2 · State Policy/Legislation	9,825	10,000	(175)	98%
5.3.3 · Dues & Memberships	24,638	25,450	(812)	97%
Total 5.3 · WATER POLICY & LEGISLATION	71,963	90,950	(18,987)	79%
5.4 · WATER EDUCATION				
5.4.1 · Water Info Program	40,878	72,295	(31,417)	57%
5.4.2 · SWCD Children's Water Festival	350	10,500	(10,150)	3%
5.4.3 · Water Leaders Pgm Scholarship	4,000	5,000	(1,000)	80%
5.4.4 · Watershed Education Program	0	6,000	(6,000)	0%
5.4.5 · Water Education Colorado	11,000	11,000	0	100%
5.4.6 · SWCD Water Seminar	0	18,000	(18,000)	0%
5.4.7 · Event Sponsorships	480	6,000	(5,520)	8%
5.4.8 · Demo CSU Farm/Water Efficiency	0	10,000	(10,000)	0%
Total 5.4 · WATER EDUCATION	56,708	138,795	(82,087)	41%
5.5 · TABOR Reserve	0	52,191	(52,191)	0%
5.6 · Emergency Contingency Reserve	0	75,000	(75,000)	0%
Total 5 · SWCD EXPENSES	916,040	1,866,880	(950,840)	49%
Total Expense	916,040	1,866,880	(950,840)	49%
Net Income	800,333	(3,292)	803,625	(24,310)%

Southwestern Water Conservation District
Bank Account Summary
As of August 31, 2021

	Aug 31, 21
ASSETS	
Current Assets	
Checking/Savings	
100 · SWCD Checking (0.38%)	1,801,873.02
101 · SWCD Credit Card	(1,701.47)
102 · Water Info Program Checking	146,970.26
107 · COLOTRUST General (0.025%)	1,000.48
167 · 1st SW Bank - CD 2 - Jan 2022	1,580,411.56
168 · 1st SW Bank - CD 3 - July 2022	506,823.42
169 · 1st SW Bank - CD 4 - Jan 2023 4	418,786.87
170 · 1st SW Bank - CD 5 - Jan 2023 1	102,769.79
Total Checking/Savings	4,556,933.93
Total Current Assets	4,556,933.93
TOTAL ASSETS	4,556,933.93
LIABILITIES & EQUITY	0.00

3:19 PM
09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
Bill.com	07/02/2021	Colorado Water Congress	2021 State & Federal Affairs Memberships - Wolff	100 - SWCD Checking (0.38%)	-500.00
			2021 State & Federal Affairs Memberships - Wolff	5 3 3 Dues & Memberships	500.00
TOTAL					500.00
Bill.com	07/02/2021	Elaine Chick Consulting	June 2021	102 - Water Info Program Checking	-5,875.87
			June 2021	54111 - WIP Contract Coordination	5,875.87
TOTAL					5,875.87
VISA	07/02/2021	Colorado Water Congress	Summer Conf Registration-Wolff, Schwindt, Russell	101 - SWCD Credit Card	-1,350.00
			Summer Conf Registration-Wolff, Schwindt, Russell	51514 Registration Fees	1,350.00
TOTAL					1,350.00
VISA	07/02/2021	Steamboat Grand	CWC Summer Conf Room Deposits	101 - SWCD Credit Card	-715.20
			CWC Summer Conf Room Deposits	51402 Director Travel	357.60
			CWC Summer Conf Room Deposits	51517 Staff Travel	357.60
TOTAL					715.20
VISA	07/05/2021	Charter Spectrum	June 2021	101 - SWCD Credit Card	-69.99
			June 2021	51518 Telecommunication	69.99
TOTAL					69.99
VISA	07/05/2021	FedEx	Bd Mtg Packet 7-1-21	101 - SWCD Credit Card	-165.50
			Bd Mtg Packet 7-1-21	51513 Postage	165.50
TOTAL					165.50
VISA	07/05/2021	Adobe Acrobat	July 2021	101 - SWCD Credit Card	-14.99
			July 2021	51512 Office Exps	14.99
TOTAL					14.99
Bill.com	07/07/2021	Charles Smith	Mtgs 4/9-7/1/21	100 - SWCD Checking (0.38%)	-800.00
			Mtgs 4/9-7/1/21	51401 Director Fees	800.00
TOTAL					800.00
Bill.com	07/07/2021	Robinson, Waters & O'Dorisio	June 2021	100 - SWCD Checking (0.38%)	-2,430.00
			June 2021	51205 Attorney Fees - Special Counsel	2,430.00
TOTAL					2,430.00
Bill.com	07/07/2021	Van Vurst Law	June 2021	100 - SWCD Checking (0.38%)	-22,703.00
			June 2021	51201 Attorney Fees - General Counsel	21,032.00
			June 2021	51203 Litigation - General Counsel	1,671.00
TOTAL					22,703.00
ACH	07/07/2021	Bill.com	June 2021	100 - SWCD Checking (0.38%)	-129.64
			June 2021	51501 Accounting	129.64
TOTAL					129.64
Bill.com	07/07/2021	Elaine Chick Consulting	June 2021 Expenses	102 - Water Info Program Checking	-924.44
			Water Law in a Nutshell	54113 - WIP Workshops	11.56
			Water Educator Network Symposium	54114 - WIP Conferences/Events	868.88
			Water & Ag WIP Library	54119 - WIP Educational Products	38.00
			Postage	54124 - WIP Office Expenses	6.00
TOTAL					924.44

3:19 PM

09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
VISA	07/08/2021	ImageNet	July 2021	101 - SWCD Credit Card	-150.00
			July 2021	51506 Equipment Leasing	150.00
TOTAL					150.00
Bill.com	07/12/2021	Christopher Treese	June 2021	100 - SWCD Checking (0.38%)	-5,000.00
			June 2021	51110 Recruitment/Contract Admin	3,500.00
			June 2021	53201 - State Lobbying Fees	1,500.00
TOTAL					5,000.00
ACH	07/12/2021	Laura E Spann	06/28-7/11/21	100 - SWCD Checking (0.38%)	-1,449.36
			06/28-7/11/21	51103 Wages - Programs Coordinator	1,938.40
			06/28-7/11/21	51107 Wages - Health & Life Insurance	-92.75
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-167.00
			06/28-7/11/21	51105 Wages - Payroll Taxes	120.18
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-120.18
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-120.18
			06/28-7/11/21	51105 Wages - Payroll Taxes	28.11
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-28.11
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-28.11
			06/28-7/11/21	216 State W/H Tax Payable	-81.00
TOTAL					1,449.36
ACH	07/12/2021	Steven W Wolff	06/28-7/11/21	100 - SWCD Checking (0.38%)	-3,385.73
			06/28-7/11/21	51102 Wages - General Manager	4,642.82
			06/28-7/11/21	51107 Wages - Health & Life Insurance	-222.92
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-482.00
			06/28-7/11/21	51105 Wages - Payroll Taxes	287.85
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-287.85
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-287.85
			06/28-7/11/21	51105 Wages - Payroll Taxes	67.32
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-67.32
			06/28-7/11/21	215 FICA/Medicare/Fed W/H	-67.32
			06/28-7/11/21	216 State W/H Tax Payable	-197.00
			06/28-7/11/21	51105 Wages - Payroll Taxes	13.93
			06/28-7/11/21	217 State Unemployment Tax	-13.93
TOTAL					3,385.73
Bill.com	07/13/2021	Steve Wolff - V	Moving Expenses WY-CO	100 - SWCD Checking (0.38%)	-11,397.86
			Moving Expenses WY-CO	51110 Recruitment/Contract Admin	11,397.86
TOTAL					11,397.86
Bill.com	07/13/2021	Steve Wolff - V	Mtg mileage Dgo-Montrose-Cortez	100 - SWCD Checking (0.38%)	-155.68
			Mtg mileage Dgo-Montrose-Cortez	51517 - Staff Travel	155.68
TOTAL					155.68
VISA	07/13/2021	Durango Parks & Recreation	BRT Mtg Oct 27, 21	101 - SWCD Credit Card	-335.00
			BRT Mtg Oct 27, 21	51510 Meeting Expenses	335.00
TOTAL					335.00
ACH	07/14/2021	United States Treasury	June 2021	100 - SWCD Checking (0.38%)	-2,161.48
			June 2021	215 FICA/Medicare/Fed W/H	698.00
			June 2021	215 FICA/Medicare/Fed W/H	593.04
			June 2021	215 FICA/Medicare/Fed W/H	593.04
			June 2021	215 FICA/Medicare/Fed W/H	138.70
			June 2021	215 FICA/Medicare/Fed W/H	138.70
TOTAL					2,161.48
VISA	07/14/2021	Verizon	June-July 2021 + Conf Phone	100 - SWCD Checking (0.38%)	-484.08
			June-July 2021 + Conf Phone	51518 - Telecommunication	484.08
TOTAL					484.08

3:19 PM
09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
ACH	07/15/2021	US Geological Survey	1Q2021	100 · SWCD Checking (0.38%)	-2,126.00
			1Q2021	52302 · Stream Gaging - Federal	2,126.00
TOTAL					2,126.00
Bill.com	07/20/2021	Trout Raley	May-June 2021	100 · SWCD Checking (0.38%)	-2,928.00
			May-June 2021	51205 · Attorney Fees - Special Counsel	2,928.00
TOTAL					2,928.00
VISA	07/21/2021	City Market	Restock office coffee	101 · SWCD Credit Card	-12.12
			Restock office coffee	51512 · Office Exps	12.12
TOTAL					12.12
VISA	07/21/2021	US Postal Service	Restock stamps	101 · SWCD Credit Card	-22.00
			Restock stamps	51513 · Postage	22.00
TOTAL					22.00
ACH	07/23/2021	Colorado Employer Benefit Trust	August 2021	100 · SWCD Checking (0.38%)	-3,109.55
			August 2021	51107 · Wages - Health & Life Insurance	3,109.55
TOTAL					3,109.55
Bill.com	07/23/2021	Peter Butler	June 2021 SUIIT proposed WQ standards	100 · SWCD Checking (0.38%)	-1,920.00
			June 2021 SUIIT proposed WQ standards	52104 · Technical Other Expenses	1,920.00
TOTAL					1,920.00
Bill.com	07/23/2021	Water Consult	April 10-July 16, 2021	103 · SJRBIP Water Dev. Cmt Checking	-14,637.37
			April 10-July 16, 2021	200 · Accounts Payable	14,637.37
TOTAL					14,637.37
ACH	07/26/2021	Laura E Spann	7/12-7/25/21	100 · SWCD Checking (0.38%)	-1,449.35
			7/12-7/25/21	51103 · Wages - Programs Coordinator	1,938.40
			7/12-7/25/21	51107 · Wages - Health & Life Insurance	-92.75
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-167.00
			7/12-7/25/21	51105 · Wages - Payroll Taxes	120.19
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-120.19
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-120.19
			7/12-7/25/21	51105 · Wages - Payroll Taxes	28.11
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-28.11
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-28.11
			7/12-7/25/21	216 · State W/H Tax Payable	-81.00
TOTAL					1,449.35
ACH	07/26/2021	Steven W Wolff	7/12-7/25/21	100 · SWCD Checking (0.38%)	-3,526.68
			7/12-7/25/21	51102 · Wages - General Manager	4,857.18
			7/12-7/25/21	51107 · Wages - Health & Life Insurance	-222.92
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-529.00
			7/12-7/25/21	51105 · Wages - Payroll Taxes	301.15
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-301.15
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-301.15
			7/12-7/25/21	51105 · Wages - Payroll Taxes	70.43
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-70.43
			7/12-7/25/21	215 · FICA/Medicare/Fed W/H	-70.43
			7/12-7/25/21	216 · State W/H Tax Payable	-207.00
			7/12-7/25/21	51105 · Wages - Payroll Taxes	14.57
			7/12-7/25/21	217 · State Unemployment Tax	-14.57
TOTAL					3,526.68
Bill.com	07/27/2021	Water Information Program	2021 SWCD Matching Contribution	100 · SWCD Checking (0.38%)	-32,600.00
			2021 SWCD Matching Contribution	44902 · WIP SWCD Matching Contribution	32,600.00
TOTAL					32,600.00

3:19 PM
09/02/21

Southwestern Water Conservation District
Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
Bill.com	07/27/2021	Wright Water Engineers	May 2021 Opposition	100 - SWCD Checking (0.38%)	-2,328.25
			May 2021 Opposition	51302 Engineering - Special Projects	2,328.25
TOTAL					2,328.25
Bill.com	07/27/2021	Wright Water Engineers	May 2021	100 - SWCD Checking (0.38%)	-1,723.25
			May 2021	51302 Engineering - Special Projects	1,723.25
TOTAL					1,723.25
Bill.com	07/27/2021	Jenny Russell	Mtgs 4/21-7/1/21; Mileage + Hotel	100 - SWCD Checking (0.38%)	-2,431.02
			Mtgs 4/21-7/1/21	51401 - Director Fees	1,700.00
			Mileage + Hotel	51402 - Director Travel	731.02
TOTAL					2,431.02
Bill.com	07/27/2021	The West Building	August 2021	100 - SWCD Checking (0.38%)	-2,509.35
			August 2021	51515 - Rent	2,509.35
TOTAL					2,509.35
ACH	07/29/2021	Colorado Department of Revenue	2Q2021	100 - SWCD Checking (0.38%)	-710.00
			2Q2021	216 State W/H Tax Payable	710.00
TOTAL					710.00
Bill.com	07/29/2021	Steve Wolff - V	Drought Mtg with Interior 7/22-23/21	100 - SWCD Checking (0.38%)	-972.00
			Drought Mtg with Interior 7/22-23/21	51517 - Staff Travel	972.00
TOTAL					972.00
Bill.com	07/29/2021	Colorado River WCD	May 2021	100 - SWCD Checking (0.38%)	-2,609.75
			May 2021	52104 Technical Other Expenses	2,609.75
TOTAL					2,609.75
Bill.com	07/29/2021	Laura Spann-V	Mild to Wild Van Rental, SWCD Board Tour 8/12/21	100 - SWCD Checking (0.38%)	-1,000.00
			Mild to Wild Van Rental, SWCD Board Tour 8/12/21	51510 - Meeting Expenses	1,000.00
TOTAL					1,000.00
ACH	07/30/2021	Colorado State Treasurer	2Q2021 Unemployment	100 - SWCD Checking (0.38%)	-51.96
			2Q2021 Unemployment	217 - State Unemployment Tax	51.96
TOTAL					51.96
VISA	08/01/2021	Office Depot	Replacement mouse (Laura)	101 - SWCD Credit Card	-29.99
			Replacement mouse (Laura)	51512 - Office Exps	29.99
TOTAL					29.99
VISA	08/03/2021	Fredrick Zink & Associates	June 2021	101 - SWCD Credit Card	-137.50
			June 2021	51501 - Accounting	137.50
TOTAL					137.50
Bill.com	08/04/2021	Steve Wolff - V	Mtg mileage 7/28-29/21 Rio Grande, Co River Copper	100 - SWCD Checking (0.38%)	-327.60
			Mtg mileage 7/28-29/21 Rio Grande, Co River Copper	51517 - Staff Travel	327.60
TOTAL					327.60
Bill.com	08/04/2021	Elaine Chick Consulting	July 2021	102 - Water Info Program Checking	-4,120.47
			July 2021	54111 - WIP Contract Coordination	4,120.47
TOTAL					4,120.47

3:19 PM
09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
VISA	08/04/2021	Adobe Acrobat	August 2021	101 - SWCD Credit Card	-14.99
			August 2021	51512 - Office Exps	14.99
TOTAL					14.99
VISA	08/05/2021	Charter Spectrum	July 2021	101 - SWCD Credit Card	-69.99
			July 2021	51518 - Telecommunication	69.99
TOTAL					69.99
VISA	08/06/2021	ImageNet	August 2021	101 - SWCD Credit Card	-150.00
			August 2021	51506 - Equipment Leasing	150.00
TOTAL					150.00
VISA	08/06/2021	Western State Colorado University	Futures Games Student Scholarship, Platero	101 - SWCD Credit Card	-100.00
			Futures Games Student Scholarship, Platero	5 4 7 - Event Sponsorships	100.00
TOTAL					100.00
VISA	08/06/2021	Western State Colorado University	Futures Games Student Scholarship, Blackwater	101 - SWCD Credit Card	-100.00
			Futures Games Student Scholarship, Blackwater	5 4 7 - Event Sponsorships	100.00
TOTAL					100.00
VISA	08/06/2021	Fredrick Zink & Associates	July 2021	101 - SWCD Credit Card	-121.00
			August 2021	51501 - Accounting	121.00
TOTAL					121.00
Bill.com	08/06/2021	Blue Channel	Website Registration Support	102 - Water Info Program Checking	-108.30
			Website Registration Support	54113 - WIP Workshops	108.30
TOTAL					108.30
Bill.com	08/09/2021	Harris Water Engineering, Inc	June-July 2021	100 - SWCD Checking (0.38%)	-3,795.00
			June-July 2021	51301 - Engineering - General	3,795.00
TOTAL					3,795.00
ACH	08/09/2021	Laura E Spann	7/26-8/8/21	100 - SWCD Checking (0.38%)	-1,449.37
			7/26-8/8/21	51103 - Wages - Programs Coordinator	1,938.40
			7/26-8/8/21	51107 - Wages - Health & Life Insurance	-92.75
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-167.00
			7/26-8/8/21	51105 - Wages - Payroll Taxes	120.18
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-120.18
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-120.18
			7/26-8/8/21	51105 - Wages - Payroll Taxes	28.10
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-28.10
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-28.10
			7/26-8/8/21	216 - State W/H Tax Payable	-81.00
TOTAL					1,449.37
ACH	08/09/2021	Steven W Wolff	7/26-8/8/21	100 - SWCD Checking (0.38%)	-3,619.58
			7/26-8/8/21	51102 - Wages - General Manager	5,000.00
			7/26-8/8/21	51107 - Wages - Health & Life Insurance	-222.92
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-561.00
			7/26-8/8/21	51105 - Wages - Payroll Taxes	310.00
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-310.00
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-310.00
			7/26-8/8/21	51105 - Wages - Payroll Taxes	72.50
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-72.50
			7/26-8/8/21	215 - FICA/Medicare/Fed W/H	-72.50
			7/26-8/8/21	216 - State W/H Tax Payable	-214.00
			7/26-8/8/21	51105 - Wages - Payroll Taxes	1.05
			7/26-8/8/21	217 - State Unemployment Tax	-1.05
TOTAL					3,619.58

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09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
ACH	08/09/2021	Bill.com	July 2021	100 · SWCD Checking (0.38%)	-128.49
			July 2021	51501 · Accounting	128.49
TOTAL					128.49
Bill.com	08/10/2021	San Miguel County	2021 Operations, Dolores Near Slickrock Gage	100 · SWCD Checking (0.38%)	-1,890.00
			2021 Operations, Dolores Near Slickrock Gage	52302 · Stream Gaging - Federal	1,890.00
TOTAL					1,890.00
VISA	08/10/2021	City Market	Restock tape, paper, mtg snacks, cream	101 · SWCD Credit Card	-37.39
			Restock tape, paper, mtg snacks, cream	51512 · Office Exps	37.39
TOTAL					37.39
Bill.com	08/10/2021	Dove Creek Volunteer Fire Department	Donation of Director Fees in Honor of Doug Stowe	100 · SWCD Checking (0.38%)	-500.00
			Donation of Director Fees in Honor of Doug Stowe	51401 · Director Fees	500.00
TOTAL					500.00
Bill.com	08/11/2021	Van Vurst Law	July 2021	100 · SWCD Checking (0.38%)	-24,573.78
			July 2021	51201 · Attorney Fees - General Counsel	16,424.00
			July 2021	51203 · Litigation - General Counsel	5,352.00
			July 2021	51202 · Travel Exps - General Counsel	2,797.78
TOTAL					24,573.78
VISA	08/11/2021	2nd Avenue Deli	Bd Mtg Lunch 8-11-21	101 · SWCD Credit Card	-58.74
			Bd Mtg Lunch 8-11-21	51510 · Meeting Expenses	58.74
TOTAL					58.74
VISA	08/11/2021	FedEx	Bd Mtg Packet 8-11-21	101 · SWCD Credit Card	-33.10
			Bd Mtg Packet 8-11-21	51513 · Postage	33.10
TOTAL					33.10
VISA	08/11/2021	FedEx	Bd Mtg Packet 8-11-21	101 · SWCD Credit Card	-209.70
			Bd Mtg Packet 8-11-21	51513 · Postage	209.70
TOTAL					209.70
ACH	08/13/2021	United States Treasury	July 2021	100 · SWCD Checking (0.38%)	-3,391.68
			July 2021	215 · FICA/Medicare/Fed W/H	1,345.00
			July 2021	215 · FICA/Medicare/Fed W/H	829.37
			July 2021	215 · FICA/Medicare/Fed W/H	829.37
			July 2021	215 · FICA/Medicare/Fed W/H	193.97
			July 2021	215 · FICA/Medicare/Fed W/H	193.97
TOTAL					3,391.68
ACH	08/16/2021	Bank of Colorado	Wire Fee (SJRBRIP Transfer to SJWC)	100 · SWCD Checking (0.38%)	-20.00
			Wire Fee (SJRBRIP Transfer to SJWC)	51501 · Accounting	20.00
TOTAL					20.00
VISA	08/19/2021	CGFOA	Webinar-Local Government Investment Pools	101 · SWCD Credit Card	-25.00
			Webinar-Local Government Investment Pools	51516 · Staff Training/Development	25.00
TOTAL					25.00

3:19 PM
09/02/21

Southwestern Water Conservation District

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
ACH	08/23/2021	Laura E Spann	08/9-22/21	100 · SWCD Checking (0.38%)	-1,449.36
			08/9-22/21	51103 Wages - Programs Coordinator	1,938.40
			08/9-22/21	51107 Wages - Health & Life Insurance	-92.75
			08/9-22/21	215 FICA/Medicare/Fed W/H	-167.00
			08/9-22/21	51105 Wages - Payroll Taxes	120.18
			08/9-22/21	215 FICA/Medicare/Fed W/H	-120.18
			08/9-22/21	215 FICA/Medicare/Fed W/H	-120.18
			08/9-22/21	51105 Wages - Payroll Taxes	28.11
			08/9-22/21	215 FICA/Medicare/Fed W/H	-28.11
			08/9-22/21	215 FICA/Medicare/Fed W/H	-28.11
			08/9-22/21	216 State W/H Tax Payable	-81.00
TOTAL					1,449.36
ACH	08/23/2021	Steven W Wolff	8/9-22/21	100 · SWCD Checking (0.38%)	-3,619.58
			8/9-22/21	51102 Wages - General Manager	5,000.00
			8/9-22/21	51107 Wages - Health & Life Insurance	-222.92
			8/9-22/21	215 FICA/Medicare/Fed W/H	-561.00
			8/9-22/21	51105 Wages - Payroll Taxes	310.00
			8/9-22/21	215 FICA/Medicare/Fed W/H	-310.00
			8/9-22/21	215 FICA/Medicare/Fed W/H	-310.00
			8/9-22/21	51105 Wages - Payroll Taxes	72.50
			8/9-22/21	215 FICA/Medicare/Fed W/H	-72.50
			8/9-22/21	215 FICA/Medicare/Fed W/H	-72.50
			8/9-22/21	216 State W/H Tax Payable	-214.00
TOTAL					3,619.58
Bill.com	08/24/2021	Four Corners Farmers & Ranchers Co...	2021 Support	100 · SWCD Checking (0.38%)	-500.00
			2021 Support	5 3 3 Dues & Memberships	500.00
TOTAL					500.00
Bill.com	08/24/2021	Don Schwindt	Mtgs 7/1-8/11/21	100 · SWCD Checking (0.38%)	-267.20
			Mtgs 7/1-8/11/21	51401 Director Fees	200.00
			Mileage Mtg 8/11/21 Durango	51402 Director Travel	67.20
TOTAL					267.20
Bill.com	08/24/2021	Christopher Treese	July 2021	100 · SWCD Checking (0.38%)	-825.00
			July 2021	53201 State Lobbying Fees	825.00
TOTAL					825.00
Bill.com	08/24/2021	Wright Water Engineers	June 2021	100 · SWCD Checking (0.38%)	-3,926.50
			June 2021	51302 Engineering - Special Projects	3,926.50
TOTAL					3,926.50
Bill.com	08/24/2021	Trout Raley	July 2021	100 · SWCD Checking (0.38%)	-435.00
			July 2021	51205 Attorney Fees - Special Counsel	435.00
TOTAL					435.00
Bill.com	08/24/2021	Colorado Cooperative Company	2021 Emergency Grant: Cottonwood Syphon	100 · SWCD Checking (0.38%)	-27,642.00
			2021 Emergency Grant: Cottonwood Syphon	5 2 6 Local Financial Support	27,642.00
TOTAL					27,642.00
Bill.com	08/24/2021	Five Rivers Trout Unlimited	2021 Grant: Upper San Juan SMP, Phase III	100 · SWCD Checking (0.38%)	-8,100.00
			2021 Grant: Upper San Juan SMP, Phase III	5 2 6 Local Financial Support	8,100.00
TOTAL					8,100.00
Bill.com	08/24/2021	Montezuma County	2021 Grant: Phreatophyte Removal Project	100 · SWCD Checking (0.38%)	-15,000.00
			2021 Grant: Phreatophyte Removal Project	5 2 6 Local Financial Support	15,000.00
TOTAL					15,000.00

Check Detail

July through August 2021

Num	Date	Name	Memo	Account	Original Amount
VISA	08/26/2021	Office Depot	Restock 11x17 paper	101 - SWCD Credit Card	-26.79
			Restock 11x17 paper	51512 - Office Exps	26.79
TOTAL					26.79
VISA	08/29/2021	Verizon	July 2021	101 - SWCD Credit Card	-137.98
			July 2021	51518 - Telecommunication	137.98
TOTAL					137.98
VISA	08/29/2021	Steamboat Grand	CWC Summer Conf Room Wolff Schwindt (Final Pymt)	101 - SWCD Credit Card	-779.30
			CWC Summer Conf Room Wolff (Final Pymt)	51517 - Staff Travel	389.65
			CWC Summer Conf Room Schwindt (Final Pymt)	51402 - Director Travel	389.65
TOTAL					779.30
VISA	08/29/2021	Steamboat Grand	CWC Conf Parking (Reimbursed by Steve)	101 - SWCD Credit Card	-120.00
			CWC Conf Parking (Reimbursed by Steve)	51517 - Staff Travel	120.00
TOTAL					120.00
Bill.com	08/31/2021	Arielle Platero	Futures Games Sponsorship - Travel Expenses	100 - SWCD Checking (0.38%)	-280.36
			Futures Games Sponsorship - Travel Expenses	5.4.7 - Event Sponsorships	280.36
TOTAL					280.36
Bill.com	08/31/2021	The West Building	September 2021	100 - SWCD Checking (0.38%)	-2,503.06
			September 2021	51515 - Rent	2,503.06
TOTAL					2,503.06
Bill.com	08/31/2021	Colorado River WCD	June-July Modeling Costshare	100 - SWCD Checking (0.38%)	-3,853.33
			June-July Modeling Costshare	52104 - Technical Other Expenses	3,853.33
TOTAL					3,853.33
Bill.com	08/31/2021	Colorado Employer Benefit Trust	September 2021	100 - SWCD Checking (0.38%)	-3,109.55
			September 2021	51107 - Wages - Health & Life Insurance	3,109.55
TOTAL					3,109.55

Southwest Basins Roundtable Update to SWCD Board of Directors

September 28, 2021

The next Roundtable meeting will be via Zoom on October 28, 2021 starting at 3:00 pm.

WSRF Grants

The Southwest Basin Roundtable's WSRF Basin Account received an additional \$200,000 from the State, a portion of the federal relief funds. October 15th is the deadline for receiving WSRF Grant applications. These should be emailed to Roundtable Chair Ed Tolen at etolen@laplawd.org, Laura Spann lauras@swwcd.org, and Ben Wade ben.wade@state.co.us.

Basin Implementation Plan Review

Basin Implementation Plan (Volume 1 and 2) Roundtable/Subcommittee reviews wrapped-up on September 13th. For those that are still looking to make comments or who are curious about the public comment period, that review will occur between October 13 and November 15 and will be posted on engagecwcb.org. If you have questions, please contact Kat Weismiller kathryn.weismiller@state.co.us.

Demand Management Workshop & Board Discussion

If you were unable to attend the most recent Board Demand Management Workshop on August 18, you can listen to the recording [here](#). Further discussion on Demand Management took place at the September 15th [Board Meeting](#). If you have questions, please contact Amy Ost diek (amy.ostdiek@state.co.us)

Water Equity Task Force Workshop

The Equity in Water Public Workshop is scheduled for September 30th and will be taking place virtually. This workshop is open to the public and we encourage all interested members of the public to participate. If you wish to attend, please register at [Eventbrite](https://www.eventbrite.com). You can also find details on engagecwcb.org. If you have questions please contact Elizabeth Schoder (elizabeth.schoder@state.co.us).

IBCC October Meeting

The Oct 21, 2021 IBCC meeting will be held virtually due to rising case numbers from the delta OVID-19 variant. At this time, there is no update on the Director of Compact Negotiations.



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

BOARD MEMORANDUM

From: Steve Wolff, General Manager

Subject: Hydrology Update for SWCD

Date: 29 September, 2021

Southwestern Colorado Summary

Although southwestern Colorado has experienced a good monsoon season across most of its extent, summer moisture has remained low in some areas. And although the rains help with local conditions, a good winter snowpack is badly needed to help the extremely low water supply conditions that have been experienced through 2021.

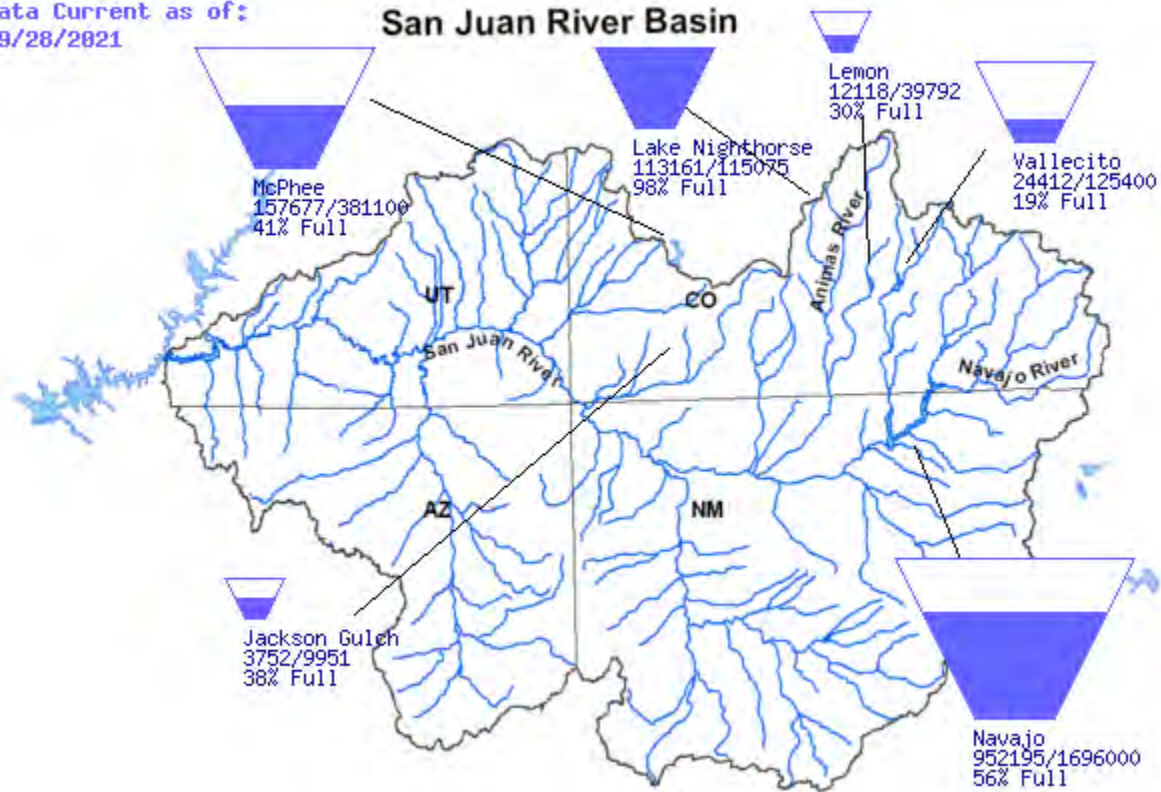
Unfortunately, neither Division Engineer's Rob Genualdi (Division 7) nor Bob Hurford (Division 4) will be joining us at our October board meeting. Some summary information is shown on the following pages.

Streamflow Conditions (as of 29 September, 2021)

Site	Current Flow	Mean for This Date
San Juan @ Pagosa Springs	42 cfs	153 cfs
Piedra @ Arboles	43 cfs	192 cfs
Los Pinos Near Ignacio	3.1 cfs	36 cfs
Animas @ Durango	161 cfs	422 cfs
La Plata @ Hesperus	4.5 cfs	---
Mancos near Towaoc	0.2 cfs	26 cfs
McElmo Creek near Cortez	18 cfs	123 cfs
Dolores @ Dolores	41 cfs	142 cfs
San Miguel @ Placerville	85 cfs	126 cfs
San Miguel @ Uravan	51 cfs	166 cfs

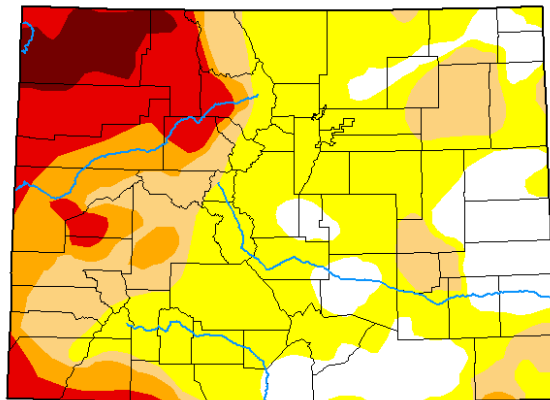
Data Current as of:
09/28/2021

San Juan River Basin



U.S. Drought Monitor Colorado

September 21, 2021
(Released Thursday, Sep. 23, 2021)
Valid 8 a.m. EDT



Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	16.92	83.08	40.94	24.58	15.05	3.91
Last Week 09-14-2021	34.60	65.40	37.06	24.48	15.05	3.91
3 Months Ago 06-22-2021	54.41	45.59	41.62	36.37	30.35	17.73
Start of Calendar Year 12-25-2020	0.00	100.00	100.00	93.73	76.17	27.60
Start of Water Year 09-29-2020	0.00	100.00	99.29	89.35	52.88	2.64
One Year Ago 09-22-2020	0.00	100.00	98.61	87.77	50.10	0.38

Intensity

None	D2 Severe Drought
D0 Abnormally Dry	D3 Extreme Drought
D1 Moderate Drought	D4 Exceptional Drought

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

Brad Rippey
U.S. Department of Agriculture



droughtmonitor.unl.edu

Reclamation releases updated projections of Colorado River system conditions

For Release: Sep 22, 2021

COLORADO RIVER BASIN - The Bureau of Reclamation today released updated modeling projections of major reservoir levels within the Colorado River system over the next five years. These projections are used by Reclamation and water users in the basin for future water management planning. The new projections show continued elevated risk of Lake Powell and Lake Mead reaching critically-low elevations as a result of the historic drought and low-runoff conditions in the Colorado River Basin.

Today's announcement comes as the Administration pursues [a whole-of-government approach to drought mitigation](#) via the Interagency Drought Relief Working Group, co-chaired by the Department of the Interior. The Working Group is coordinating with partners across the federal government, providing assistance to impacted communities, and developing long-term solutions to climate change.

Lake Powell Projections

At Lake Powell, the projections indicate the potential of falling below minimum power pool as early as July 2022 should extremely dry hydrology continue into next year. Beyond 2022, the chance Lake Powell could fall below minimum power pool ranges from about 25% to 35%. Elevation 3,525 feet, the target elevation in Lake Powell, has an almost 90% chance of being reached next year. That target elevation provides a 35 vertical-foot buffer designed to minimize the risk of dropping below the minimum power pool elevation of 3,490 feet and balances the need to protect the infrastructure at Glen Canyon Dam and meet current operational obligations to the Lower Basin States of Arizona, California and Nevada.

"The latest outlook for Lake Powell is troubling," said Reclamation's Upper Colorado Basin Regional Director Wayne Pullan. "This highlights the importance of continuing to work collaboratively with the Basin States, Tribes and other partners toward solutions."

After consultation with - and acknowledgement from - all seven Basin States and other partners, under the emergency provisions of the 2019 Drought Response Operations Agreement (DROA), Reclamation started supplemental water deliveries in July 2021 to Lake Powell from the upper reservoirs of Flaming Gorge, Blue Mesa and Navajo. Those supplemental deliveries will provide up to an additional 181 thousand acre-feet of water to Lake Powell by the end of the 2021.

As the Upper Basin States continue to work towards the development of a Drought Operations plan that will govern potential future supplemental deliveries, previous modeling assumptions regarding any additional or continued DROA releases have been removed to provide a clearer representation of future risk. The removal of these assumptions was the main contributor in the increase in risk between the last set of projections released in June of this year.

Lake Mead Projections

At Lake Mead, today's projections indicate the chance of Lake Mead declining to elevation 1,025 feet (the third shortage trigger) is as high as 66% in 2025, and that there is a 22% chance of the reservoir elevation dropping to 1,000 feet the same year.

Reclamation continues to work with all seven Colorado River Basin States to address current conditions in the Colorado River Basin.

"This five-year probability table underscores the need for additional actions beyond the 2007 Guidelines and the 2019 Drought Contingency Plan to be taken to enhance our efforts to protect Lake Mead, Lake Powell and the Colorado River system overall," **said Tom Buschatzke, Director of the Arizona Department of Water Resources.**

Most of the flow of the Colorado River originates in the Rocky Mountains. The Upper Basin experienced an exceptionally dry spring in 2021, with April to July runoff into Lake Powell totaling just 26% of average, despite near-average snowfall last winter. Total Colorado River system storage today is 39% of capacity, down from 49% at this time last year.

Today's release also includes updated presentations that utilize additional forecast information to improve public understanding of Reclamation's future hydrologic projections. In keeping with its commitment to better inform all water users and the public regarding the hydrologic tools available, Reclamation has added in-depth information on its website about modeling and projections in the Colorado River system. A new interactive tool also allows users to explore projected reservoir conditions under a range of inflow forecasts.

"We're providing detailed information on our modeling and projections to further generate productive discussions about the future of Lake Powell and Lake Mead based on the best data available," **said Reclamation's Lower Colorado Basin Regional Director Jacklynn Gould.** "Being prepared to adopt further actions to protect the elevations at these reservoirs remains a Reclamation priority and focus."

To view the most recent Colorado River system projections, visit <https://www.usbr.gov/lc/region/g4000/riverops/crss-5year-projections.html>.



Steve Wolff <steve@swgcd.org>

Statement on Colorado River System Projections

1 message

Commissioner Rebecca Mitchell <sara.leonard@state.co.us>
Reply-To: Commissioner Rebecca Mitchell <sara.leonard@state.co.us>
To: steve@swgcd.org

Wed, Sep 29, 2021 at 2:01 PM



FOR IMMEDIATE RELEASE

MEDIA CONTACT:

Sara Leonard

sara.leonard@state.co.us

303-866-3441 x3242

Commissioner Mitchell Statement on Colorado River System Projections Released

September 29, 2021 (Denver, CO) - On September 22, the Bureau of Reclamation released updated projections for levels in the Colorado River's major reservoirs - Lake Powell and Lake Mead. As a result of continued historic drought and low runoff conditions, both reservoirs are at risk of reaching critically low levels.

In Lake Powell, projections indicate that the critical elevation of 3,525 feet now has a near 90% chance of being reached next year. In Lake Mead, elevation 1,025 feet (the third shortage trigger) is as high as 66% in 2025.

Statement from Colorado River Commissioner Rebecca Mitchell:

"Though deeply troubling, these projections tell us what we already know and have experienced in Colorado and the whole Upper Basin - that this has been a very dry and challenging year and these conditions will continue into the future. Our water users have already experienced painful and deep cuts, and these will continue. Colorado is fully committed to working with the basin states and the Bureau of Reclamation to chart a course that provides additional security to the entire Colorado River Basin and its water users during this challenging time and into the future."

For further information, read the [Bureau of Reclamation's news release](#).

###

The [Colorado Water Conservation Board](#) mission is to conserve, develop, protect and manage Colorado's water for present and future generations.



Media Contact:

Sara Leonard

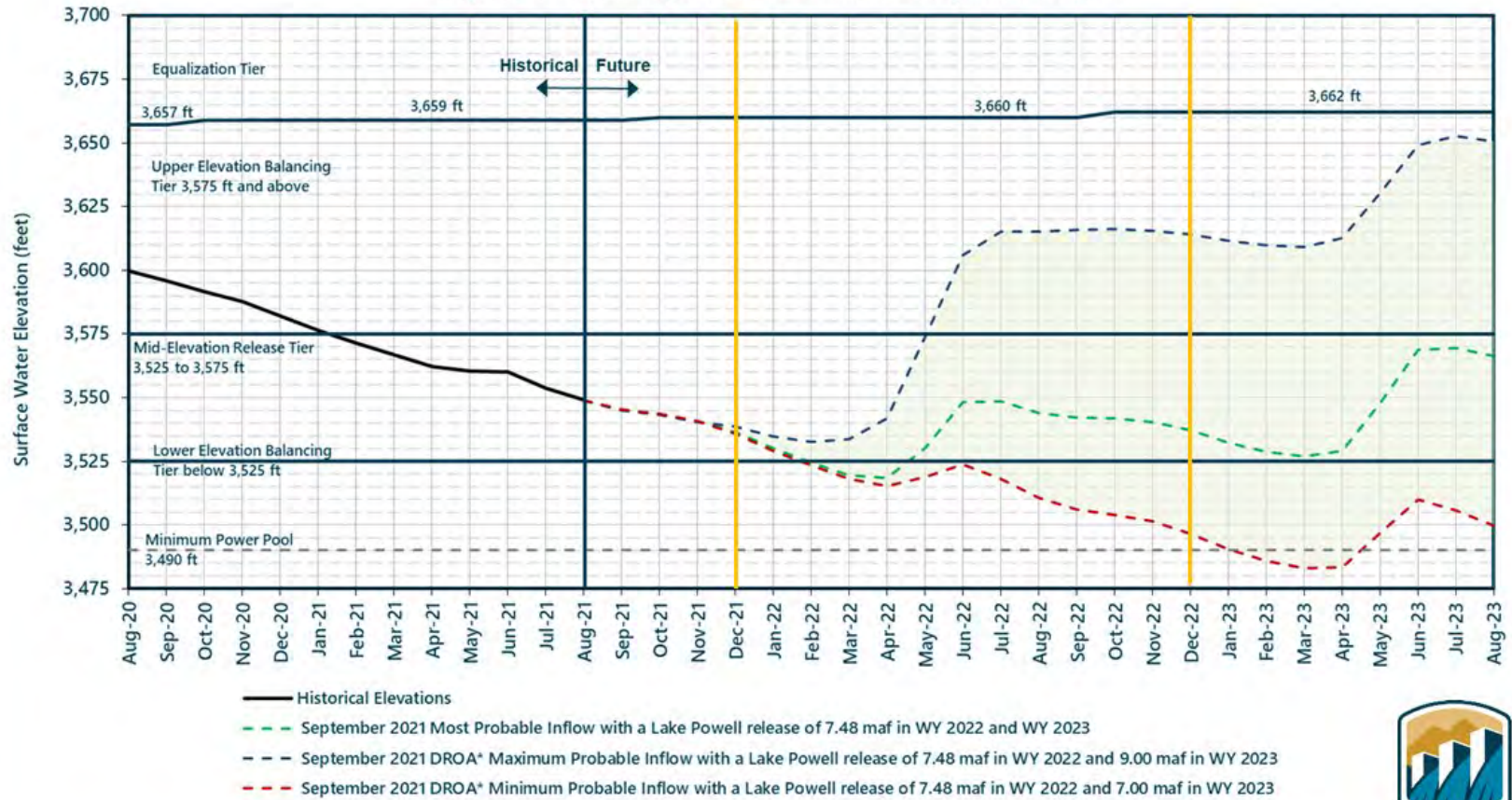
sara.leonard@state.co.us

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Lake Powell End of Month Elevations

Projections from the September 2021 24-Month Study Inflow Scenarios

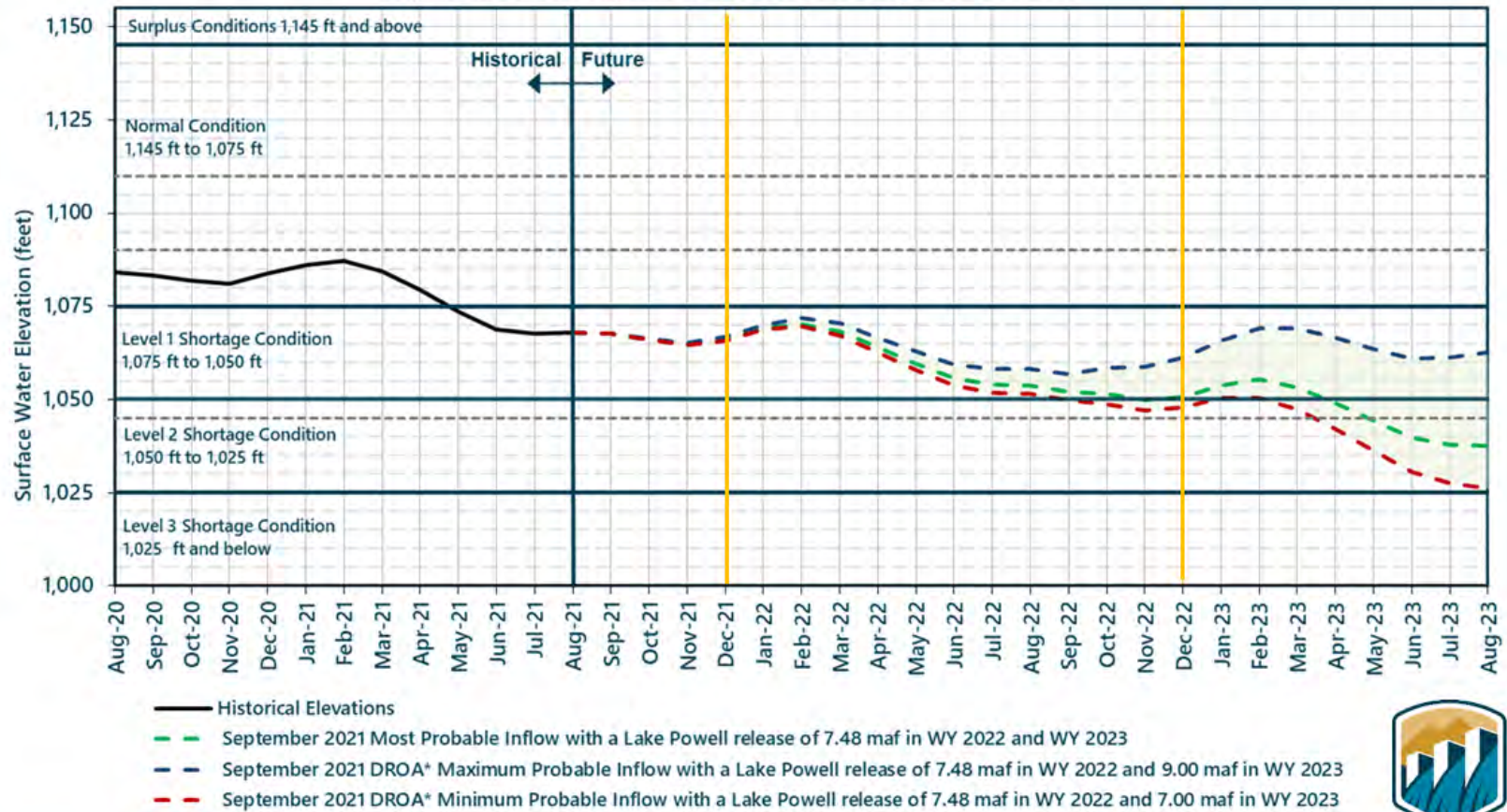


*The Drought Response Operations Agreement (DROA) is available online at: <https://www.usbr.gov/dcp/finaldocs.html>.



Lake Mead End of Month Elevations

Projections from the September 2021 24-Month Study Inflow Scenarios



*The Drought Response Operations Agreement (DROA) is available online at: <https://www.usbr.gov/dcp/finaldocs.html>.



Chance of Reaching Critical Reservoir Elevations

June 2021 (with UB DRO) vs. August 2021 (without UB DRO)

	Run	2022	2023	2024	2025	2026
Lake Powell less than 3,525 feet	June 2021	79%	30%	25%	30%	34%
	August 2021	88%	53%	41%	44%	41%
	Difference	+9%	+23%	+16%	+14%	+7%
Lake Powell less than 3,490 feet	June 2021	0%	5%	17%	16%	22%
	August 2021	3%	34%	25%	28%	34%
	Difference	+3%	+29%	+8%	+12%	+12%
Lake Mead less than 1,025 feet	June 2021	0%	17%	44%	58%	63%
	August 2021	0%	22%	44%	66%	63%
	Difference	0%	+5%	0%	+8%	0%
Lake Mead less than 1,000 feet	June 2021	0%	0%	9%	21%	23%
	August 2021	0%	0%	13%	22%	22%
	Difference	0%	0%	+4%	+1%	-1%

*All results computed as the chance of falling below the threshold in any month in the calendar (water) year for Lake Mead (Lake Powell).
All projections assume Stress Test Hydrology.

Upper Basin – Lake Powell

Percent of Traces with Event or System Condition

Results from August 2021 CRSS **without Upper Basin Drought Response Operations** (values in percent)

Event or System Condition	2022	2023	2024	2025	2026
Equalization Tier (Powell \geq Equalization [EQ] Elevation)	0	0	0	6	6
<i>Equalization – annual release > 8.23 maf</i>	0	0	0	6	6
<i>Equalization – annual release = 8.23 maf</i>	0	0	0	0	0
Upper Elevation Balancing Tier (Powell < EQ Elevation and \geq 3,575 ft)	0	16	25	28	31
<i>Upper Elevation Balancing – annual release > 8.23 maf</i>	0	16	25	28	28
<i>Upper Elevation Balancing – annual release = 8.23 maf</i>	0	0	0	0	3
<i>Upper Elevation Balancing – annual release < 8.23 maf</i>	0	0	0	0	0
Mid-Elevation Release Tier (Powell < 3,575 and \geq 3,525 ft)	100	38	44	34	28
<i>Mid-Elevation Release – annual release = 8.23 maf</i>	0	0	0	6	9
<i>Mid-Elevation Release – annual release = 7.48 maf</i>	100	38	44	28	19
Lower Elevation Balancing Tier (Powell < 3,525 ft)	0	47	31	31	34
<i>Below Minimum Power Pool (Powell < 3,490 ft)</i>	3	34	25	28	34
<i>Below Minimum Power Pool (Powell < 3,490 ft) in any month</i>	3	34	25	28	34

Notes:

¹ Modeled operations include the 2007 Interim Guidelines, Lower Basin Drought Contingency Plan, and Minute 323, including the Binational Water Scarcity Contingency Plan.

² Reservoir initial conditions on December 31, 2021 were simulated using the August 2021 Most Probable 24 Month Study.

³ Stress Test Hydrology uses 32 hydrologic inflow sequences that resamples the observed natural flow record from 1988-2019 for 32 traces analyzed.

⁴ Percentages shown in this table may not be representative of the full range of future possibilities that could occur with different modeling assumptions.

⁵ Percentages shown may not sum to 100% due to rounding to the nearest percent.

Lower Basin – Lake Mead

Percent of Traces with Event or System Condition

Results from August 2021 CRSS **without Upper Basin Drought Response Operations** (values in percent)

Event or System Condition	2022	2023	2024	2025	2026
Surplus Condition – any amount (Mead \geq 1,145 ft)	0	0	0	0	0
Surplus – Flood Control	0	0	0	0	0
Normal or ICS Surplus Condition (Mead < 1,145 and > 1,075 ft)	0	3	3	0	9
Recovery of DCP ICS / Mexico's Water Savings (Mead $>/\geq$ 1,110 ft)	0	0	0	0	0
DCP Contribution / Mexico's Water Savings (Mead \leq 1,090 and > 1,075 ft)	0	3	3	0	3
Shortage Condition – any amount (Mead \leq 1,075 ft)	100	97	97	100	91
<i>Shortage / Reduction – 1st level (Mead \leq 1,075 and \geq 1,050)</i>	<i>100</i>	<i>75</i>	<i>28</i>	<i>22</i>	<i>16</i>
DCP Contribution / Mexico's Water Savings (Mead \leq 1,075 and > 1,050 ft)	100	75	28	22	16
<i>Shortage / Reduction – 2nd level (Mead < 1,050 and \geq 1,025)</i>	<i>0</i>	<i>22</i>	<i>66</i>	<i>38</i>	<i>34</i>
DCP Contribution / Mexico's Water Savings (Mead \leq 1,050 and > 1,045 ft)	0	16	3	6	3
DCP Contribution / Mexico's Water Savings (Mead \leq 1,045 and > 1,040 ft)	0	6	13	6	3
DCP Contribution / Mexico's Water Savings (Mead \leq 1,040 and > 1,035 ft)	0	0	13	9	3
DCP Contribution / Mexico's Water Savings (Mead \leq 1,035 and > 1,030 ft)	0	0	13	9	3
DCP Contribution / Mexico's Water Savings (Mead \leq 1,030 and \geq 1,025 ft)	0	0	25	6	22
<i>Shortage / Reduction – 3rd level (Mead < 1,025)</i>	<i>0</i>	<i>0</i>	<i>3</i>	<i>41</i>	<i>41</i>
DCP Contribution / Mexico's Water Savings (Mead $</\leq$ 1,025 ft)	0	0	3	41	41

Notes:

¹ Modeled operations include the 2007 Interim Guidelines, Lower Basin Drought Contingency Plan, and Minute 323, including the Binational Water Scarcity Contingency Plan.

² Reservoir initial conditions on December 31, 2021 were simulated using the August 2021 Most Probable 24 Month Study.

³ Stress Test Hydrology uses 32 hydrologic inflow sequences that resamples the observed natural flow record from 1988-2019 for 32 traces analyzed.

⁴ Percentages shown in this table may not be representative of the full range of future possibilities that could occur with different modeling assumptions.

⁵ Percentages shown may not sum to 100% due to rounding to the nearest percent.

MEMO

TO: SWCD Board of Directors

FROM: Steve and Laura

DATE: September 28, 2021

RE: Selection of 2022 Employee Health Plans

We wish to confirm that, for 2022, the SWCD would like to continue offering the same health plans selected in 2021 within the same employee health benefit structure.

The deadline to select 2022 employee health insurance plans with Colorado Employer Benefit Trust (CEBT) is October 15, 2021. Premiums will increase 2% from 2021 to 2022.

In summer 2021, the SWCD board conducted a thorough review of health insurance plans on the market and restructured SWCD's health insurance benefit for employees.

In 2021, the SWCD board offered the following three health plans choices for employees to select from:

- PPO4 (Steve's 2021 plan selection and likely choice for 2022)
- PPO6 (Laura's 2021 plan selection and likely choice for 2022)
- HDHP3 (high deductible plan with an HSA option)

In 2021, SWCD also offered the following dental, vision and life insurance plans:

- Dental Plan A
- Vision Plan A
- Life insurance (covered by 100% by SWCD)

Currently, SWCD pays for up to \$1,200 per month of an employee's health, dental and vision plan premiums. SWCD pays 100% of employee life insurance premiums, as required by CEBT.

If an employee selects the HDHP3 plan (a high deductible option that is eligible for a Health Savings Account), SWCD will contribute \$150 per month to an employee HSA and up to \$1,050 per month toward an employee's health, dental, and vision plan premium. Neither Steve nor Laura has selected this plan in 2021.

MEMO

TO: SWCD Board of Directors

FROM: Steve and Laura

DATE: September 28, 2021

RE: **Please Review:** Proposed 2022 SWCD Meeting Schedule

Please compare your calendar with the proposed 2022 SWCD meeting schedule included here and email us with any potential conflicts, concerns, or comments you have prior to or during October's meeting.

This meeting schedule was developed to avoid potential conflicts with other water activities, including the CWCBB meetings, Roundtable, and conferences.

We'd like to at least hold these SWCD meeting dates for 2022 now to allow us to start planning, understanding that some changes will happen.

Proposed 2022 SWCD Meeting Schedule

Biweekly special board meetings regarding state legislation every other Thursday at noon starting on January 20th.

Regular board meetings:

- February 16th-17th (Grant approvals)
- April 13th (Annual Water Seminar, April 14th)
- June 8th
- August 10th (Board Basin Tour, August 11th)
- Sept 14th Budget Workshop
- October 12th
- December 7th

If it's helpful, here are some other 2022 water meetings and conferences dates:

January Date TBD Southwest Basins Roundtable Meeting

January 26-28 Colorado Water Congress Annual Conference

February 23-25 Family Farm Alliance Annual Conference

April 28 Southwest Basins Roundtable Meeting

July 28 Southwest Basins Roundtable Meeting

August 24-26 Colorado Water Congress Summer Conference

October 27, Southwest Basins Roundtable Meeting

December 14-16 Colorado River Water Users Association Annual Conference

2022

SWCD BOARD MEETING SCHEDULE

JANUARY

S	M	T	W	T	F	S
					31	1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

FEBRUARY

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20	21	22	23	24	25	26
27	28					

MARCH

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20	21	22	23	24	25	26
27	28	29	30	31		

APRIL

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17	18	19	20	21	22	23
24	25	26	27	28	29	30

MAY

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1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JUNE

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

JULY

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

AUGUST

S	M	T	W	T	F	S
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7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

SEPTEMBER

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				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

OCTOBER

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						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

NOVEMBER

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

DECEMBER

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Regular Board Meeting

Other Meetings

Educational Events

Holiday Closure

PROPOSED 9-20-21

DECEMBER 31: NEW YEARS DAY (OBSERVED)

THURS, JAN 20: SPECIAL BOARD MEETING

THURS, FEB 3: SPECIAL BOARD MEETING

MON, FEB 14: PRESIDENTS DAY

FEB 16-17: REGULAR BOARD MEETING (GRANTS)

THURS, MARCH 3: SPECIAL BOARD MEETING

THURS, MARCH 17: SPECIAL BOARD MEETING

THURS, MARCH 31: SPECIAL BOARD MEETING

WED, APRIL 13: REGULAR BOARD MEETING

THURS, APRIL 14: ANNUAL WATER SEMINAR

THURS, APRIL 28: SPECIAL BOARD MEETING

WED, MAY 4: CHILDREN'S WATER FESTIVAL

MON, MAY 30: MEMORIAL DAY

WED, JUNE 8: REGULAR BOARD MEETING

MON, JULY 4: INDEPENDENCE DAY

WED, AUG 10: REGULAR BOARD MEETING

THURS, AUG 11: BOARD BASIN TOUR

MON, SEPT 5: LABOR DAY

WED, SEPT 14: BUDGET WORKSHOP

WED, OCT 12: REGULAR BOARD MEETING

FRI, NOV 11: VETERAN'S DAY

THURS, NOV 24-WED, NOV 25: THANKSGIVING

WED, DEC 7: REGULAR BOARD MEETING

DEC 22 & 23: XMAS EVE & XMAS (OBSERVED)

MEMO

TO: SWCD Board of Directors

FROM: Steve and Laura

DATE: September 30, 2021

RE: Proposals for Professional Auditing Services

As the board will recall, SWCD published the enclosed Request for Proposals (RFP) for Professional Auditing Services. We received five proposals by the September 20th deadline.

Based on staff review of the submissions, we recommend that the SWCD board select Fredrick Zink and Associates (FZA) to conduct the financial audit for fiscal years 2021-2026. FZA is the only proposal from southwest Colorado, has a reputation of detailed work and demonstrated experience with governmental audits, and proposed a fee within SWCD's current budget for auditing services. FZA has offered to hold this rate if we offer them a five-year term. Their written proposal also included a detailed work plan that fits with SWCD staff's needs and was customized to requests outlined in SWCD's RFP.

FZA currently provides limited accounting oversight for SWCD. Barb Prose conducts a monthly review of bookkeeping and various other staff have answered accounting-related questions in recent years. We don't believe this will pose a conflict of interest for the firm as there will be different staff handling the audit and we can, if needed, adjust our bookkeeping review to avoid concerns. FZA does not see their current services as a conflict with this proposal.



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

REQUEST FOR PROPOSALS – PROFESSIONAL AUDITING SERVICES

Purpose

The purpose of this request for proposal (RFP) is to solicit the services of a qualified firm of Certified Public Accountants to provide annual auditing services to the Southwestern Water Conservation District (“SWCD”). A five-year contract term is contemplated.

Background

SWCD was established in 1941 to protect, conserve, use and develop the water resources of the Southwestern basin for the welfare of the District, and safeguard for Colorado all waters to which the state is equitably entitled. Following this mandate, SWCD advocates for southwestern Colorado’s water interests at the local, state and regional level. SWCD also administers a substantial grant program to support water projects and other efforts within the District.

SWCD’s work is funded primarily by a small property tax in Archuleta, Dolores, La Plata, Montezuma, San Juan, San Miguel, and parts of Hinsdale, Mineral, and Montrose counties in southwestern Colorado. Total annual operating expenses average just under \$2 million.

SWCD is governed by a nine-member board, which employs a full-time general manager and programs coordinator and contracts with various consultants to fulfill its statutory mandate. More about SWCD can be found on our website: swgcd.org.

SWCD has one general fund. SWCD’s recent audited financial statements are available at the [Office of the State Auditor’s webpage](#) and recent adopted budgets with the [Colorado Department of Local Affairs](#).

Services Required

SWCD is required to submit an annual audit report to the State of Colorado. The scope of the engagement will be for the selected firm to:

- Perform a timely financial audit of, issue a report covering, and submit SWCD’s financial statements and other required documents for the year ended December 31st in accordance with U.S. generally accepted auditing standards and state statute;
- Review and recommend adjustments to SWCD’s Chart of Accounts or General Ledger as needed;
- Prepare a detailed letter to management at the completion of each annual audit; and
- Make a formal presentation on the annual audit to SWCD’s Board of Directors at their regularly scheduled meeting in June.

Proposal Process and Criteria for Selection

Firms are requested to provide five written and one digital copies of their written proposals to Laura Spann at the address and email below by the close of business (5:00 p.m.) on September 20, 2021. Late or incomplete proposals will not be considered. Please limit proposals to 25 pages or less.

At a minimum, all proposals should include:

- Description of qualifications, including the governmental experience and training of staff to be assigned to the audit;
- Contact information for the individual(s) principally responsible for conducting the audit;
- At least two references, ideally from governmental entities;
- Tentative audit work plan, including deadlines for documentation submittal and date for draft audit to be provided to staff; and
- Annual cost of the audit (please include annual audit fee or applicable hourly rate(s) and estimated hours).

Select members of the board and staff will evaluate the merits of proposals received in accordance with the following criteria:

- Firm must be licensed to practice in the State of Colorado as a certified public accounting firm.
- Adequacy and completeness of the proposal.
- Experience and timeliness of the firm in serving similar governmental organizations.

SWCD reserves the right to reject any or all proposals. All materials submitted become the property of SWCD. There is no expressed or implied obligation of SWCD to reimburse firms for any expenses incurred in preparing proposals in response to this request. During the evaluation process, SWCD may request firms to make an oral presentation answer questions about their proposal. SWCD will select the firm that it believes, in its sole discretion, is best able to provide the required services at a reasonable cost. A formal contract will be prepared and negotiated between SWCD and the selected firm.

If you have questions about the process or SWCD's operations before making the decision to submit a proposal, please contact either person listed below.

Term of Engagement

A five-year contract is contemplated, subject to annual review and recommendation of SWCD's Board Finance Committee, the satisfactory negotiation of contract terms (including, but not limited to, a price acceptable to both SWCD and the selected firm), the concurrence of SWCD's Board and the annual availability of an appropriation to cover audit costs.

Key Dates

Please submit all questions in writing to lauras@swgcd.org by **Friday, September 3, 2021**.

SWCD's answers to written questions will be posted on the District's website no later than **Friday, September 10, 2021**.

Firms are requested to provide five written and one digital copies of their written proposals to Laura Spann at the address below by the close of business (5:00 p.m.) on **Monday, September 20, 2021**.

SWCD anticipates announcing the selected firm no later than **Thursday, December 9, 2021**. All firms who submitted proposals will be notified of the results no later than **Wednesday, December 15, 2021**.

Contacts

Steve Wolff, General Manager, steve@swgcd.org, 970-247-1302 x21

Laura Spann, Programs Coordinator, laura@swgcd.org, 970-247-1302 x22

Southwestern Water Conservation District, 841 E 2nd Avenue, Durango, CO 81301



MEMORANDUM

TO: Steve Wolff, Beth Van Vurst, SWWCD
FROM: John Carron and Taylor Adams, Hydros Consulting
SUBJECT: Proposed Scope of Work for Analysis of Compact Call Scenarios
DATE: September 27, 2021

Per your request for a compact call analysis for the SWCD, we have prepared this scope of work and budget. The purpose of the analysis is to build upon results generated by Phase III of the Colorado River Risk Study, with a particular focus on how a full or partial compact call would impact water users in the Southwestern Water Conservation District.

Results of Phase III indicate that the Southwestern Basins as a whole consume an average of about 501,000 AF annually¹. Of this amount, under a compact call, about 323,000 AF of those depletions could be met by pre-compact rights. The difference, approximately 178,000 AF, represents just over 19% of all post-compact depletions of Colorado River water by the State of Colorado. Additional analysis for Phase III developed specific call dates in order to generate average yields of “conserved consumptive use”. For example, the following table shows state-wide call dates to yield a given target volume:

Target Volume (acre-feet/yr)	Yampa	White	Colorado	In-Basin	TMDs	Gunnison	Southwest
100,000	28%	3%	59%	22%	37%	6%	8%
(Jul 1957)	27,627	2,753	59,124	22,309	36,815	5,925	7,528
300,000	16%	2%	59%	20%	39%	7%	13%
(Sep 1940)	47,987	5,325	177,976	59,918	118,058	20,862	40,233
600,000	8%	1%	55%	12%	44%	4%	19%
(Aug 1935)	49,679	8,478	331,556	69,452	262,105	26,163	113,862
Full	6%	1%	67%	10%	57%	6%	19%
	58,440	11,888	626,171	94,403	531,834	57,273	178,163

Our analysis for SWWCD would build on this previous work by identifying which Southwestern basin water rights would be in or out of priority under various Compact call

¹ Depletion numbers are computed by the “baseline” San Juan/Dolores StateMod model for the period 1988-2005. Depletion values for the Southwest basin include the San Juan and its tributaries, plus the Dolores and its tributaries.



and conserved consumptive use scenarios. The analysis will be done at a sub-basin level within the bounds of the Southwestern District. Sub-basins within the Southwestern District could be defined in a number of different ways. For this analysis, we will analyze each of the sub-basins in the district individually with the following exceptions:

- The Animas and La Plata sub-basins will be analyzed as an aggregated basin
- The Dolores and McElmo sub-basins will be analyzed as an aggregated basin

Aggregation of these sub-basins is a recommended simplification in comparison to analysis of each sub-basin in isolation due to the uncertainties associated with accounting for consumptive use of trans-basin diversions. The allocation of depletions to either the basin from which water is diverted or the basin in which that same water is consumed is particularly important for the pro-rata call scenarios. The amounts of reduction in post-compact depletions for other water users within the basins of origin and use differ depending on which basin the trans-basin depletions are attributed, and there is not an established policy or precedent that for that attribution.

In order to ensure the accuracy of the results of this analysis, careful consideration will be given to the impacts of simulated calls on operations at McPhee. One of the findings of Phase III was that placing a call that prevents McPhee from filling results in a large step-change in the simulated depletions in the model. As part of this analysis, operations at McPhee will be reviewed to ensure that depletions other than those directly associated with the Dolores Project are correctly represented.

Call dates and volumes for each sub-basin will be determined in two distinct ways:

1. Use the call dates (months) shown in the table above and compute how much of the total reduction in consumptive use is attributed to each of the Southwest sub-basins. This “state-wide” approach assumes that all users across all Colorado River basins would be treated as a single administrative group subject to a single call date.
2. Determine the percentage of total post-compact Colorado River depletions that are attributable to the San Juan / Dolores basins. Using that percentage, reduce consumptive uses in each sub-basin (or District), determining that sub-basins total use and implementing a call until the desired reduction is achieved. The table below shows the percentage of Colorado’s total post-compact use by basin.

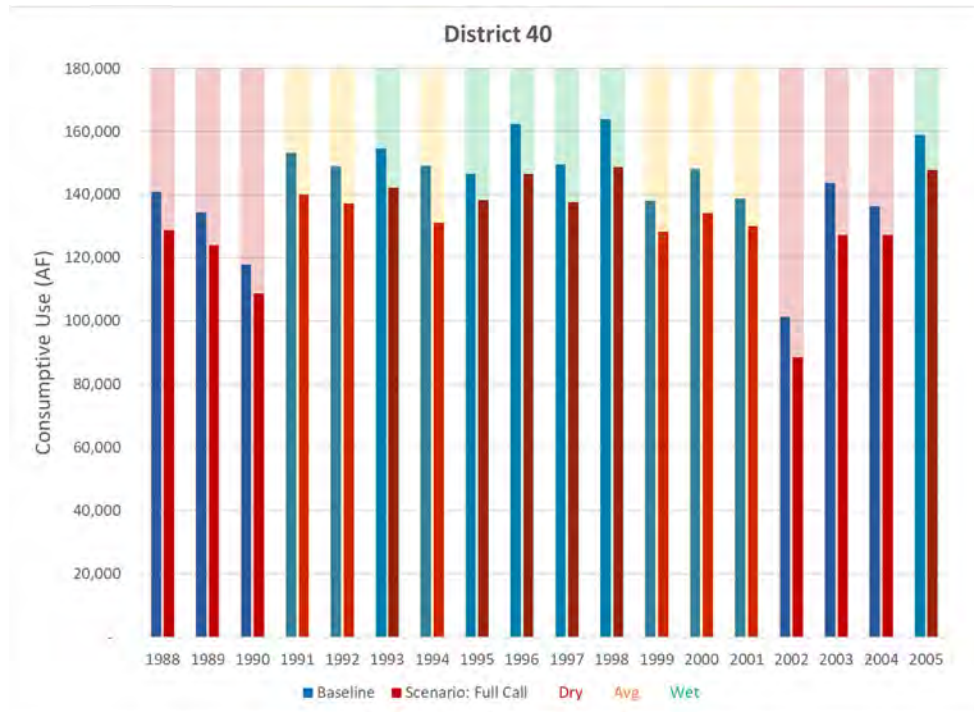


Target Volume (acre-feet/yr)	Yampa	White	Colorado	Gunnison	Southwest
	6.3%	1.3%	67.2%	6.1%	19.1%
100,000	6,270	1,276	67,186	6,145	19,116
	Jul 1972	Jul 1962	Jul 1957	Nov 1957	Sep 1940
300,000	18,811	3,827	201,557	18,436	57,348
	Aug 1962	May 1955	Nov 1935	Apr 1955	Sep 1940
600,000	37,622	7,653	403,114	36,871	114,697
	Jun 1952	Jan 1938	Aug 1935	Dec 1933	Nov 1935

Results of the analyses will include tabular data and charts for each sub-basin. Example outputs are shown below.

System Metric	Scenario							
	Baseline	100 KAF - StateWide	100 KAF - ProRata	300 KAF - StateWide	300 KAF - ProRata	600 KAF - StateWide	600 KAF - ProRata	Full Call
Call Date		7/1/1957	11/1/1957	9/1/1940	4/1/1955	8/1/1935	12/1/1933	11/24/1922
Direct Diversions (AF)	454,200	448,653	449,025	438,337	446,817	419,547	417,809	406,690
Total Supply (AF)	491,031	485,506	485,859	471,143	483,666	442,903	441,158	428,564
Consumptive Use (AF)	143,689	142,316	142,487	137,804	142,135	134,906	134,427	131,455
CU Shortage (AF)	41,208	42,581	42,410	47,093	42,761	49,991	50,469	53,442
Efficiency (%)	29.3%	29.3%	29.4%	29.3%	29.4%	30.5%	30.5%	30.7%

Example output: District 40 (Gunnison Basin) call results



Example output: Consumptive use by year for District 40 under a “full compact call” scenario.

Modeling Note: for this initial analysis, we will be using the “Baseline” StateMod dataset, which represents as closely as possible the current levels of consumptive uses in the basin. A second phase of this work is anticipated to include forecasts of future additional consumptive uses. These will likely include additional use of ALP water and development of tribal water.

Budget and Schedule: This effort should take 4-6 weeks to complete, with a budget in the \$20-\$25k range. Deliverables from this effort will include a paper report outlining the analysis and a detailed PowerPoint presentation with results. We anticipate a meeting with SWWCD staff and Board to present these results.

SB 20-048 - Report of the Work Group to Explore Ways to Strengthen Current Water Anti-Speculation Law

August 13, 2021

**Submitted to the Interim Water Resources Review Committee of the
Colorado General Assembly as required by Section 37-98-103, C.R.S.**



TABLE OF CONTENTS

Acknowledgements	5
1. Executive Summary	6
2. Introduction	10
2.a Senate Bill 20-048	10
2.b Work Group Member Acknowledgement	10
3. Background	11
3.a Factual and Historical Background of Colorado’s Anti-Speculation Doctrine	11
i. Anti-Speculation Law is Founded in the Constitution and is a Product of Colorado’s Climate	11
ii. Acquiring Water for Future Profit, Rather Than Beneficial Use, is at the Heart of Water Speculation	13
iii. Statutory and Case Law Further Explain the Anti-Speculation Doctrine as it Applies in Water Court Proceedings	13
iv. Water Court Approval is Not Required for Lease or Purchase of an Existing Water Right	20
v. SB03-115 and Protections for Significant Water Development Activity	22
vi. There Are Limited Tools to Control Speculation Outside of the Water Courts	22
3.b Water Markets	26
i. Background	26
ii. Defining a Water Market	26
iii. Water Markets in Colorado	27
3.c Relevant laws and recent speculation issues in other states	29
4. What are the Risks to Coloradans from Speculation?	30
4.a Potential Negative Outcomes from Traditional Water Speculation	31
i. Outcome 1: Parties with legitimate beneficial uses have increased uncertainty regarding water availability, or water is only available for their use through payment to the water right holder	31
4.b Potential Negative Outcomes from Investment Water Speculation	32
i. Outcome 1: Using ownership of a substantial amount of water rights in a local market to adversely affect Colorado Water Users	32
ii. Outcome 2: Increased cost of water rights for an end user who would actually put the water to beneficial use in Colorado.	34
iii. Outcome 3: Large scale dry-up of specific parcels or varying parcels within a region that were historically irrigated, which occurs either through a change of water right or through purchase followed by non-use	34

iii. Outcome 4: Profit provides motivation to develop new consumptive use solely for the purpose of the sale of a water right, which impacts over-appropriated status, water availability, and in some cases compact compliance.	36
4.c Conclusions from analysis of risks and outcomes	36
5. Analysis of individual anti-speculation concepts	38
5.a: Concepts modifying existing proceedings or legal standards in water court	40
Concept A: Require prima facie showing of non-speculation in water court proceedings	40
Concept B: Expand the government review and approval process for changes of use of water rights that exceed some minimum threshold of rate, volume, or seniority	41
Concept C: Restrict participation of out-of-state entities in Colorado water court and Ground Water Commission proceedings	42
Concept D: Reduce expectations of investors by clarifying that water savings due to efficiency improvements cannot be sold to other users	43
Concept E: Prohibit or penalize compensated non-diversion	44
5.b: Concepts promoting the tying of water to the land	45
Concept F: Modify the conservation easement statute to incentivize tying water rights to their place of historical use	45
Concept G: Fund and/or create a right of first refusal for the purchase of water rights for long-term irrigation use for public benefit	46
Concept H: Eliminate or reduce the agricultural tax benefit for lands from which water is removed.	47
Concept I: Unless irrigated land is going to be changed to a new land use, require water to be tied to the land.	48
5.c: Concepts specifically relying on identifying Investment Water Speculation at the time of a water rights sale	48
Concept J: Create a statewide process to identify and prohibit Investment Water Speculation	50
Concept K: Encourage local governments to police Investment Water Speculation through their 1041 powers	51
Concept L: Tax the profit derived from sale or lease of water rights previously purchased for Investment Water Speculation purposes	53
Concept M: Encourage ditch companies to adopt Catlin bylaws that allow boards to impose terms and conditions on water transfers affecting shareholders	54
5.d: Concepts that would identify and impact the sale of water rights without specifically identifying Investment Water Speculation	54
Concept N: Impose time limits on turnover of ownership of water rights to discourage short-term ownership for quick profit	55
Concept O: Require public record of relevant details for sales of water rights	56
Concept P: Establish a maximum rate of water right price increase and impose higher taxes when the rate is exceeded.	57

Concept Q: Prohibit out-of-state persons from holding water rights	58
5.e: Concepts that encourage temporary changes in use of water rights and/or ensure that temporary changes do not result in or facilitate Investment Water Speculation	59
Concept R: Encourage Usage of Alternative Transfer Methods (ATMs)	59
Concept S: Ensure safeguards against Investment Water Speculation are included within a Demand Management program or something similar if established in the future.	60
6. Presentation to the Water Resources Review Committee	62
6.a. Summary of Section 6	66

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This report was only possible because of the extraordinary efforts of the Work Group Members, each of whom volunteered countless hours to this important task. Their dedication was matched only by the diversity of their experience and perspectives. Each member's contribution was critical in the effort to develop a comprehensive final report, just as each citizen's contribution is critical to the success of our State.

1. Executive Summary

This *Senate Bill 20-048 Report of the Work Group to Explore Ways to Strengthen Current Water Anti-Speculation Law* (“Report”) was developed by the SB 20-048 Work Group and is submitted to the Water Resources Review Committee (“Committee”) in fulfillment of the provisions of SB 20-048. In SB 20-048 the General Assembly directed the Executive Director of the Department of Natural Resources (“Executive Director”) to convene a Work Group to explore ways to strengthen current water anti-speculation law.¹ SB 20-048 directed the Work Group to submit a written report regarding any recommended changes to the Committee by August 15, 2021.²

The Work Group has 22 members, including people affiliated with the agricultural community, environmental and recreational interests, and municipal water providers, as well as attorneys with a variety of backgrounds in water law. In addition, the Work Group includes members of the State Engineer’s Office, Colorado Water Conservation Board, Attorney General’s Office, and the Judicial Department. Work Group members were invited to apply their unique expertise to this effort with no expectation that they participate on behalf of a particular entity. The composition of the Work Group embodies the Executive Director’s objective of creating a Work Group with diverse interests and perspectives.

Through its work, the Work Group found it important to distinguish two different types of speculation: Traditional Water Speculation and Investment Water Speculation, both of which are later defined in the Report.³ The distinction is important. The Work Group understood that, at least in part, SB 20-048 grew out of concerns by Colorado water users that businesses, including some outside of Colorado, were appropriating or purchasing water rights with the primary motivation of profiting from a later transaction such as sale, lease, or payment for non-diversion of those rights - even if they have a current plan to beneficially use the water rights. Some people perceived those businesses to be more concerned with generating a profit based on changes in the market value of water rights than with using the water, and hence described those purchases as “speculative.” That terminology could be confusing because “speculation” is also a term of art in Colorado water law. Speculation as prohibited under existing law is generally subject to review by water courts only when a water right is appropriated, changed, or a claim for diligence is made for a conditional water right. Conveyances or purchases of water rights are not normally subject to review by the courts. That type of speculation that is prohibited under existing law essentially refers to the concept of trying to secure the right to use water but without a specific plan and intent to put the water to beneficial use. Colorado’s legal definition of “speculation” thus generally does not expressly cover the sorts of appropriations and purchases of water rights that provided the impetus for SB 20-048. This Report refers to activity within Colorado’s existing legal definition of speculation as “Traditional Water Speculation.” Speculation defined relative to profit as primary motivation is referred to as “Investment Water Speculation.” Section 4 of this Report contains more detailed definitions of both terms.

¹ C.R.S. § 37-98-103(8)(a).

² C.R.S. § 37-98-103(8)(b).

³ Full definitions are provided in Section 4 of this report.

The legal prohibition against Traditional Water Speculation is founded on the concept that the waters of our natural streams belong to the people and should be available to those with actual needs. A corollary is that water should not be hoarded by those without legitimate needs. These ideas are embedded in Colorado's Constitution. For example, Section 5 of Article XVI says:

The water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided. (emphasis added)

and Section 6 of Article XVI declares:

The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied. (emphasis added)

The legal foundations of Traditional Water Speculation are further detailed in Section 3.a of the Report: Factual and Historical Background of Colorado's Anti-Speculation Doctrine ("Legal Background"). The Legal Background describes existing tools to prevent Traditional Water Speculation. The Legal Background also states that water right conveyances without a change of water right are unlikely to be reviewed for Investment Water Speculation using existing tools.

Sections 4, 5, and 6 move from analysis of existing law and policy to more forward-looking analysis. They are designed to be understood separately from Section 3, although the legal and factual detail in Section 3 helps inform the analysis throughout.

In order to formulate a set of concepts for addressing speculation, the Work Group wanted to first understand the risks associated with Traditional and Investment Water Speculation and the potential negative outcomes that might result from either. Section 4 describes those risks and negative outcomes. Some of those outcomes are not unique to Traditional or Investment Water Speculation and could occur under various water right transactions. Through its discussion of these risks and outcomes, the Work Group identified common values that were shared among its members:

- Coloradans value water for its beneficial use. Water should not be traded as a commodity for profit.
- Coloradans value irrigated lands, safe and reliable drinking water, and the environmental, recreational, and community benefits derived from our water resources.
- Coloradans value property rights in the beneficial use of water and the protection of these property rights.

Having identified risks and negative outcomes, the Work Group then brainstormed potential concepts to address them. Section 5 includes all of the concepts that the Work Group evaluated from the brainstorming effort and details the pros and cons of each concept. Finally, in Section 6, the Work Group presents a select group of concepts

for the Committee's consideration. Each concept presented in Section 6 meets the criteria that the Work Group understands were intended by the General Assembly in SB 20-048: (1) it is a change in law and (2) it has the potential to effectively reduce Investment Water Speculation on a large scale, rather than just in certain limited situations.

Due in part to the drawbacks that the Work Group identified for each of the brainstormed concepts in Section 5, and a lack of consensus, the Work Group does not recommend any of the concepts for implementation. Nevertheless, as a collective body, the Work Group believes it has a responsibility to present concepts to the Committee for consideration, as long as the concepts meet the two criteria above. That will allow the Committee to consider the concepts, including their benefits and drawbacks, and determine whether to further pursue a concept. The Work Group recommends that the General Assembly gather additional feedback from multiple and diverse stakeholders within Colorado for any change in law considered.

The following eight concepts that meet the statutory criteria are described in greater detail, with a focus on the potential drawbacks, in Section 6.

- Concept E: Prohibit or penalize compensated non-diversion.

The receipt of payment for non-diversion would be made illegal or penalized, unless that payment occurs pursuant to an exception allowed by law. Potential penalties for receiving payment for non-diversion include abandonment of the water right. The primary focus of this concept would be to address speculation near the state line.

- Concept G: Fund and/or create a right of first refusal for the purchase of water rights for long-term irrigation use for public benefit.

This concept would provide funds for a public entity to purchase irrigation rights to keep those rights in irrigation use. Alternatively or in combination, the state or other entities would be granted a right of first refusal to purchase irrigation water rights before those rights can be sold to an Investment Water Speculator.

- Concept H: Eliminate or reduce the agricultural tax benefit for lands from which water is removed.

This concept would reduce the benefit for lands converted from irrigated agriculture to non-irrigated agriculture land use types.

- Concept I: Unless irrigated land is going to be changed to a new land use, require water to be tied to the land

This concept would impose stringent limits on when water rights currently used for irrigation use can be changed to other uses. To be effective in reducing Investment Water Speculation, the concept would need to be applied to a broad swath of lands and water rights, as otherwise the concept might simply increase speculative pressure on water rights for which changes of use are permitted.

- Concept J: Create a statewide process to identify and prohibit Investment Water Speculation.

This concept would create a statewide process through the water courts, a state agency, or another government body by which water rights purchases would be reviewed for speculative intent and blocked if speculative intent is found.

- Concept K: Encourage local governments to police Investment Water Speculation through their 1041 powers.

Counties already have some powers to regulate water projects under 1041 permitting projects. This concept would significantly expand the reach and usage of these powers by modifying the statutory language governing 1041 powers to explicitly cover review of water rights sales for speculative intent and providing state funding to counties to develop and implement 1041 regulations under the new designation.

- Concept L: Tax the profit derived from sale or lease of water rights previously purchased for Investment Water Speculation purposes.

This concept is similar to Concept J and would require a similar process to review the intent of a water right purchase. However, instead of outright preventing transactions identified as Investment Water Speculation, this Concept would merely disincentivize the transactions by imposing a tax. The tax would apply to all subsequent payments to the purchasing entity involving the water right, at a rate that would make Investment Water Speculation less attractive.

- Concept P: Establish maximum rate of water right price increase and impose higher taxes when the rate is exceeded.

This concept would establish a water right price increase rate, above which a high tax rate would need to be paid on water right transactions.

Common drawbacks include a high cost to implement the concept or impacts to the time and cost of water transactions for all water users, even those who are not speculative investors. Further, the Work Group recognizes that concepts that reduce the sale price of water rights, and therefore, their value as property, present a risk to the current owners of irrigation water rights.

The Committee should be aware that there are several concepts discussed in Section 5 that do not meet the two criteria listed above, but might otherwise be beneficial to Colorado and, therefore, may be worthy of consideration by the Committee and the Colorado water community in other contexts.

2. Introduction

2.a Senate Bill 20-048

In Senate Bill 20-048 the General Assembly directed the Executive Director of the Department of Natural Resources (“Executive Director”) to convene a Work Group to explore ways to strengthen current water anti-speculation law.⁴ SB 20-048 directed the Work Group to submit a written report regarding any recommended changes to the Committee by August 15, 2021.⁵ This *Senate Bill 20-048 Report of the Work Group to Explore Ways to Strengthen Current Water Anti-Speculation Law* (“Report”) was developed by the SB 20-048 Work Group and is submitted to the Water Resources Review Committee (“Committee”) in fulfillment of the provisions of SB 20-048.

2.b Work Group Member Acknowledgement

Thank you to the members of the Work Group, who represent a broad range of Colorado water interests and backgrounds, for your diligent efforts in completing this report:

Amy Moyer	Lauren Ris
Joseph Bernal	Erin Light
Amy Ostdiek	Kate Ryan
Peter Fleming	Scott Steinbrecher
Joe Frank	Alexandra Davis
Steve Leonhardt	Tracy Kosloff
Alex Funk	Kevin Rein
Daris Jutten	Peggy Montaña
Greg Hobbs	Adam Reeves
Drew Peterzell	Larry Clever
Kelly Romero-Heaney	Julian Manasse-Boetani

⁴ C.R.S. § 37-98-103(8)(a).

⁵ C.R.S. § 37-98-103(8)(b).

3. Background

This section contains discussion of three distinct topics to provide background information relevant to this report. The three topics are: factual and historical background of Colorado’s anti-speculation doctrine, water markets, and relevant laws and recent speculation issues in other states.

3.a Factual and Historical Background of Colorado’s Anti-Speculation Doctrine

i. Anti-Speculation Law is Founded in the Constitution and is a Product of Colorado’s Climate

The Colorado Constitution provides that, “[T]he water of every natural stream, not heretofore appropriated, within the state of Colorado, is hereby declared to be the property of the public, and the same is dedicated to the use of the people of the state, subject to appropriation as hereinafter provided.”⁶ Stated simply, in Colorado, water flowing in natural streams is the property of the public, subject to appropriation for beneficial use.⁷

As a semi-arid state with limited water resources, Colorado—like the other states west of the 100th meridian—uses a system of prior appropriation for allocating water rights and water resources. The prior appropriation system of water law was born in Colorado and is often referred to across the West as the “Colorado Doctrine.” “The doctrine of prior appropriation is a rule of scarcity, not of plenty.”⁸ “The premise that birthed prior appropriation water law is that water users in a water-scarce region undergoing a population increase must need the water for an actual and continuing beneficial use in order to obtain and retain a share of the public’s water resource.”⁹

Under the prior appropriation doctrine, a water right confers not ownership of water, but rather the right to place water to a beneficial use. The framers of Colorado’s Constitution sought to qualify the right to divert water by enacting section 6 of Article XVI, which states: “[t]he right to divert the unappropriated waters of any natural stream to beneficial use shall never be denied.”¹⁰ The “beneficial use” qualification established that any party diverting water from Colorado’s streams must put that water to a specified beneficial use.

Further, under prior appropriation, water rights are allocated according to the “first in time, first in right” principle. With the “first in time, first in right” principle, the priority date of the water right is critically important. When the quantity of water available is insufficient to meet the needs of all those with a right to it, newer (“junior”) rights are curtailed for the benefit of older (“senior”) rights.

⁶ Colo. Const. art. XVI, § 5.

⁷ *Pagosa Area Water and Sanitation Dist. v. Trout Unlimited*, 170 P.3d 307, 313 (Colo. 2007).

⁸ Gregory J. Hobbs, Jr., *Reviving the Public Ownership, Antispeculation, and Beneficial Use Moorings of Prior Appropriation Water Law*, 84 U. Colo. L. Rev. 97, 111 (2013).

⁹ *Id.* at 105.

¹⁰ Colo. Const. art. XVI, § 6.

Scarcity of water led not only to Colorado's prior appropriation system of water allocation, but also to several policy principles that underlie Colorado water law, among them maximum utilization and anti-speculation. In Colorado, the public's water is subject to the policy of maximum utilization, "a doctrine intended to make water available for as many decreed uses as there is available supply."¹¹ The Colorado Supreme Court has stated that maximum utilization involves, "maximizing the use of Colorado's limited water supply for as many decreed uses as possible consistent with meeting the state's interstate delivery obligations under United States Supreme Court equitable apportionment decrees and congressionally approved interstate compacts."¹²

The other side of the maximum utilization coin is anti-speculation. While maximum utilization encourages maximum water use, the purpose of Colorado's anti-speculation doctrine is to "preserv[e] unappropriated water for users with legitimate, documentable needs."¹³ The roots of anti-speculation "reside in the agrarian populist efforts of miners and farmers to resist speculative investment that would corner the water resource to the exclusion of actual users settling into the territory and state."¹⁴ By requiring maximum utilization and beneficial use, the Colorado Doctrine formed "a way of limiting speculation and concentration of wealth in water and encouraging its wide distribution . . . by limiting the amount that could be acquired by any one irrigator to the amount actually needed to water his or her crops at the time of appropriation."¹⁵

The anti-speculation doctrine is designed to prevent the hoarding of water rights to the detriment of other water users.¹⁶ "[T]he anti-speculation doctrine is rooted in the requirement that an appropriation of Colorado's water resource must be for an actual beneficial use."¹⁷ The actual beneficial use requirement means "the right of any landowner to appropriate water . . . could only arise if the appropriator meant to use the water, not just hoard it for later resale."¹⁸ In other words, one claiming a water right must demonstrate a specific beneficial use before being granted "the privilege of diversion."¹⁹

The concept underlying the anti-speculation doctrine is that, in a dry climate, it is critical that water resources be allocated to those with actual water needs and legitimate beneficial uses.

¹¹ *Pagosa*, 170 P.3d at 313.

¹² *Empire Lodge Homeowners' Ass'n v. Moyer*, 39 P.3d 1139, 1150 (Colo. 2001).

¹³ *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 51 (Colo. 1996) ("*Bijou*").

¹⁴ *High Plains A & M, LLC v. Southeastern Water Conservancy District*, 120 P.3d 710, 719 (Colo. 2005) (citing David B. Schorr, *Appropriation As Agrarianism: Distributive Justice in the Creation of Property Rights*, 32 Ecology L.Q. 3, 33, 41, 55-56 (2005)).

¹⁵ David B. Schorr, *The Colorado Doctrine: Water Rights, Corporations, and Distributive Justice on the American Frontier* 44 (2012).

¹⁶ *Id.* at 45.

¹⁷ *High Plains*, 120 P.3d at 714.

¹⁸ Schorr, 32 Ecology L.Q. at 47.

¹⁹ *Combs v. Agric. Ditch Co.*, 28 P. 966, 968 (Colo. 1892).

ii. Acquiring Water for Future Profit, Rather Than Beneficial Use, is at the Heart of Water Speculation

The mere desire to profit is not a legitimate use of the public's water resource in Colorado. Indeed, the Colorado Supreme Court has identified profit motive as the heart of water speculation. The Court has explained that:

Our constitution guarantees a right to appropriate, not a right to speculate. The right to appropriate is for use, not merely for profit. As we read our constitution and statutes, they give no one the right to preempt the development potential of water for the anticipated future use of others not in privity of contract, or in any agency relationship, with the developer regarding that use. To recognize conditional decrees grounded on no interest beyond a desire to obtain water for sale would as a practical matter discourage those who have need and use for the water from developing it. Moreover, such a rule would encourage those with vast monetary resources to monopolize, for personal profit rather than for beneficial use, whatever unappropriated water remains.²⁰

An intent to profit through the sale of water to others amounts to speculation. To combat profit motive, *Vidler* requires that an applicant demonstrate non-speculative intent to use the water itself or that it has a firm commitment or agency relationship with the prospective ultimate user of the water.²¹

iii. Statutory and Case Law Further Explain the Anti-Speculation Doctrine as it Applies in Water Court Proceedings

A. *The Anti-Speculation Doctrine Applies to New Conditional and Absolute Water Rights Claims*

The Colorado General Assembly codified the Supreme Court's holding in *Vidler* at Section 37-92-103(3)(a), C.R.S. The statute provides:

"Appropriation" means the application of a specified portion of the waters of the state to a beneficial use pursuant to the procedures prescribed by law; but no appropriation of water, either absolute or conditional, shall be held to occur when the proposed appropriation is based upon the speculative sale or transfer of the appropriative right to persons not parties to the proposed appropriation, as evidenced by either of the following:

²⁰ *Colorado River Water Conservation District v. Vidler Water Company*, 594 P.2d 566, 568 (Colo. 1979) ("*Vidler*").

²¹ *Bijou*, 926 P.2d at 37, 42.

- (I) The purported appropriator of record does not have either a legally vested interest or a reasonable expectation of procuring such interest in the lands or facilities to be served by such appropriation, unless such appropriator is a governmental agency or an agent in fact for the persons proposed to be benefited by such appropriation.
- (II) The purported appropriator of record 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.²²

Because the General Assembly defined speculation in the context of an appropriation, it is clear that anti-speculation principles apply to claims for new absolute or conditional water rights. Either of the factors identified in C.R.S. § 37-92-103(3)(a) can demonstrate speculation and defeat a claim for a new absolute or conditional water right.²³

B. The Anti-Speculation Doctrine Applies to Hexennial Claims for Diligence

The anti-speculation doctrine is applicable not only to new claims for conditional water rights, but also to an application for a finding of reasonable diligence in the development of conditional water rights.²⁴ “The existence of a plan, capability, and need for the water is examined periodically by the water court, at the close of each diligence period, to determine whether the applicant is entitled to retain the antedated priority.”²⁵

C. The Anti-Speculation Doctrine Applies to Applications to Change Water Rights

Today, courts also apply the anti-speculation doctrine to applications to change water rights, both conditional and absolute. An “absolute water right” is a vested property right perfected by the diversion of water for a specific beneficial use, and confirmed by a water court decree that specifies a point of diversion, an amount of water, a date of priority, and the time and place of use. For both absolute and conditional rights, the decree sets the limits of the owner’s right to divert and use water.

Municipalities often seek to expand their water resources by buying absolute water rights originally decreed for irrigation use and filing in water court for a “change of water right” to change the decreed rights to municipal use. If approved, the municipality obtains the right to divert and use the formerly agricultural water in its municipal water supply, on conditions that will prevent injury to other water rights. Relatedly, third parties may also attempt to change water rights and then sell them to municipalities. Anti-speculation doctrine has been applied when a third party attempts

²² C.R.S. § 37-92-103(3)(a).

²³ *Dallas Creek Water Co. v. Huey*, 933 P.2d 27, 37 (Colo. 1992).

²⁴ *Municipal Subdist., Northern Colo. Water Conservancy Dist., OXY*, 990 P.2d 701, 708 (Colo. 1999) (“[H]exennial diligence applications are subject to the anti-speculation doctrine.”).

²⁵ *Dallas Creek Water Co.*, 933 P.2d at 36.

to change an absolute water right it has bought to municipal use so it may sell the water to a municipality, before contracting with a municipal buyer for the water.

The Colorado Supreme Court first confirmed application of the anti-speculation doctrine to a change of absolute water rights in its 2005 decision *High Plains A & M, LLC v. Southeastern Colorado Water Conservancy District*. In that case, High Plains, a private water investment company, bought about 30% of the shares in the Fort Lyon Canal Co., a large mutual ditch company in southeastern Colorado's Arkansas River valley.²⁶ High Plains then applied to change the use of the water from agricultural to municipal so it could sell the water to municipalities on the Front Range.²⁷ The company listed twenty-eight counties as potential locations of use, but had no evidence of any actual contracts with municipalities agreeing to buy the water.²⁸ The water court dismissed the application.²⁹

High Plains appealed the dismissal to the Colorado Supreme Court, which affirmed the water court's finding that the change application violated the anti-speculation doctrine because the company had no confirmed beneficial use for the changed water right.³⁰ High Plains clearly was attempting to change the use in anticipation of profitable future sales to growing Front Range cities. The court examined the definitions of "appropriation" and "beneficial use" in Colorado's water statutes, explaining these definitions "reinforce each other to the end that an appropriator of the public's water resource will put a specific amount of that water to an actual beneficial use at an identified location within Colorado."³¹ The statute implements the constitutional beneficial use requirement of Article XVI, the court reasoned. Because an absolute water right is perfected based on demonstrating a beneficial use, to change that right a party must similarly specify and demonstrate a new beneficial use.³² The court noted that an absolute water right "is reopened by virtue of a change application,"³³ and explained:

[T]he anti-speculation doctrine is rooted in the requirement that an appropriation of Colorado's water resource must be for an actual beneficial use.

We hold that, in defining '[c]hange of water right' to include 'a change in the type, *place*, or time of *use* ' and "a change in the point of diversion' in section 37-92-103(5), . . . and in defining 'appropriation' in section 37-92-103(3)(a)(I) and (II), the 1969 Colorado Water Right Determination and Administration Act . . . anticipates, as a basic predicate of an application for a decree

²⁶ *High Plains*, 120 P.3d at 714-15.

²⁷ *Id.* at 715.

²⁸ *Id.* at 716.

²⁹ *Id.*

³⁰ *Id.* at 724.

³¹ *Id.* at 718.

³² *Id.* at 720.

³³ *Id.*

changing the type and place of use, that the applicant will sufficiently demonstrate an actual beneficial use to be made at an identified location or locations under the change decree, if issued.

34

High Plains could not show any agreements with municipalities demonstrating a specific and concrete use for the changed water right, only the potential for a future use. The court stated a “guess that a transferred priority might eventually be put to beneficial use is not what the Colorado Constitution or the General Assembly envisioned as the triggering predicate for continuing an appropriation under a change of water right decree.”³⁵ Thus, the Colorado Supreme Court affirmed the dismissal of the application.

To confirm a water right in Colorado, an applicant must prove to the water court that the water will be diverted for a beneficial and non-speculative use. The *High Plains* decision confirms that changes of absolute water rights are encompassed within the statutory anti-speculation doctrine. Because an absolute water right requires a beneficial use, any change of that right is predicated on continued beneficial use when the water is diverted somewhere else.

The definition of “change of water right” includes “changes of conditional water rights” as well as absolute water rights.³⁶ The anti-speculation doctrine applies to both, so an applicant seeking to change a conditional right must also show that the change is not speculative.³⁷ Because conditional rights are similarly predicated on beneficial use, an applicant must demonstrate an actual beneficial use for any new or changed use of the conditional right.

Changes in the decreed use of conditional rights may trigger scrutiny, similar to changes of absolute rights, particularly if the changed use is more profitable or less costly and the change appears to be driven by a desire to profit. The General Assembly addressed one such suspect type of change in 1994, in legislation that was introduced to prevent speculators from taking advantage of the opportunity to acquire conditional water rights and use their decreed senior priorities for uses much different from those that were originally decreed. The sponsor amended the 1994 bill to narrow this broad goal as it moved through the legislative process, and the final version only impacted the Colorado Water Conservation Board’s instream flow program. The statute says the CWCB “may not acquire conditional water rights or change conditional water rights to instream flow uses.”³⁸ The statute’s main purpose is to prevent speculators from adjudicating a conditional water right for a use they will never perfect, then selling the right to the CWCB for a profit based on the “contemplated draft” from the stream system³⁹ for a structure that will never be built.

³⁴ *Id.* at 714.

³⁵ *Id.* at 721.

³⁶ C.R.S. § 37-92-103(5)(b).

³⁷ See C.R.S. § 37-92-103(3)(a).

³⁸ C.R.S. § 37-92-102(3)(c.5); Senate Bill 94-054 (amended by House Bill 00-1438).

³⁹ “Contemplated draft” is the measure of a conditional right in a change case. See *Twin Lakes Reservoir & Canal Co. v. City of Aspen*, 568 P.2d 45, 49 (Colo. 1977). Senate Bill 94-054 was

Under *High Plains*, the constitutional requirement of a demonstrated beneficial use is maintained through a change of use proceeding. In such a case, the owner of an absolute or conditional water right must demonstrate that the water will continue to be diverted for decreed beneficial use and will not be held from the public to be sold for a higher profit in the future.

D. The Anti-Speculation Doctrine Applies to Groundwater

Although Colorado has several distinct allocation mechanisms for ground water of various types, each mechanism applies the anti-speculation doctrine in some form.

Designated groundwater is administered under a “modified” version of the prior appropriation doctrine, to protect prior groundwater appropriations based on beneficial use.⁴⁰ Even though designated groundwater is managed differently than tributary groundwater, the Colorado Supreme Court has held that the anti-speculation doctrine applies to tributary groundwater and to all designated groundwater. The Court denied an appropriation of designated groundwater on grounds of speculation where a developer intended future sales of the water without any contractual commitment for purchase.⁴¹ The Court has also applied anti-speculation doctrine in a case involving designated groundwater within the Denver Basin aquifers.⁴²

Unlike tributary and designated groundwater, which are subject to forms of appropriation, nontributary groundwater outside the designated basins is allocated based on ownership of overlying land.⁴³ The landowner may seek either a water court decree or a well permit to confirm the right to use the nontributary groundwater beneath their land. The decree defines the amount of water available for withdrawal each year, but does not obligate the landowner to construct a well or withdraw or use the water. The anti-speculation doctrine does not apply to the court decree process, which simply determines the amount of available nontributary groundwater.⁴⁴ However, in seeking a well permit to withdraw nontributary ground water, the applicant must show a non-speculative, beneficial use before the permit may be issued.⁴⁵ Similarly, the anti-speculation doctrine is applied to well permit applications for pumping tributary ground water, requiring the user to identify the beneficial use for the water, and, after the well is drilled, demonstrate the beneficial use through a sworn statement.⁴⁶

enacted to dissuade speculation that could also injure junior water rights by changing senior conditional water rights to instream flow use.

⁴⁰ *Colo. Groundwater Comm’n v. N. Kiowa-Bijou Groundwater Management Dist.*, 77 P.3d 62, 70 (Colo. 2003).

⁴¹ *Jaeger v. Colo. Ground Water Comm’n*, 746 P.2d 515, 520-22 (Colo. 1987).

⁴² *See N. Kiowa-Bijou*, 77 P.3d at 80-81.

⁴³ C.R.S. § 37-90-102(2).

⁴⁴ *East Cherry Creek Valley Water and Sanitation Dist. v. Rangeview Metro. Dist.*, 109 P.3d 154, 158 (Colo. 2005).

⁴⁵ *Id.*.

⁴⁶ *See Danielson v. Milne*, 765 P.2d 572 (Colo. 1988).

E. *Public Water Providers Are Afforded Greater Flexibility Under the Anti-Speculation Doctrine Than Private Appropriators*

Because public water providers have a responsibility to provide their constituents with a reliable water supply, they are afforded greater flexibility under the anti-speculation doctrine than private parties claiming water rights. However, this flexibility for public entities is not unbounded. The Colorado Supreme Court has held that:

[A] municipality may be decreed conditional water rights based solely on its projected future needs, and without firm contractual commitments or agency relationships, but a municipality's entitlement to such a decree is subject to the water court's determination that the amount conditionally appropriated is consistent with the municipality's reasonably anticipated requirements based on substantiated projections of future growth.

⁴⁷

The Supreme Court has further held that, to satisfy the anti-speculation doctrine, a public water supply entity must demonstrate three elements: the reasonable planning period; the substantiated population projection for that period; and the amount of water reasonably necessary to serve the population for the period.⁴⁸ Allowing public water providers to obtain conditional water rights to satisfy population growth into the indefinite future would undermine Colorado's policy of maximum utilization.

The limited government agency exception to the anti-speculation doctrine "applies only where a government agency is seeking to appropriate water on behalf of end users with whom it has a governmental agency relationship."⁴⁹ The Colorado Supreme Court confirmed this principle as recently as November of 2020 in *United Water & Sanitation District v. Burlington Ditch Reservoir & Land Co.*⁵⁰ The court found that United did not qualify for the governmental planning exception to the anti-speculation doctrine because it had no governmental agency relationship with the end users, and under the facts presented, United was acting as a water broker, not a provider to its own municipal customers.⁵¹ United has an approved statewide service area. Its actual district territory, however, is a single acre in Elbert County, and its water service plan states that it does not intend to provide water directly to individual end users. When a government agency is acting as a water supplier on the open market, rather than as a governmental entity seeking to supply water to its citizens, the exception does not apply, and the entity must satisfy the full requirements of the anti-speculation doctrine.⁵² The court found that United failed to demonstrate a non-speculative intent for its claimed conditional water storage right in a reservoir because it did not have a binding contract or agency relationship with the water users.

⁴⁷ *Bijou*, 926 P.2d at 39.

⁴⁸ *Pagosa*, 170 P.3d at 309-10.

⁴⁹ *United Water and Sanitation Dist. v. Burlington Ditch Reservoir and Land Co.*, 476 P.3d 341, 349 (Colo. Nov. 23, 2020).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

F. *Water Rights May be Abandoned if Unused*

Abandonment incidentally helps prevent speculation by creating the possibility that unused water rights will be abandoned. But it does not address situations where a water right is being used with the intent of increasing its value for sale.

“Abandonment of a water right” 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 part of the water available thereunder.”⁵³ When a water right is abandoned, the water previously decreed to the right becomes available for use by others.⁵⁴ Abandonment “requires a concurrence of nonuse and intent to abandon.”⁵⁵ Under current Colorado law, a rebuttable presumption that an owner intends to abandon a water right arises when the owner fails to use the water right for a period of ten years.⁵⁶ As such, current abandonment law incidentally helps prevent speculation in the form of holding water rights for future benefit or profit without using them by creating a risk that the unused rights will be abandoned. However, abandonment cannot address the nearly parallel scenario where the same water user has the same intent to hold water for benefit or profit but is putting the water to its decreed beneficial use.

Any person may seek a determination that a water right has been abandoned by filing an application for a determination of abandonment with a water court or by opposing a water court application on the grounds that the subject water right has been abandoned.⁵⁷ In addition, every ten years, the Division Engineers in charge of administering water rights in Colorado’s seven water divisions are required to prepare a list of all absolute water rights in their respective divisions that they have determined to have been abandoned, and these abandonment lists are eventually approved or modified by the water court.⁵⁸

While abandonment law creates a risk that unused water rights will be terminated, nonuse alone does not guarantee abandonment. First, the Colorado General Assembly has provided that nonuse due to participation in certain approved programs—including approved water conservation programs and temporary provision of water to the Colorado Water Conservation Board for instream flow use—cannot result in abandonment.⁵⁹ Second, the presumption of intent to abandon that arises from nonuse is rebuttable.⁶⁰ To rebut the presumption, an owner must provide “proof of some affirmative act” showing ongoing intent to utilize the water right in question,⁶¹ or proof of circumstances that prevented the owner from exercising the right in spite of an

⁵³ C.R.S. § 37-92-103(2).

⁵⁴ *Se. Colo. Water Conservancy Dist. v. Twin Lakes Assocs., Inc.*, 770 P.2d 1231, 1238 (Colo. 1989).

⁵⁵ *Beaver Park Water, Inc. v. City of Victor*, 649 P.2d 300, 302 (Colo. 1982).

⁵⁶ C.R.S. § 37-92-402(11); *McKenna v. Witte*, 346 P.3d 35, 43 (Colo. 2015).

⁵⁷ *Gardner v. State*, 614 P.2d 357, 362 (Colo. 1980).

⁵⁸ C.R.S. §§ 37-92-401(1)(a) to -401(8).

⁵⁹ C.R.S. § 37-92-103(2).

⁶⁰ C.R.S. § 37-92-402(11); *McKenna*, 346 P.3d at 43.

⁶¹ *McKenna*, 346 P.3d at 43.

intent to do so.⁶² Acts that “may be enough to rebut a presumption of abandonment” include, without limitation, repair and maintenance of diversion structures, attempts to put water to beneficial use, filing documents to protect, change, or preserve the water right, leasing the water right, and diligent efforts to sell the right.⁶³

In its current form, the abandonment law does not present a strong barrier to speculation in the form of acquiring or holding water rights with the intent to profit from their future sale. An owner that acquires water rights with the primary intent to profit from their future sale may lose the water rights to abandonment if it does not use them for an extended period. However, the same owner can avoid all risk of abandonment by using or leasing the rights while it waits for the right time to realize its anticipated profits.

In addition, Colorado Supreme Court precedent suggests that an intent to sell water rights, if demonstrated by acts, may be enough to overcome the presumption of abandonment created by nonuse, such that water rights may be maintained by marketing them as well as by using them. In the 1950s, the Court held that an owner cannot overcome a presumption of abandonment by showing that it has sought to sell a water right because “[s]peculation on the market, or sale expectancy, is wholly foreign to the principle of keeping life in a proprietary right and is no excuse for failure to perform that which the law requires.”⁶⁴ However, in two more-recent cases, the Court held that evidence of diligent efforts to sell water rights can overcome a presumption of abandonment, even where an owner’s statements or actions show that its sole reason for holding the water rights was to sell them.⁶⁵ Notably, in each of the recent cases, three justices dissented based in part on concerns that the Court’s decisions would encourage speculation.⁶⁶ The dissent in one case noted, “[t]o allow evidence of sale expectancy, and nothing more, to defeat a presumption of abandonment results in encouraging nonusing owners of water rights to stockpile their interests for some future time when maximum profit can be derived from a sale, since the presumption of abandonment will be easily rebuttable by evidence of an intent and some effort to sell the water rights.”⁶⁷

iv. Water Court Approval is Not Required for Lease or Purchase of an Existing Water Right

In Colorado, a water right is a real property interest, separate and distinct from the land on which it is used, and it can be conveyed independently of the real property. (In

⁶² *Danielson v. City of Thornton*, 775 P.2d 11, 18 (Colo. 1989); *Hallenbeck v. Granby Ditch & Reservoir Co.*, 420 P.2d 419, 426 (Colo. 1966).

⁶³ *E. Twin Lakes Ditches & Water Works, Inc. v. Bd. of Cty. Comm’rs of Lake Cty.*, 76 P.3d 918, 922 (Colo. 2003).

⁶⁴ *Knapp v. Colo. River Water Conservation Dist.*, 279 P.2d 420, 427 (Colo. 1955).

⁶⁵ *Danielson v. City of Thornton*, 775 P.2d at 14-23; *E. Twin Lakes Ditches & Water Works, Inc.*, 76 P.3d at 919-25.

⁶⁶ *Danielson v. City of Thornton*, 775 P.2d at 23-25 (Quinn, C.J., dissenting); *E. Twin Lakes Ditches & Water Works, Inc.*, 76 P.3d at 925-26 (Hobbs, J., dissenting).

⁶⁷ *Danielson v. City of Thornton*, 775 P.2d at 24 (Quinn, C.J., dissenting).

some situations, ditch association bylaws or other covenants impose certain restrictions on the severance of a water right from real property). “It is elementary learning in Colorado that a water priority is a property right—not a mere revocable privilege; that it is not a fixed appurtenance; that the right to change its place of use and the point of diversion is an inherent property right . . .”⁶⁸ As such, it is subject to the same conveyance requirements as—and has a full, separate, and independent existence from—other real property interests. “In the conveyance of water rights . . . the same formalities shall be observed and complied with as in the conveyance of real estate.”⁶⁹

Yet, the conveyance of water rights is not required to be reviewed by the water courts under current law. In contrast, the appropriation of conditional waters, periodic filings for reasonable diligence of conditional water rights, and changes of water rights are required by statute to be reviewed by the water courts. In this way, other water users and the public at large are ensured public notice (i.e., a published water court resume of monthly water court filings in each Colorado Water Division) of any such court filing. The public then has the opportunity (due process) to oppose or contest any such filing on the basis that the water court application is speculative. Opponents also can appeal an adverse water court decision directly to the Colorado Supreme Court.

None of the current statutorily required water court proceedings apply to the conveyance of water rights in a situation where the purchaser has a speculative intent (i.e. Investment Water Speculation, as defined in Section 4). This does not necessarily mean that the anti-speculation doctrine does not apply to the speculative acquisition of water rights. As discussed above, the doctrine is rooted in the constitutional edict that the appropriation of water is for beneficial use—not for speculative profit. Thus, the anti-speculation doctrine actually applies at all times - it is never permissible to hoard water solely for speculative purposes.

The water courts have jurisdiction over all water matters arising in their respective water divisions, including claims by a third party that a water right should be abandoned because the owner does not intend to use the water for a beneficial purpose. However, it is not clear that a water court would accept jurisdiction to hear a case concerning the transfer of water rights to a purchaser in order to evaluate whether the purchaser has a speculative intent to profit from the acquisition of the subject water rights. Nor is there any statutory public notice requirement that would alert the public to the existence or proposal of any such speculative acquisition.

Thus, the acquisition of absolute water rights for speculative purposes is likely to avoid judicial review, at least until the purchaser “reopens” the rights⁷⁰ by filing in water court to change the type of use, place of use, or point of diversion of the water rights. Avoidance of public notice and water court review is even more likely if the purchaser is able to secure the speculative profit without needing to secure a change of water rights (such as profiting through the non-use of existing water rights, e.g., receiving payment to not divert the water for a period of time).

⁶⁸ *Brighton Ditch Co. v. City of Englewood*, 237 P.2d 116, 120 (Colo. 1951).

⁶⁹ C.R.S. § 38-30-102.

⁷⁰ See *High Plains*, *supra*, 120 P.3d at 720.

v. SB03-115 and Protections for Significant Water Development Activity

Senate Bill 03-115 created the term “Significant Water Development Activity,” which is defined as a “transfer of more than one thousand acre-feet of consumptive use water per year by a single applicant.”⁷¹ Significant Water Development Activities have additional notice requirements beyond the water court resume, including by mail to the county commissioners in the affected county. A court may impose mitigation payments from the water owner to the county if the water is transferred to a location more than 20 miles from the original location of irrigation.⁷² The bill also created “Special Taxes for Water Rights,” wherein counties may levy a sales tax or use tax of up to one percent to create a county water fund to fund the county’s transactions in water rights.

⁷³

vi. There Are Limited Tools to Control Speculation Outside of the Water Courts

A. *The Water Conservancy District Act Offers an Opportunity to Control Against Speculation*

Water Conservancy Districts are created under the Water Conservancy Act, a state law created in 1937 and found at C.R.S §§ 37-45-101 to 153. There exist at least 24 such districts in Colorado and they are located across the state. In addition to creating water policy within their boundaries, some Water Conservancy Districts manage water supplies under contracts with the United States for numerous federal water supply projects. Water Conservancy Districts have the power to appropriate, acquire, use, and lease water and the power to make and enforce rules for the management, control, delivery and use and distribution of those waters. The Boards of those Water Conservancy Districts retain discretion in allowing the use or refusal to allow the use of the developed water supplies.

Some Water Conservancy Districts have created rules to control the use of those water supplies in various ways, including to address the issue of speculation. Some rules specify forfeit of the use of the Water Conservancy District’s water as a possible sanction for violation of the rules. Additional Water Conservancy District rules provide that if a landowner sells the existing base water supply off of a parcel of land, the Water Conservancy District may not provide for new water to backfill a water supply to that land parcel. These rules are known by various terms, however, terms such as “base water supply” or “native water” rules are not uncommon. Decisions both to adopt and to apply Water Conservancy District rules are subject to judicial review.

B. *The Four Water Conservation Districts in Colorado Have Powers to Control Against Speculation*

⁷¹ C.R.S. § 37-92-103(10.7).

⁷² C.R.S. § 37-92-305(4.5)(b).

⁷³ C.R.S. § 29-2-103.7.

In addition to Water Conservancy Districts, four water conservation districts have been created by Colorado State law. Each conservation district is created by individual statute and those statutes are found in Title 37 of the Colorado Revised Statutes. Although there are important differences between water conservation districts and Water Conservancy Districts, the conservation districts have similar powers. For example, among other powers, the Colorado River Water Conservation District may adopt rules and regulations that provide for the rental of water and other services furnished by the district, adopt under the police power such reasonable rules and regulations pertaining to water services provided by the district or any facilities of others affecting the activities of the district, and exercise implied powers necessary to carry out the district's statutorily-expressed powers.⁷⁴ Water conservation districts have exercised their powers to adopt "base water supply" rules similar to rules adopted by Water Conservancy Districts.

C. Federal Reclamation Law Limits Speculation in Project Water

Federal reclamation law governs the Bureau of Reclamation's construction and operation of water projects that were designed to subsidize the irrigation of arid lands in the West. Where Reclamation has funded construction of irrigation projects, it provides project water to eligible landowners through irrigation districts or WCDs. These districts collect fees from users to repay the U.S. for the project costs. Under the Reclamation Act of 1902 and the Reclamation Reform Act of 1982, Reclamation restricts use of project water, primarily in the form of acreage limitations.⁷⁵ An individual or entity can only own land up to a maximum acreage limit within a contracting district to receive project water.⁷⁶ Any excess acreage above the limitation is not eligible for subsidized reclamation project water.⁷⁷ A district is subject to project water restrictions unless explicitly exempted by statute or until the district fully repays its construction obligations to reclamation.⁷⁸ Colorado-Big Thompson Project water is specifically exempted from acreage limitations.⁷⁹

The Reclamation Act provides that the right to appropriate water for projects is subject to state law, meaning the Bureau of Reclamation or another entity seeking to appropriate water for a reclamation project must obtain a state water right to do so.⁸⁰ In Colorado, applicable state laws include the anti-speculation doctrine. However, Reclamation must approve any transfer or change in use of project water, following review to assure the transfer will not conflict with the interest of other project

⁷⁴ C.R.S. § 37-46-111, 148(c), 148(d), and 107(k).

⁷⁵ 43 U.S.C. § 390dd.

⁷⁶ *Id.* The Bureau of Reclamation adopted regulations to close potential loopholes for entities by defining a qualified recipient of project water as a natural person or a "legal entity established under State or Federal law which benefits twenty-five natural persons or less." See 43 C.F.R. § 426.2

⁷⁷ 43 U.S.C. § 390dd.

⁷⁸ 43 U.S.C. § 390mm(a).

⁷⁹ 43 U.S.C. § 386.

⁸⁰ 43 U.S.C. § 383.

beneficiaries and will comply with reclamation law, other federal laws, and state law.⁸¹ Transfers of irrigation project water rights remain subject to the same acreage limitations. When project water is converted to municipal use, the acreage limitation does not apply but neither does the irrigation subsidy; Reclamation establishes a new rate to account for project repayment obligations.⁸² These restrictions limit the accumulation of project water for speculative purposes and discourage conversion of project water to non-irrigation uses.

D. Colorado Counties and Municipalities Have Limited and Indirect Statutory Authority to Regulate Against Speculation

In 1974, the Colorado General Assembly enacted a statute to allow local governments to regulate certain aspects of planning including particular water development matters.⁸³ Though these matters are of “statewide interest,” the permitting authority is held by counties and municipalities. For example, a county may require a permit for development of reservoirs, pipelines, canals, and other water supply facilities located in that county to provide a water supply for use in another county. These powers are commonly referred to as “1041 powers,” based on the bill number of the legislation (HB 74-1041). These 1041 powers allow local governments to identify, designate, and regulate areas, such as geologic hazard areas, and water facility activities through a local permitting process. Among the activities available for designation are water distribution systems, major facilities of a public utility and efficient utilization of municipal water projects.

Each county or municipality may select at its option the matters it chooses to regulate and develop a land use code provision setting out the regulation. Public hearings are required in the regulation adoption process. The Department of Local Affairs published a report in 2017 which documents use of 1041 powers.⁸⁴

The utilization of such powers is not automatic and requires action by the county or municipality. The use of such powers to condition water supply facilities has been upheld in litigation following the adoption of HB 74-1041.⁸⁵ Anti-speculation is not an identified statutory purpose of 1041 powers but may indirectly be an issue raised in public hearings. No reported court cases have identified anti-speculation as a proper purpose of 1041 regulation, but some local governments address speculation concerns in regulating projects that would remove water from agricultural irrigation use.

A county also may be able to create a disincentive to speculative water right acquisitions through its taxing authority. For example, counties often tax land used for

⁸¹ Bureau of Reclamation, PEC P09, *Bureau of Reclamation Manual: Transfers and Conversions of Project Water* (2019) available at <https://www.usbr.gov/recman/pec/pec-p09.pdf>.

⁸² Bureau of Reclamation, PEC 09-01, *Bureau of Reclamation Manual: Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (2019) available at <https://www.usbr.gov/recman/pec/pec09-01.pdf>.

⁸³ C.R.S. 24-65.1-101.

⁸⁴ See <https://cdola.colorado.gov/1041-regulations-colorado>.

⁸⁵ See *City & County of Denver v. Bd. Of County Commissioners of Grand Co.*, 782 P.2d. 753 (Colo. 1989).

agricultural purposes at a lower rate than commercial or residential land uses.⁸⁶ A county may be entitled to revoke its agricultural tax rate for lands with associated irrigation water rights if the water is removed from the land and the land is no longer used for agricultural purposes.

E. Water May Not Be Diverted for Use Outside the State Without Prior Approval

In most major river basins, limited supplies of water must meet both the demands of Colorado's citizens as well as downstream users under interstate compacts or equitable apportionment decrees.⁸⁷ Colorado's policy has been to conserve and prevent waste of its water resources, preserving supplies of water necessary to ensure the continued health, welfare, and safety of all Colorado citizens.⁸⁸ Accordingly, existing state law prohibits export of water from the state without prior approvals.⁸⁹ A person may not transport water from the state by any means, including in the natural streams, without first obtaining approval.⁹⁰ Prior to approving an application, the state engineer, ground water commission, or water judge, as the case may be, must find that:

- (a) The proposed use of water outside this state is expressly authorized by interstate compact or credited as a delivery to another state pursuant to section 37-81-103 or that the proposed use of water does not impair the ability of this state to comply with its obligations under any judicial decree or interstate compact which apportions water between this state and any other state or states;
- (b) The proposed use of water is not inconsistent with the reasonable conservation of the water resources of this state; and
- (c) The proposed use of water will not deprive the citizens of this state of the beneficial use of waters apportioned to Colorado by interstate compact or judicial decree.⁹¹

Any diversion of water from the state which does not comply with these requirements "shall not be recognized as a beneficial use for purposes of perfecting a water right to the extent of such unlawful diversion or use."⁹²

⁸⁶ See C.R.S. § 39-1-102(1.6)

⁸⁷ C.R.S. § 37-81-101(1)(a).

⁸⁸ C.R.S. § 37-81-101(1)(b).

⁸⁹ *Id.*

⁹⁰ C.R.S. § 37-81-101(2).

⁹¹ C.R.S. § 37-81-101(3).

⁹² C.R.S. § 37-81-101(4).

3.b Water Markets

i. Background

The Work Group has articulated information about anti-speculation law within and outside of Colorado, and the risks in Colorado. In the discussions regarding what “speculation” is and whether there are actions to take to reduce such speculation, the Work Group has contemplated and discussed several options that would regulate water markets or water right transactions. While all regulations such as those the Work Group has discussed are intended to promote and protect certain values or community attributes, it is important and helpful to realize and incorporate into our discussion the fact that any regulation may have unintended consequences.

Discussion is difficult if those involved in the discussion have a different idea or definition of what a “water rights market” is or is not. This Section seeks to define the term “water market” for the purposes of the Work Group’s discussions, specifically to guide the Work Group’s understanding of what market regulations might impact. Thus, this Section articulates several definitions of market and seeks to identify the types of water markets that exist in Colorado. This Section does not address whether any regulation, taxation or specific controls of such markets are appropriate or not.

ii. Defining a Water Market

To assist in defining a “water market”, it seems useful to first define “market.” The idea of a market is intuitively understood by most people because most people participate in a market economy. The following are general definitions of a market:

- A market is one of a composition of systems, institutions, procedures, social relations or infrastructures whereby parties engage in exchange. While parties may exchange goods and services by barter, most markets rely on sellers offering their goods or services (including labor power) in exchange for money from buyers.⁹³
- Markets establish the prices of goods and services that are determined by supply and demand.⁹⁴
- A market is any place where two or more parties can meet to engage in an economic transaction—even those that don’t involve legal tender. A market transaction may involve goods, services, information, currency, or any combination of these that pass from one party to another.
- Markets may be represented by physical locations where [transactions](#) are made. These include retail stores and other similar businesses that sell individual items to wholesale markets selling goods to other distributors. Or they may be virtual. Internet-based stores and auction sites such as [Amazon](#) and [eBay](#) are examples of markets where transactions can take place entirely online and the parties involved never connect physically.⁹⁵

⁹³ Wikipedia, “Market (economics),” available at https://en.wikipedia.org/wiki/Market_%28economics%29.

⁹⁴ Investopedia, “Market,” available at www.investopedia.com/terms/m/market.asp.

⁹⁵ Investopedia, “Market,” available at www.investopedia.com/terms/m/market.asp.

Generally speaking, a market is a means, method or place to conduct trading of goods or services. A market is not only the venue where transactions occur, but also includes and informs the form of the transaction, the degree of control an entity has relative to the transaction and accessibility, ease of transactions, price, and availability (supply).

A Colorado water market may be understood as the virtual or physical space where one may lease, purchase or sell water rights and/or the act of leasing, purchasing or selling water rights or the use of water pursuant to a water right.

There is no single, or even a dominant, Colorado “water market.” There is no specific physical location where the majority of such transactions occur; water right transactions can occur wherever the parties to the transaction choose. There is also no single defined water “marketplace” such as other countries or states have (e.g. Australia, California). There are multiple methods, places, and entities through which water right transactions occur. In Colorado, both water marketing and water markets exist in a number of variations. Water markets here operate with a more regional focus and significant variations. This variety in purpose, type of water, control of pricing and control of participants is important to consider in the context of any proposed regulation, oversight, or evaluation of potential negative consequences.

Water markets are not changes of water rights, appropriations of water rights, or any other type of water court adjudication. Those adjudications define the water right including type of use, amount available, and location of use. Those rights are sold or leased in a water market. Relatedly, a water market is limited to the sale or lease of water rights and does not extend to the sale of commodities derived from the beneficial use of water.

All markets are composed of willing buyers and sellers, but many of the specific existing water marketing programs have developed in response to specific needs and/or goals of the entities that created or have participated in the programs. For a number of these markets, there are specific processes and purposes that set parameters, such that water transactions and the price are not purely driven by supply and demand.

iii. Water Markets in Colorado

Below are descriptions of a variety of water markets that operate in Colorado:⁹⁶

Individual Sales: Individual sales between willing sellers and buyers. Such transactions are similar to real property transactions and may occur anywhere. These transactions are regulated through many of the same regulations and laws that apply to the transfer of any real property asset.

For example, individual sales/transfers and leases may take the form of stock sales of a private irrigation company (for example in the Grand Valley) or real estate transactions under a federal project (such as the Grand Valley Water Users Association (“GVWUA”)) which include adjudicated water rights that are tied to the property. Generally stock

⁹⁶ The list is not a result of methodical research but based instead on the subcommittee’s knowledge as water professionals and water users. The intent of the list is to provide examples of the different formats for water markets in Colorado, and to demonstrate the significant variation between water markets.

sales from a private ditch company are public and the irrigation company will provide information regarding who has shares for sale.

Regional Water Marketing Programs: stored water available for long-term or annual contract purchases for a variety of uses, including augmentation, industrial, environmental and agricultural uses. For example:

Colorado River District Water Marketing

Program:<https://www.coloradoriverdistrict.org/water-marketing/>

- Upper Yampa Water Conservancy District - Stagecoach Reservoir:

<http://www.upperyampawater.com/water-storage-for-sale/>

Northern Water Conservancy District, Colorado Big Thompson:

<https://www.northernwater.org/your-water/allottees/cbt-buyers-and-sellers>

Regional Augmentation Plans: Numerous associations, conservancy districts and authorities have adjudicated blanket augmentation programs that sell or lease water to augment wells. Examples include the Central Colorado Water Conservancy District GMS and WAS; Arkansas Groundwater Users Association; Upper Gunnison River Water Conservancy District; Headwaters Association of the South Platte; Rio Grande Water Conservation District (and Subdistricts 1-6) among others.

Leasing programs: Numerous municipal and at least some industrial users lease to other water users. For example:

- The City of Boulder:
<https://bouldercolorado.gov/water/agricultural-and-irrigation-water-leasing>
- Coors Brewing Company
- Board of Water Works of Pueblo

Conversely, the Colorado Water Trust is an example of an organization that facilitates the lease of water rights; in addition to facilitating permanent acquisitions for streamflow restoration, it works closely with the CWCB and water users to lease water in dry years.

The differences in these markets include:

- The availability and allowed use of the water. Municipal leasing programs for example are often leasing effluent that is reusable and decreed for many types of uses. The availability of effluent is fairly steady. On the other hand, a regional augmentation plan may be supplying direct diversions and may be more dependent on the particular hydrology.
- How the price is set. Some of the programs allow supply and demand to drive the price. An example is the Colorado-Big Thompson water supplied by Northern Colorado Water Conservancy District. Other entities such as the Colorado River District Board will set a price based on particular criteria.
- The amount of control a single entity exerts over a particular market.

- Whether there are other laws and regulations that apply to a transaction. For example a sale between individuals will be regulated by laws that govern real property transactions.
- Amount or impact of competition. Some programs have specific criteria for participants. If an individual does not meet that criteria, they cannot participate. Others are open to any individual or entity.

3.c Relevant laws and recent speculation issues in other states

A summary of laws and policies in other states protecting against speculation in water rights as well as recent situations in those states where speculation was an issue was prepared by the Governor's Office. The states included in his report are Washington, Arizona, Iowa, California, New Mexico, Nevada, Oregon, and Idaho. The report was discussed in the March 2021 Work Group meeting to inform potential solutions for Section 5 of this report.

4. What are the Risks to Coloradans from Speculation?

In order to discuss the risks to Coloradans from speculation, this section begins by defining two terms: Traditional Water Speculation and a related but different concept, Investment Water Speculation.

This report defines Traditional Water Speculation as seeking to appropriate, change, or continue a water right without a specific plan and intent to put the water right to its claimed beneficial use, or without a vested interest in the facilities or place to be served by the water. Without plan and intent to place the water to beneficial use, the party intends to either profit from future sale of the water right or to hoard the water right for some unidentified future use. Section 3 discusses legal standards that can protect against Traditional Water Speculation as well as limited governmental agency exceptions.

This report defines Investment Water Speculation as the appropriation or purchase of water rights followed by the use of those water rights, where the appropriator or purchaser's primary purpose is profiting from increased value of the water in a subsequent transaction such as sale, lease, or payment for non-diversion. The profit is derived solely from forces of supply and demand, and not from any added value. The initial transaction would not trigger water court review if the investor continues to beneficially use the water. Even if water court review of water right transactions were required, water courts do not currently consider whether an applicant's primary purpose is profiting from the increased value of the water. Still, Investment Water Speculation violates the intent of Colorado's anti-speculation doctrine because the investor's primary goal is profit from the water value rather than beneficial use of the water (and the profit that comes from the use). Section 5.c. contains the Work Group's ideas for how Investment Water Speculation could be objectively identified.

The distinction between these two definitions is not always clear. However, this report distinguishes the two in order to highlight unique aspects of Investment Water Speculation. It is untested whether some of the activities described as Investment Water Speculation could be covered by existing law. Because Investment Water Speculation requires a determination of intent, it is inherently difficult to identify. Members of the Work Group know of several situations where Investment Water Speculation has occurred or could potentially occur, such as:

- Water broker: an entity buys a water right and quickly sells it to a third party for profit.
- Use while waiting for appreciation or increased demand: an entity that is not typically involved in agriculture buys a water right, continues the historical irrigation use of the water right for a longer period of years with an intent to profit by:
 - selling the water right when prices have increased,
 - leasing the water right for beneficial use (or a future program that pays water users to not divert) in years when there is high demand and high water prices,
 - accepting payment to not divert the water right from a downstream entity that benefits from the non-diversion.

The examples above are based on the personal and professional experiences of the Work Group members. They are anecdotal descriptions of situations where Investment Water Speculation has occurred, rather than an exhaustive or research-based list of the possible situations. Nonetheless, the Work Group members represent perspectives from a wide spectrum of Colorado water users, both geographically and professionally, which lends credence to these observations. Based on their perspectives and recent media coverage of water issues, the Work Group members also surmise that the General Assembly crafted SB 20-048 foremost to consider regulating activities of private investment entities that the legislation presumes to be Investment Water Speculation.

Despite this focus on Investment Water Speculation, the Work Group recognizes the beneficial role that private investment played in developing Colorado's water resources and delivery systems historically. In addition, Work Group members have noted the value of on-farm improvements that have recently occurred as a result of investors buying land and water rights on Colorado's western slope. In recognition of the beneficial role private investment can play, the Work Group focused on potential negative outcomes from speculation, rather than from private investment generally, in the development of this report.

This section explores potential negative outcomes from both Traditional Water Speculation (Section 4.a) and from Investment Water Speculation (Section 4.b).

4.a Potential Negative Outcomes from Traditional Water Speculation

The existing body of anti-speculation law, described in Section 3, provides legal standards intended to minimize the risk to Coloradans that Traditional Water Speculation will occur. Despite the well-developed anti-speculation laws, the enforcement of anti-speculation standards in the water court process can be inconsistent, which may allow water rights to be adjudicated when there is not an adequate plan and intent.

The possible negative outcome of Traditional Water Speculation is described below with a description of how the outcome could (or already does) happen and details of the potential results.

i. Outcome 1: Parties with legitimate beneficial uses have increased uncertainty regarding water availability, or water is only available for their use through payment to the water right holder

A. How could/does this happen?

- New appropriations, changes of water right, and diligence applications to the water court are not consistently required to completely describe their plan and meet their burden of proof, such as contracts with end users of the water, to fully show compliance with the anti-speculation doctrine.
 - Although water court applicants must describe their proposed use and place of use, the law does not require those claims to be fully investigated by either the court or another entity, and
 - Interested parties do not always object to the application or thoroughly litigate anti-speculation requirements.

- The lack of consistency may be due to:
 - Trust that water users apply for uses for which they have a plan.
 - The high cost of participating in water court to strictly hold all water users to their burden of proof under anti-speculation law.
- B. This could/does result in:
- A legal water right is appropriated, changed, or continued without a specific plan and intent to place the water to beneficial use. The existence of the rights makes water unavailable to parties with legitimate beneficial uses. The owner of the speculative water right may try to sell the use of water to others who do have a beneficial use or to hoard it for some other unidentified future use.
 - If those water rights go unused for many years, there is uncertainty of whether the use will be developed or not. If eventually developed, the use may change the historical availability of water on a stream system.
 - Additional court costs for other water users:
 - Speculative water rights that are not used need to be canceled (conditional rights) or abandoned (absolute rights) in a water court process.
 - Investors may try to change their speculative water right to a useful water right. Other water users may need to get involved in the water court case to protect their rights from injury.

4.b Potential Negative Outcomes from Investment Water Speculation

The following possible outcomes of Investment Water Speculation were discussed in varying detail by the Work Group. The Work Group did not arrive at common agreement about these outcomes. Some of the outcomes may be perceived differently by various sectors and water users (rural communities, state agencies, farmers, water providers). One group may perceive an outcome as negative, where another group may perceive it as neutral or beneficial.

The following three examples of possible outcomes (not exclusive) each include a description of how the outcome could happen and details of the potential results.

i. Outcome 1: Using ownership of a substantial amount of water rights in a local market to adversely affect Colorado Water Users

- A. How could this happen?
- Investor purchases rights to the use of a substantial amount of water in a particular region based on an expectation that there will be a need for that water by others in the near future. Investor beneficially uses the water.
- B. This could result in:
- Investor controls the price of water sales and leases within that particular area because they have control of the market or the investor is the only seller/lessor. This increases the price for other water users with a need to use the water.

- If the eventual water user is a municipal water provider, the price increase will be passed along to customers who may have difficulty paying for their water, increasing the cost for everyone.
- The price increase results in profit for the investor who has acted as a broker in water transactions. The non-speculative water users make less profit.
- Smaller communities may not be able to access, lease, or otherwise acquire the necessary water resources. This may cause:
 - Increased reliance on non-renewable groundwater.
 - Growth to be pushed to unincorporated areas, increasing the burden on county resources.
 - Days when they cannot meet the needs of their citizens.
- Investor is able to exert some control over future processes involving the water. For instance:
 - Ditch company by-laws may be changed for the benefit of the investor. For example, by-laws that prevent the transfer of water from the land could be changed, resulting in additional impacts to the local community.
- Investor collaborates with out-of-state entities related to the use or non-use of the water to the detriment of Coloradans.
 - The potential use of Colorado water rights in downstream states has been raised in the media and elsewhere, but such use is a low probability outcome because the use of a Colorado water right outside of Colorado must meet the approvals regarding the “export” of water in Section 37-81-101, C.R.S.
 - There is a potential that an investor might be paid to not divert Colorado water rights that might then flow out of state. That threat is mitigated because if the water is not diverted for its decreed purpose, it would be available for diversion by other Colorado water users and may not result in an additional amount of water leaving Colorado for other states’ use. Further, as a deterrent to the water right’s owner, the water right would be subject to abandonment.
 - If and when a Demand Management program⁹⁷ (as contemplated in the Drought Contingency Plan) is established, investor claims more than a fair share of the benefits of the program or otherwise exerts more influence over the program than other water users, which has a detrimental effect on other water users. Concept S, discussed in Section 5, provides suggested provisions

⁹⁷ Colorado is currently investigating the feasibility of a potential Demand Management program for purposes of ensuring ongoing compliance with the Colorado River Compact. Demand Management is the concept of temporary, voluntary, and compensated reductions in the consumptive use of water in the Colorado River Basin. Each of the Upper Colorado River Basin States is conducting their own investigation to determine whether a potential program would be feasible in their state as well. All Upper Division States would need to agree that a program would be feasible before a program may be established.

for a Demand Management or similar program to help avoid this risk.

ii. Outcome 2: Increased cost of water rights for an end user who would actually put the water to beneficial use in Colorado.

- A. How could this happen?
 - a. Investor outbids non-speculative users on water rights for sale due to better access to funds/resources.
- B. This could result in:
 - a. Farmers are unable to expand their farms because they cannot afford the water.
 - b. Municipalities and other water providers are forced to spend more ratepayer money to acquire water needed to serve their citizens. Because municipal water providers are not for profit entities, this results in individual homeowners and businesses paying more for their water than they otherwise would. Lower income residents may have increased difficulty paying for their water.
 - c. Environmental groups have decreased purchasing power to acquire or lease water for the environment.

iii. Outcome 3: Large scale dry-up of specific parcels or varying parcels within a region that were historically irrigated, which occurs either through a change of water right or through purchase followed by non-use

- A. How could this happen?
 - Investor purchases large quantities of water rights in a particular region with the intent to sell the water rights to another who might use the water for a different purpose or to stop diverting the water for any purpose.
 - The Work Group recognizes that this is not necessarily a direct result of Investment Water Speculation and that dry-up regularly occurs under non-speculative changes of water rights; and potentially for the same water rights that would be the subject of the Investment Water Speculation. However, the outcome of dry-up is documented here as a potential outcome of Investment Water Speculation.
 - Investor purchases large quantities of water in a particular region and stops diverting the water.
 - Historically, this would have been a rare outcome because the lack of diversion for decreed purposes would devalue the water and subject it to abandonment proceedings, resulting in a reduction in the water right. However, the likelihood of more regular dry-up occurring could be increased if:
 - a large-scale market develops under a future Demand Management (temporarily following) or other program that would reward owners for not diverting their water rights.

It is possible that the legislature may enact new, more protective legislation that would protect water rights from the presumption of abandonment if they were not diverted for their originally decreed uses due to participation in a Demand Management Program. How the legislature might proceed is unclear. Concept S, discussed in Section 5, provides suggested provisions for a Demand Management or similar program to help avoid this risk.

- as described above, states downstream of Colorado could encourage owners in Colorado to not divert their water rights (outside of a Demand Management program), which could result in dry-up. That threat is mitigated because if the water is not diverted for its decreed purpose, it would be available for diversion by other users or subject to abandonment.
- In either situation, Investors could purchase water rights with an expectation of potential payment for non-diversion and, depending on the location of the subject water rights and the local stream regime, the likelihood of abandonment might not be a disincentive.
- Some observers have mentioned that a market for existing agricultural rights on the Colorado River located in proximity to the Colorado State Line already exists, perhaps, in part, based on the purchaser's presumption that a Demand Management program or other market will develop to reward owners for not diverting their water rights.

B. This could result in:

- Impacts to ongoing ditch operations and remaining shareholders;
- Primary and secondary socio-economic impacts to rural economies;
- Loss of local food, forage, and livestock production;
- Impacts to wildlife as habitat created by irrigated agriculture is lost;
- Reduction in the number of willing participants for alternative transfer methods (ATMs)⁹⁸ or partners with the instream flow program;
- Loss of groundwater recharge that supports other water users (spring flow, sub-irrigation);
- Invasive species; and
- Loss of topsoil.

⁹⁸ An ATM usually provides the legal and administrative structure for an irrigator to retain ownership of a water right, while also allowing a transfer of some or all of the water to a different beneficial use for a period of time. The Colorado Water Conservation Board has produced a report providing a detailed definition of alternative transfer methods (ATMs). See Colorado Water Conservation Board, "Alternative Transfer Methods in Colorado: Status Update, Framework for Continued Support, and Recommendations for CWCB Action" (July 2020), pp. 42-44.

iii. Outcome 4: Profit provides motivation to develop new consumptive use solely for the purpose of the sale of a water right, which impacts over-appropriated status, water availability, and in some cases compact compliance.

Note: The results below can also occur as a result of appropriations that are not deemed Investment Water Speculation. However, Investment Water Speculation could potentially cause the results at an accelerated pace.

A. How could this happen?

- There are limited areas of Colorado that are not administratively over-appropriated, where new junior water rights, particularly groundwater rights, may be appropriated and reliably used without augmentation. A new junior appropriation could be made by an investor and perfected for beneficial use. If the administrative status of the basin then changes to over-appropriated, new groundwater uses will need to be augmented as a condition of being permitted and new surface water uses may also need to be augmented in order to avoid curtailment. Perfected water rights that do not require augmentation may quickly increase in value if there are new demands for water. If the intent at the time of appropriation was to realize the increase in value, this is Investment Water Speculation.
- A similar scenario involves an investor who purchases a senior water right that has not been used to the fullest extent of its decree limits⁹⁹. The investor's intent is to increase the consumptive use of the water right within the decree limits to increase the amount of water transferable to a different water user, increasing the overall value of the water right.

B. This could result in:

- New areas being designated over-appropriated. Water will be less available for appropriation by other water users and there will be an increased need to augment or replace diversions.
- Augmentation water becoming increasingly unavailable or unaffordable.
- For the use of groundwater, in some areas the rate of water level decline may increase, making water use less economically feasible for all water users, and there will be less non-renewable groundwater available for use. Aquifer sustainability efforts would be hindered.
- If the consumptive use is through irrigation, the sale could result in dry-up of irrigated land.
- Additional consumptive use could impact compact compliance.

4.c Conclusions from analysis of risks and outcomes

The Work Group considered risks and potential outcomes from Traditional Water Speculation and Investment Water Speculation that were not negative outcomes for all sectors. For instance, an irrigator may make more money from the sale of their water

⁹⁹ Note that the water right may be subject to partial abandonment of the unused portion of the water right.

right if there is Investment Water Speculation and this would benefit the irrigator. However, the Investment Water Speculation would increase the price for the end water user, potentially a municipal water supplier or Colorado's instream flow program, which is a negative outcome for large groups of Colorado citizens.

These discussions brought to light issues related to water user values and intentions that the Work Group recognizes are hard to balance when legislating, such as:

- Coloradans value water for its beneficial use. Water should not be traded as a commodity for profit.
- Coloradans value irrigated lands, safe and reliable drinking water, and the environmental, recreational, and community benefits derived from our water resources.
- Coloradans value property rights in the beneficial use of water and the protection of these property rights.

Another conclusion is that some of the negative outcomes identified are also negative outcomes from water transactions that do not include speculation. For instance, dry-up of irrigated lands occurs as a result of a change of water right from irrigation use to uses such as municipal and instream flow. Although Investment Water Speculation may accelerate dry-up or make it more difficult to mitigate dry-up, dry-up can occur as a result of transactions without any speculative element.

The Work Group discussed which of the negative outcomes should be a focus of brainstorming concepts to address speculation risks in Section 5 of this report but did not agree upon a clear area of focus. The Work Group was in agreement that many of the listed concepts carry their own risk of negative consequences as further explored in Section 5.

5. Analysis of individual anti-speculation concepts

The Work Group discussed many concepts to reduce speculation, and in particular Investment Water Speculation and its negative outcomes. This Section is intended as a guide for the Committee on the pros and cons of each concept, as well as the types of speculative activity that each concept might be capable of addressing. As the Work Group's focus was on Investment Water Speculation, the set of pros identified is not intended to be exhaustive. The pros listed in this Section center on how each concept would interact with Investment Water Speculation activity and its negative outcomes. The concepts described below may have other beneficial effects, beyond the scope of this Report.¹⁰⁰

The Work Group began the process of identifying possible ways to address Investment Water Speculation by brainstorming ideas. This Section reflects those brainstormed ideas, as subsequently refined and discussed by the Work Group. Each idea for addressing speculation that was considered by the Work Group is included, although for the sake of clarity some concepts combine multiple ideas.

Although this section identifies the pros and cons of each concept, it provides no weighing of these factors. Due to the comprehensive inclusion of ideas, inclusion of a concept in this section implies nothing about the concept's desirability. Indeed, there are several concepts described in this section that no member of the Work Group would necessarily recommend. Instead, the purpose of this section is to document the full range of concepts discussed by the Work Group. By cataloguing all the ideas discussed by the Work Group, their pitfalls, and their potential, the Work Group hopes that this section will allow both (1) the avoidance of ideas that, upon consideration, would almost certainly be unworkable or ineffective and (2) the clear-eyed evaluation of concepts with potential to limit Investment Water Speculation or its negative outcomes.

The last row of each table is the filter for what concepts are presented to the Committee in Section 6. It answers the following question: Does the concept have the potential to be effective in reducing Investment Water Speculation on a large scale (and not just for certain limited situations)? If the answer to this question is yes, the Work Group also notes whether this is a change in Colorado law that could be considered by the Committee. As the last row relates only to the extent to which the concept fulfills the legislature's charge to this Work Group, the last row does not reflect any judgment on the desirability of a concept. Concepts that would not be effective legislative actions to reduce the amount of Investment Water Speculation may nevertheless be beneficial to Coloradans and worthy of attention from the water community.

¹⁰⁰ For example, several of the concepts described in this Section are also discussed, from a broader frame of reference, in the Colorado Water Plan. See, e.g., Colorado Water Conservation Board, *Colorado Water Plan: Chapter 10: Critical Action Plan* 10-10 (2015).

The five groupings and individual concepts are as follows:

5.a: Concepts modifying existing proceedings or legal standards in water court

Concept A: Require prima facie showing of non-speculation in water court proceedings

Concept B: Expand the government review and approval process for changes of use of water rights that exceed some minimum threshold of rate, volume, or seniority

Concept C: Restrict participation of out-of-state entities in Colorado water court and Ground Water Commission proceedings

Concept D: Reduce expectations of investors by clarifying that water savings due to efficiency improvements cannot be sold to other users

Concept E: Prohibit or penalize compensated non-diversion

5.b: Concepts promoting the tying of water to the land

Concept F: Modify the conservation easement statute to incentivize tying water rights to their place of historical use

Concept G: Fund and/or create a right of first refusal for the purchase of water rights for long-term irrigation use for public benefit

Concept H: Eliminate or reduce the agricultural tax benefit for lands from which water is removed.

Concept I: Unless irrigated land is going to be changed to a new land use, require water to be tied to the land.

5.c: Concepts specifically relying on identifying Investment Water Speculation at the time of a water rights sale

Concept J: Create a statewide process to identify and prohibit Investment Water Speculation

Concept K: Encourage local governments to police Investment Water Speculation through their 1041 powers

Concept L: Tax the profit derived from sale or lease of water rights previously purchased for Investment Water Speculation purposes

Concept M: Encourage ditch companies to adopt Catlin bylaws that allow boards to impose terms and conditions on water transfers affecting shareholders

5.d: Concepts that would identify and impact the sale of water rights without specifically identifying Investment Water Speculation

Concept N: Impose time limits on turnover of ownership of water rights to discourage short-term ownership for quick profit

Concept O: Require public record of relevant details for sales of water rights

[Concept P: Establish a maximum rate of water right price increase and impose higher taxes when the rate is exceeded.](#)

[Concept Q: Prohibit out-of-state persons from holding water rights](#)

[5.e: Concepts that encourage temporary changes in use of water rights and/or ensure that temporary changes do not result in or facilitate Investment Water Speculation](#)

[Concept R: Encourage Usage of Alternative Transfer Methods \(ATMs\)](#)

[Concept S: Ensure safeguards against Investment Water Speculation are included within a Demand Management program or something similar if established in the future.](#)

5.a: Concepts modifying existing proceedings or legal standards in water court

This group of concepts proposes changes to the operation of existing water court procedures or legal standards, primarily at the change of use stage. Investment Water Speculation begins with a speculator purchasing a water right, but speculators may need to pursue a change of use. Although the concepts in this group would not directly limit Investment Water Speculation purchases, the concepts aim to make Investment Water Speculation less attractive and/or to reduce the negative effects resulting from Investment Water Speculation.

Concept A: Require prima facie showing of non-speculation in water court proceedings	
Description	Require water court applications for new water rights, maintenance of conditional water rights (findings of reasonable diligence), and changes of use of water rights to include a description of the “specific plan and intent to put the water right to its claimed beneficial use.” Although current law prohibits speculative water appropriations and changes of use, challenges on speculation grounds must be brought explicitly by litigants. The change in law could be implemented as a change to statutes or the Uniform Local Rules for the water court, requiring a prima facie showing of non-speculation with a water court application. The water court and/or Division Engineer could be required to review whether the description meets minimum requirements of specificity and intent.
Pros	<ul style="list-style-type: none">• This concept would provide consistent structure to current court processes regarding Traditional Water Speculation.
Cons	<ul style="list-style-type: none">• Even if reviewed by a water court, most Investment Water Speculation transactions would not be considered speculative under Traditional Water Speculation law, since Investment Water Speculation generally occurs with a new use or maintains the existing water use. Therefore, this concept does not address Investment Water

<p>Speculation.</p> <ul style="list-style-type: none"> • There is no evidence that failure to implement Traditional Water Speculation law is a prevalent issue in Colorado. Therefore, this concept may be targeting a non-issue. • Changes that make the water court process less efficient are likely to increase the price of water.
<p>Effective as legislation addressing Investment Water Speculation?</p> <ul style="list-style-type: none"> • This concept is not likely to be effective in reducing the amount of Investment Water Speculation.

<p>Concept B: Expand the government review and approval process for changes of use of water rights that exceed some minimum threshold of rate, volume, or seniority</p>
<p>Description</p> <p>There are already special requirements for “Significant Water Development Activities” specified in Section 37-92-305(4.5)(b), C.R.S. Significant Water Development Activities are defined in the statute as intercounty transfers involving the removal of more than one thousand acre-feet of water per year from agriculture to a non-agricultural use. This concept would modify the special requirements and/or expand the set of transfers to which the special requirements apply.</p> <p>The Water Development Activities statute could be modified to require an entity seeking a change of use to fund an economic analysis of the change’s effects prior to proceeding with a water court change case. The water court could review the analysis and impose additional conditions on the transfer. The general public and parties to the proceeding could also provide comment on the submitted analysis and conditions.</p> <p>The Significant Water Development Activities statute could also be modified to expand the set of changes of use that are covered. For example, the threshold triggering special requirements could be changed.</p>
<p>Pros</p> <ul style="list-style-type: none"> • Compared to a concept that required public review of all transfers, this selective review would reduce the burdens on water courts. • Exposing the negative economic impacts of transfers based on speculative purchases could generate media attention to the proposed transfer and mitigation requirements could make the transfer more expensive to complete. This may indirectly reduce the amount of speculative purchases. • Economic analysis could facilitate more public participation in water transfer proceedings and could highlight potential mitigation strategies to reduce the impact of the proposed water transfer on the area of origin.
<p>Cons</p> <ul style="list-style-type: none"> • Including public input in the process could result in the unintended consequence that certain “unpopular” beneficial uses would be caught in the review process. • Increasing the cost of change of use proceedings may prevent socially beneficial and

- non-speculative changes of use.
- The review and approval process would apply to all changes of use meeting the volumetric and other criteria, not just changes of use based on initial speculative purchases increasing transaction costs for all water users.
- The concept is aimed at change proceedings rather than the sale or lease of water rights.

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation.

Concept C: Restrict participation of out-of-state entities in Colorado water court and Ground Water Commission proceedings

Description

This concept would be a law or water court rules change preventing out-of-state entities from participating in water court as either an applicant or as a party to a case. This would prevent out-of-state entities from appropriating new water rights, opposing beneficial use in Colorado, or changing the use of existing water rights. The out-of-state nature of an entity could be defined in various ways. A less-rigorous standard could simply be some physical presence in Colorado. A more rigorous standard could be residency or principal place of business.

A variation on this idea is to allow water court challenges to be lodged only if there is a claimed injury to a Colorado water right. This would prevent out-of-state entities objecting in a diligence or adjudication.

This limitation on changes of use for water rights would come after a transaction so it may not have a direct effect on the amount of Investment Water Speculation.

Pros

- To the extent that there is a direct relationship between out-of-state entities and Investment Water Speculation, this concept would limit Investment Water Speculation for some scenarios.

Cons

- The change of water right application is typically filed by the end user, after the Investor has already profited from sale of the water right, so this would not prevent Investment Water Speculation.
- Some water right activities that are actually beneficial to Colorado would be precluded under this limitation.
- Preventing a class of parties from participating in water right matters in Colorado, especially new appropriations, may conflict with Colorado's constitution.¹⁰¹
- The less rigorous standard could be easily evaded by entities wishing to engage in

¹⁰¹ See Colo. Const. Art. XVI, Section 6 ("The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied.").

Investment Water Speculation.

- State laws that discriminate against out-of-state entities engaging in commercial transactions generally violate the Commerce Clause of the U.S. Constitution.¹⁰² Laws implementing this concept are thus unlikely to be constitutional, particularly if the stronger requirements for in-state presence are applied.¹⁰³

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation.

Concept D: Reduce expectations of investors by clarifying that water savings due to efficiency improvements cannot be sold to other users

Description

This concept would clarify that water no longer diverted due to an increase in the efficiency of water use (the ratio of water consumed to water diverted) cannot be transferred to a new beneficial use. Work Group members noted that although sophisticated investors are unlikely to make this mistake, it is not uncommon for purchasers of small tracts of agricultural land to believe that they can easily sell off “water savings.” This often creates acrimony in communities where such purchases occur.

In particular, some investors might mistakenly believe that they can purchase a water right and then:

- Increase the efficiency of water use.
 - For example, an investor might convert a field that consumes 500 acre-feet of water from flood to sprinkler irrigation. The field will still consume 500 acre-feet of water. However, less water needs to be diverted once a sprinkler is used to apply the water to the field. This may result in a change in water needed for diversion from 1000 acre-feet to 625 acre-feet.
- Sell the portion of the water right that no longer needs to be diverted due to the efficiency increase.

If the sale of the water right is for use outside of the decreed irrigated lands, it would require a change of water right application in water court. The water that is no longer diverted was never historically consumed and is not available to transfer to a new use.

The General Assembly could consider legislation that affirms or codifies the case law regarding this aspect of injury considerations in change of water right proceedings. There is also a variety of educational mechanisms that could be considered:

¹⁰² See *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 48 (2d Cir. 2007) (summarizing Supreme Court caselaw).

¹⁰³ Compare *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 37, 42-43 (1980) (state law prohibiting bank holding companies with an out-of-state principal place of business from owning businesses providing investment services violated Commerce Clause) with *Kleinsmith v. Shurtleff*, 571 F.3d 1033 (10th Cir. 2009) (insufficient evidence to conclude state law requiring that attorneys merely “maintain a place” in-state to provide certain legal services violated Commerce Clause).

- Requiring realtors to explain the basics of water law to potential purchasers of land with associated water rights.
- Discussions at various water-related organizations
- Creation of new educational publications in coordination with water education institutions, similar to the Colorado Water Center’s “Use It or Lose It” publication.¹⁰⁴

Pros

- Improving the clarity of this issue would not infringe on property rights.
- This concept does not require a change in the law, but potentially materials to describe the limits on changing the use of only the historically consumed water.

Cons

- This is a narrow concept targeting only a small part of the issue raised in SB 20-048.

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation on a large scale.

Concept E: Prohibit or penalize compensated non-diversion

Description

This concept is intended to primarily target Investment Water Speculation where the speculator’s intent is not to sell the actual water right for subsequent beneficial use but instead to receive a profit by selling the “non-diversion” of the water right. This concept would help to prevent scenarios where a water right that otherwise would be diverted in priority is simply bypassed so that the water flows downstream (potentially into downstream states). Although Colorado law would generally prevent a direct change of use for use within another state, non-diversion at a downstream point could result in water flowing to another state without any need for a change of use application.

The receipt of payment for non-diversion would be made illegal or penalized, unless that payment occurs pursuant to an exception allowed by law. Allowable exceptions would include enrollment in organized conservation programs or a State-approved Demand Management Program, if one is established. Non-diversion pursuant to the CWCB’s instream flow acquisition program would continue to be allowed. Potential penalties for receiving payment for non-diversion include abandonment of the water right or high rates of tax on the non-diversion payments.

For the penalty of abandonment, under existing law, a 10-year period of non-use creates a rebuttable presumption of abandonment. The 10-year period could be shortened to one or two years when a payment is made to the water user to encourage or require non-use. The existing statutory exceptions to the presumption of abandonment would continue to apply

¹⁰⁴ Colorado Water Institute, “How Diversion and Beneficial Use of Water Affect the Value and Measure of a Water Right: Is ‘Use It or Lose It’ an Absolute?,” Special Report No. 25 (February 2016), available at <https://watercenter.colostate.edu/wp-content/uploads/sites/33/2020/03/SR25.pdf>.

(e.g., no presumption of abandonment if the non-use was due to participation in an approved water conservation program or instream flow loan/lease).

Pros

- Helps resolve a potential risk that water could be bypassed that could have the effect and appearance of the export of water.
- Enforcement would not require an inquiry into a purchaser's intent (that is, essentially, a fact based analysis).

Cons

- If geographically limited, it may be difficult to enforce the provision and properly inform the water rights holders to whom the provision applies.
- It may be difficult to determine whether a water user was compensated for non-diversion.

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of certain types of Investment Water Speculation on a large scale (although geographically limited to areas near state lines).

5.b: Concepts promoting the tying of water to the land

If a water right will continue to be used for its decreed use on the land for which it was decreed, the opportunity for Investment Water Speculation in that water right is limited. The Work Group understands that entities engaged in Investment Water Speculation usually seek to profit from water rights by eventually ceasing irrigation use on the historically irrigated lands, usually in favor of a different type of beneficial use. Thus, tying a water right to the land and ensuring its ongoing irrigation use greatly reduces the opportunity for Investment Water Speculation in that water right. Each of the concepts in this subsection has the objective of limiting Investment Water Speculation by increasing the set of agricultural irrigation water rights for which changes of use are legally prohibited or restricted.

Concept F: Modify the conservation easement statute to incentivize tying water rights to their place of historical use

Description

The State's conservation easement program provides tax credits to water rights owners who tie water use under the water right to the land through the permanent conveyance of an easement on their real property. The law could be changed to expand usage of this program to more potential beneficiaries. One particular change would be to grant the owners of water rights or public entities the ability to participate in the tax credit program for conveyances of easements on water rights.

The degree to which conservation easements tie water to the land is another parameter that could be modified or considered. Some conservation easement programs allow for

leasing or other temporary water transfers. While these mechanisms could make easements more attractive, and provide flexibility in water use, they could also transform easements into a mechanism for Investment Water Speculation, at least when that investment is based on temporary payments for non-diversion. See the discussion of Concept R (Encourage usage of Alternative Transfer Methods).

Pros

- Easements provide water right owners with an alternative to permanent sale. This in turn may decrease opportunities for Investment Water Speculation.
- Easements encourage continued beneficial use around the state, consistent with the Colorado Water Plan. In particular, easements may mitigate the effects of Investment Water Speculation by preventing whole areas from undergoing agricultural dry-up.
- Voluntary/compensated/combined land and water protection strategies have demonstrated appeal in Colorado.

Cons

- Voluntary conservation easements would only cover the lands and water rights of owners who opt into the program. Investment Water Speculation could still occur on all other water rights.
- There are already substantial state and federal tax credits for conservation easements based on valuation of easements as charitable gifts. It is not clear what incentives could be offered to further encourage voluntary usage of conservation easements by the current owners of water rights.
- Conservation easements may reduce the pool of water available for change to non-speculative beneficial uses.

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation on a large scale.

Concept G: Fund and/or create a right of first refusal for the purchase of water rights for long-term irrigation use for public benefit

Description

To avoid sales of water rights that would transfer water out of irrigation, facilitate purchases of irrigation water rights for use for public benefit, including ongoing irrigation use, by:

- Establishing a funding pool to (a) preserve irrigated agriculture while still providing flexibility (such as the ability to use the water for public water supply in a minority of years); or (b) support a public buy-out option
- Creating a right of first refusal for state, local, tribal, or nonprofit entities (including mutual ditch shareholders) for proposed water sales. The right of first refusal law could potentially be set to only apply when there is a proposed purchase by certain categories of out-of-state purchasers and/or entities engaged in

Investment Water Speculation.
<p>Pros</p> <ul style="list-style-type: none"> • If public entities purchased all water rights that came up for sale to speculator, the speculator would not be able to engage in Investment Water Speculation. • Purchased water rights would continue to be used for irrigation, preventing long-term agricultural dry-up.
<p>Cons</p> <ul style="list-style-type: none"> • Public purchases of water rights, at any meaningful scale, would be very expensive. • Administering a program of public purchases would be complex. • Granting a right of first refusal to public entities could discourage non-speculative sales of water rights for needed beneficial uses.
<p>Effective as legislation addressing Investment Water Speculation?</p> <ul style="list-style-type: none"> • This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale. • This concept proposes a change in Colorado law.

Concept H: Eliminate or reduce the agricultural tax benefit for lands from which water is removed.
<p>Description</p> <p>Counties could reduce the tax benefit for lands from which water has been removed. This could apply on a yearly basis when water rights are transferred temporarily. Exceptions could be made to continue the agricultural tax rate when the payment for non-use was made pursuant to a state-approved plan such as a water conservation program, a temporary transfer for municipal use, or an instream flow loan.</p>
<p>Pros</p> <ul style="list-style-type: none"> • This concept could reduce the profits from Investment Water Speculation in irrigation water rights, in turn reducing Investment Water Speculation in these rights. • This concept could discourage one of the negative effects of Investment Water Speculation, long-term agricultural dry-up.
<p>Cons</p> <ul style="list-style-type: none"> • This concept is not narrowly targeted at Investment Water Speculation, and could impact all owners of irrigation water rights. • This concept would decrease flexibility in use of Colorado water rights by disincentivizing (both temporary and permanent) changes to different beneficial uses. • Changing the tax rate may be too minor of a penalty to discourage Investment Water Speculation.

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale.
- This concept is a change in Colorado law.

Concept I: Unless irrigated land is going to be changed to a new land use, require water to be tied to the land.

Description

In specific areas, limit the future place of use of a water right to the historically irrigated land or a location nearby.

As with Concept F, the degree to which water is tied to the land could be varied. An approach that allows leasing or other temporary water transfers would make the policy impact less harsh, but could re-open the possibility of Investment Water Speculation.

Pros

- Such water rights would not be targeted by Investment Water Speculation speculators.
- This concept could greatly reduce one of the negative effects of Investment Water Speculation, long-term agricultural dry-up.

Cons

- This concept is drastic. It would significantly devalue water rights, including a large group of water rights not associated with any Investment Water Speculation.
- This concept would greatly decrease flexibility in use of Colorado's water resources by making water rights unavailable for different beneficial uses at different locations in the future.
- To effectively prevent Investment Water Speculation, restrictions would need to be placed on a large set of land. This magnifies the cons already noted.

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale.
- This concept is a change in Colorado law.

5.c: Concepts specifically relying on identifying Investment Water Speculation at the time of a water rights sale

Each of the concepts below requires identification of whether the purchaser of a water right is engaged in or intends to engage in Investment Water Speculation. This subsection outlines the Work Group's ideas for how such water rights purchases could be identified.

Some potential objective criteria for identifying Investment Water Speculation or intent to engage in Investment Water Speculation at the time of a water rights purchase are:

- (a) The purchaser is not an entity primarily engaged in activities involving the beneficial use of water including, but not limited to: non-profits or governmental entities with an interest in environmental or recreational value, water providers/municipalities, producers of products containing water or using water for processing, and those engaged in farming.
- (b) The purchase is not part of a transaction that ties the water to the land for a long period of time; reducing the likelihood that it is speculative. In addition, certain transactions in which a farmer sells a water right in return for a long-term lease back of the water right for their own irrigation use could be deemed non-speculative.
- (c) Whether after the purchase, the purchaser will, in aggregate, own Colorado water rights exceeding a specified threshold. This threshold might vary based on the priority date of the water rights purchased and/or the river basin in which the purchase is made.
- (d) The purchaser has raised money for the purchase in whole or in part by representing any of the following: (1) the water right will be re-sold; (2) acquisition of the water right will be profitable based on one or more temporary changes of use; or (3) acquisition of the water right will be profitable based on a permanent change of use, where that new use is not identified at the time of the transaction.
- (e) The purchaser plans to own the water right for a short period.

The intent review process could be triggered for all transactions or could be applied in a more targeted fashion. For example, the process could be limited to large water rights transactions so that it does not impose a burden on small farmers seeking to sell their water rights. Alternatively, as entities engaged in Investment Water Speculation could acquire significant water rights through a series of small transactions, the process could apply only when the purchaser of water rights has or would have cumulative water rights ownership exceeding a specified threshold.

The Work Group noted several downsides to any process that requires identification of particular transactions as Investment Water Speculation:

- Developing objective standards to determine a purchaser's intent will be difficult.
- Review processes increase the time and expense required to transfer a water right. The extra time and expense could prevent some potential buyers or sellers from engaging in valuable, non-speculative transactions.
- Increased transaction costs for each transfer of water rights could encourage conglomeration of rights to cover the transaction costs. The resulting concentration of ownership in water rights could itself have negative outcomes.
- Review will require additional funding for staff of the court, agency, or other government body that conducts the review.
- If the process for identifying Investment Water Speculation depends on criteria that explicitly target an entity's out-of-state nature or that, as the criteria listed in (a)-(e) may, apply more often to out-of-state entities than to in-state

entities, there is some risk that it would be found unconstitutional under the Commerce Clause. The Commerce Clause of the U.S. Constitution implicitly prohibits state laws that discriminate against out-of-state entities, whether on face or in effect.¹⁰⁵

- If the review process identifies out-of-state entities as engaged in Investment Water Speculation much more often than in-state entities, it could be challenged under the Commerce Clause even if none of the criteria considered explicitly mentions out-of-state entities.
- None of the concepts described in this subsection that would rely on the review process are likely to be invalidated due to this concern. None of the potential example criteria identified by the Work Group explicitly discriminates against out-of-state entities. Moreover, none of the factors seems likely to have differential effects on out-of-state entities relative to similarly situated in-state entities.

Concept J: Create a statewide process to identify and prohibit Investment Water Speculation

Description

First, modify statutory language to clarify that water right transactions with the primary intent of profit from the value of the water right through its sale or lease rather than the beneficial use of the water right are prohibited. Second, create new tools and processes to determine whether a water right sale or lease is Investment Water Speculation. Various possible entities could perform the review including the water court, an existing state agency, a new state agency, and county governments.

Pros

- This concept directly addresses Investment Water Speculation and prevents it.
- Water Court:
 - Well-versed in considering evidence and making findings.
- State Agency:
 - Well-versed in processing permit applications.
 - Potentially faster process than Water Court.
- County Government:
 - Some Coloradans might think the local control of this approach is beneficial, particularly given the particularized concerns created by dry-up of agricultural land.

¹⁰⁵ This is known as the “dormant Commerce Clause.” In general, a law regulating commerce is invalid under the dormant Commerce Clause when, with respect to in-state and out-of-state entities, it is (1) facially discriminatory, (2) has a discriminatory purpose, or (3) has discriminatory effects. *See Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 48 (2d Cir. 2007) (summarizing Supreme Court caselaw). In addition, a law may be invalid under the dormant Commerce Clause when “the burden imposed on [] commerce is clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

Cons

- All of the downsides identified above (Section 5.c) for any process that requires identification of particular transactions as Investment Water Speculation.
- Some water right purchases that are beneficial to Colorado could be precluded under objective standards, even if the review process is perfectly accurate in identifying speculative intent.
- Eliminating some entities from water rights purchases could decrease the value of water rights, by either reducing competition among potential purchasers or by effectively restricting changes of use.
- Water Court:
 - Further overload already full court dockets.
- County Government:
 - Could result in significant variability throughout the state. County government review is less likely to provide a common framework for Colorado water users.
 - Many county governments are less familiar with existing water laws than water courts or state agencies.

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale.
- This concept proposes a change in Colorado law.

Concept K: Encourage local governments to police Investment Water Speculation through their 1041 powers

Description

Counties already have some power to regulate or prohibit certain water projects using their “1041 powers” (as described in Section 3.a.vi). County governments can decide whether or not to employ particular subcategories of 1041 power. The “efficient utilization of municipal and industrial water projects” subcategory¹⁰⁶ may cover, and has been used to address, concerns about speculation in water projects removing water from agricultural land. The limits of county 1041 powers for water speculation considerations have not been legally tested. However, even when employed against water speculation, county 1041 powers have generally been limited to regulation of physical water projects (e.g. water pipelines).¹⁰⁷

One way to encourage use of existing 1041 powers to prevent Investment Water Speculation would be to simply inform counties about their authority and encourage its use against speculation¹⁰⁸. One legislative action along these lines would be to clarify that anti-speculation is a valid purpose for the exercise of 1041 powers. As use of 1041 powers

¹⁰⁶ C.R.S. § 24-65.1-203(h).

¹⁰⁷ See, e.g., Pueblo County Code, Ch. 17.172.130(10) (“The Project will not significantly degrade any current or foreseeable future sector of the local economy.”).

¹⁰⁸ C.R.S. § 24-65.1-302 authorizes state agencies to provide recommendations and technical assistance to local governments.

would remain limited to water projects, and may not be applicable to water transactions or water court activities, encouragement of this form would probably, at most, reduce the negative impacts of Investment Water Speculation.

A stronger alternative would be legislation explicitly designating water rights transactions as activities of state interest, thereby authorizing county-level review of water rights sales and leases for speculative intent. As with the existing 1041 categories, the legislation could specify the parameters or factors that counties choosing to adopt the new category must consider.¹⁰⁹ This would be similar to the approach of Concept J, although it would be optional for county governments to make use of a new 1041 subcategory.

To apply this proposal counties would need to determine whether a water rights transaction is Investment Water Speculation. County governments might also choose to require mitigation of the impacts of speculation, rather than an outright prohibition of transactions.

Given the varied uptake of 1041 regulations across Colorado, using 1041 regulations to regulate Investment Water Speculation on a large scale would require the General Assembly to provide funding to counties with limited resources.

Pros

- Local communities bear the brunt of permanent agricultural dry-up, one possible result of Investment Water Speculation, and hence are well-positioned to evaluate the cost of an Investment Water Speculation that is likely to exacerbate dry-up.
- Several counties already have 1041 permitting programs and fees that help pay for them.

Cons

- All of the downsides identified above (Section 5.c) for any process that requires identification of particular transactions as Investment Water Speculation.
- Creates additional administrative burdens and potentially additional litigation burdens for counties.
- Many county governments are less familiar with water laws and water transactions than water courts or state agencies.
- 1041 rules vary from county to county and do not provide a common framework for Colorado water users.
- Would require funding to counties in order to implement 1041 regulations against Investment Water Speculation at a large scale.
- Subject to existing limitations on 1041 powers, unless changed by statute.

Effective as legislation addressing Investment Water Speculation?

If implemented by encouraging the use of 1041 powers under current law:

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation.

¹⁰⁹ See C.R.S. § 24-65.1-204.

If implemented by expanding the 1041 powers to specifically include water rights transactions:

- This has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale.
- This concept proposes a change in Colorado law.

Concept L: Tax the profit derived from sale or lease of water rights previously purchased for Investment Water Speculation purposes

Description

As in Concept J, create new tools and processes to determine whether a water right purchase is Investment Water Speculation. If the review process identifies a purchase as Investment Water Speculation, tax all profits (from sale, lease, or other means) that the purchasing entity receives based on future transactions involving the water right. The tax would make Investment Water Speculation less attractive.

The review of the purchaser's intent to determine whether the profits tax applies could be completed by the Department of Regulatory Affairs (DORA), in consultation with DNR. DORA already has technical expertise in regulation of real estate transactions and handling tax matters. Proceeds from the tax could be used to fund the DORA program, local efforts to mitigate the impacts of Investment Water Speculation, or other community investments.

Pros

- This concept directly addresses Investment Water Speculation.
- Compared to a strict prohibition on Investment Water Speculation, taxation reduces the risk of blocking the most beneficial transactions.

Cons

- All of the downsides identified above (Section 5.c) for any process that requires identification of particular transactions as Investment Water Speculation.
- Taxes might be passed along to buyers or sellers, rather than acting as a deterrent.
- Identifying the profits of Investment Water Speculation may be difficult for several reasons:
 - Profits may be realized over a long time period and come from multiple sources. For example, profit may come from a combination of the water right's decreed beneficial use, year-to-year leases of the water right, and eventual sale of the water right.
 - The price paid for the water right may not be easily distinguishable from the price paid for land with which the water right is associated.
- Funds raised are likely to be only a fraction of the value of water. Therefore, such a fund may be unable to cover the direct and indirect impacts of Investment Water Speculation.

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale.
- This concept proposes a change in Colorado law.

Concept M: Encourage ditch companies to adopt Catlin bylaws¹¹⁰ that allow boards to impose terms and conditions on water transfers affecting shareholders

Description

Ditch bylaws could impose various requirements at the time of a water transaction to limit or prohibit Investment Water Speculation:

- Prevent sales of water that will remove water from use on the originally-decreed land area. Either prevent for all sales, for sales greater than a certain amount, or for a certain amount under the ditch in a particular time period.
- Require review of the purchase to determine whether there is speculative intent (see the intro to Section 5.c).
- Require mitigation for certain types of negative outcomes for sales that meet certain criteria.
- Limit voting power of individual shareholders to some percentage of shares less than a majority, so that no individual speculator can re-write the bylaws by purchasing a majority of shares.

Pros

- If successful, this could reduce speculation in ditch company water rights.

Cons

- The effect is limited to ditch company water rights where the ditch companies choose to implement changes to their bylaws. Many ditch companies are unaware of their ability to implement bylaws. Although some explanation of this ability may be helpful, there is no clear legislative step to take.
- A speculator who owns the majority of shares could change the bylaws. Limits on voting power might be evaded through transfers of ownership of some shares to entities related to the speculator.
- Different bylaws might result in inconsistent results across the state.
- Might prevent non-speculative changes of ditch company rights to other beneficial uses of water and the ability to implement other creative solutions.

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation on a large scale.

5.d: Concepts that would identify and impact the sale of water rights without specifically identifying Investment Water Speculation

As with the concepts in 5.c., this group of concepts would directly limit or change the process for sale of water rights. Because the concepts would apply to all water right sales, the concepts avoid the difficulties imposed by attempting to explicitly identify

¹¹⁰ See *Fort Lyon Canal Co. v. Catlin Canal Co.*, 642 P.2d 501, 503 (Colo. 1982).

Investment Water Speculation. At the same time, however, the widespread approach of these concepts could mean that more non-speculative transactions would be impacted or prevented.

Concept N: Impose time limits on turnover of ownership of water rights to discourage short-term ownership for quick profit

Description

Under this concept, legislation would impose minimum terms of ownership or use for water rights.

The Work Group discussed a variety of time limits, ranging from a few days to several years, but did not come to a consensus regarding what time limits on re-sale would be sufficient to prevent the flipping of water rights. Work Group members noted that whereas 15 years may be a relatively long time for a water speculator or individual farmer, it is a relatively short time for many governmental water planning entities. This concept would not target long-term Investment Water Speculation unless the time limits were very long.

Pros

- Could prevent brokers from buying a water right and quickly selling it for profit. Brokers decrease seller's proceeds and increase buyers' costs.
- Unlike solutions requiring particularized review of speculative intent, the set of transactions to which a restriction or tax would apply is fairly easy to identify.

Cons

- Without adequate exclusions or variances, a law like this could prohibit transfers that are otherwise unobjectionable.
 - For example, a law like this could harm a farmer who purchases a neighboring farm, and the associated water right, but needs to sell it due to an unexpected change in circumstances.
- The concept may devalue water rights and infringe on their non-speculative sale.
- Profits of middlemen may simply reflect socially valuable activity, facilitating the transaction with the ultimate purchaser. Rather than purchasing from the middleman, the purchaser itself could have taken the effort to identify the opportunity to purchase the water right.
- As a significant restriction on a private property right, there is some possibility that this concept would constitute a taking and require compensation be paid to owners. However, given that most owners would be able to beneficially use their water rights without sale, it is unlikely that this concept would be a taking.¹¹¹

¹¹¹ See *Andrus v. Allard*, 444 U.S. 51, 65-66 (1979) (holding a *permanent* restriction on commercial sale of eagle feathers was not a taking); see also *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 316, 334 (2002) (holding a two-year deprivation of *all* economic value of land was not a per se taking).

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation on a large scale.

Concept O: Require public record of relevant details for sales of water rights

Description

Each of the potential changes within this concept would facilitate public access to information about water right sales.

A fairly small change would be to require a public record for all changes of ownership of water rights. Section 38-30-102, C.R.S. already requires that certain sales of water rights be publicly recorded, as with real estate. However, section 38-30-10, C.R.S. exempts water rights acquired when “ownership of stock in ditch companies or other companies constitutes the ownership of a water right.” In addition, only transfers of well permits, but not transfers of surface or groundwater rights, have a standardized recording process. A law could require public records of the ownership of ditch companies and other forms of water rights ownership not currently covered by statute and specify a comprehensive process for recording changes of ownership in water rights.

A new law could also require that the prices at which water rights are sold or leased be made public. This information could be organized in a publicly available database. A publicly available listing of water right sales and prices could allow buyers and sellers to better understand the market value of water rights. This would encourage direct transactions rather than transactions where a water broker makes a profit.

Finally, a law could facilitate or require public listing of water rights prior to sale. A listing of contact information and potential pricing of water rights would allow buyers more ability to buy directly from sellers, again avoiding transfer of profit to a middleman.

Although these ideas might help avoid short-term re-sale of water rights by brokers, they are unlikely to directly reduce longer-term Investment Water Speculation.

Pros

- Greater public information on the ownership of water rights and water transactions would allow greater understanding of the scope of the problem posed by Investment Water Speculation.
- Centralized information on the ownership of water rights could help facilitate short-term transactions to address temporary water needs, such as in a drought.
- Many of the other concepts considered by the Work Group would already require that some government entity be informed of changes in ownership of water rights.
- If populated with accurate information, this could be a useful tool to remove or reduce broker profit without infringing on the ability to buy and sell water because the end user of the water could potentially purchase directly from the seller rather than dealing with a broker. Some brokers may currently receive high profits due to a lack of knowledge among other market participants about the set of people seeking to buy and sell water rights or the market value of water rights.

Cons

- An optional system would not be useful if not used widely or if populated with unrealistic or bad information.
- Privacy concerns could have a chilling effect on the willingness of water right owners to enter into acquisitions with any buyer, including buyers with a need for water to facilitate beneficial uses.
 - For example, farmers may wish to sell and lease back their water rights. Exposing the sale, which would be private under current law, could be embarrassing for the farmer.
- Could attract water brokers if they can easily see who is willing to sell water rights and/or are better able to navigate new systems than ordinary people.
- Making the market for purchase of water rights more competitive could increase the price of water rights.
- There are already voluntary public auctions for water rights, so a voluntary system would not change anything.

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation on a large scale.

Concept P: Establish a maximum rate of water right price increase and impose higher taxes when the rate is exceeded.**Description**

Legislation could set a ceiling for the amount of profit from the sale of a water right in a given time period and any profits in excess of that allowed price increase would be taxed at a higher rate, similar to a short-term capital gains rate. That would avoid needing to determine intent but would penalize profit above a certain rate (such as a sale price that is an increase over the purchase price of more than 5 percent per year).

There may be reasonable exemptions to this requirement that could be built into the legislation.

Pros

- This would disincentivize Investment Water Speculation because any large profit would be taxed at a high rate.
- There is no need to determine speculative intent to apply this concept.

Cons

- Although exceptions could be built into the legislation, this could potentially impact profits for sales of water rights that are not speculative.
- Information about the price of water right sales is not currently recorded and the law would need to provide a way to make this record.
- There may be situations where there is not a clear way to determine the original sale price in order to determine the price increase.
- During a period of water shortage, in which prices for water rights rise rapidly, this

<p>concept may disincentivize transfer of water to beneficial uses.</p> <ul style="list-style-type: none"> • Speculators may profit from purchases of water rights through leases or other arrangements that do not require sale of the water right, unless the law is crafted to apply to these other transactions.
<p>Effective as legislation addressing Investment Water Speculation?</p> <ul style="list-style-type: none"> • This concept has the potential to be effective in reducing the amount of Investment Water Speculation on a large scale. • This concept proposes a change in Colorado law.

<p>Concept Q: Prohibit out-of-state persons from holding water rights</p>
<p>Description</p> <p>Impose a law that allows only in-Colorado entities to hold water rights.</p>
<p>Pros</p> <ul style="list-style-type: none"> • This concept targets a concern that has been raised about the particular negative impacts due to the incidence of Investment Water Speculation by out-of-state purchasers of water rights.
<p>Cons</p> <ul style="list-style-type: none"> • People in Colorado may also engage in Investment Water Speculation. This concept would do nothing to prevent that activity. • Some out-of-state entities are engaged in socially beneficial, non-speculative operations in Colorado. They would be precluded from continuing their operations. • This concept could be avoided fairly easily by incorporating an in-state corporation. Although a law could further specify that, for example, in-state corporations that hold water rights must be owned by Colorado residents, such additions would deepen both the practical and constitutional issues with this concept. • Preventing a class of parties from participating in water right matters in Colorado, especially new appropriations, may conflict with Colorado’s constitution.¹¹² • If applied to current out-of-state owners of water rights this concept would almost certainly require compensation be paid to these owners under the Takings Clause.¹¹³ • State laws that discriminate against out-of-state entities engaging in commercial transactions generally violate the Commerce Clause of the U.S. Constitution.¹¹⁴ Laws implementing this concept are thus unlikely to be constitutional.¹¹⁵

¹¹² See Colo. Const. Art. XVI, Section 6 (“The right to divert the unappropriated waters of any natural stream to beneficial uses shall never be denied.”).

¹¹³ U.S. Const., amend. V.

¹¹⁴ See *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 48 (2d Cir. 2007) (summarizing Supreme Court caselaw).

¹¹⁵ See *Lewis v. BT Inv. Managers, Inc.*, 447 U.S. 27, 37, 42-43 (1980) (state law prohibiting bank holding companies with an out-of-state principal place of business from owning businesses providing investment services violated Commerce Clause).

Effective as legislation addressing Investment Water Speculation?

- This concept is not likely to be effective in reducing the amount of Investment Water Speculation.

5.e: Concepts that encourage temporary changes in use of water rights and/or ensure that temporary changes do not result in or facilitate Investment Water Speculation

This group of concepts explores the interaction between new and developing mechanisms for temporary changes of use and Investment Water Speculation.

Concept R: Encourage Usage of Alternative Transfer Methods (ATMs)**Description**

ATMs are an intermediate option between one-year leases of water rights and permanent sale of irrigation water rights. An ATM usually provides the legal and administrative structure for the irrigator to retain ownership of the right, while also allowing a transfer of some or all of the water to a different beneficial use for a period of time.¹¹⁶ ATMs thus may help prevent permanent dry-up of irrigated lands and the associated impacts on the local community. This concept may include:

- Educating water right owners of the availability and advantages of ATMs
- Developing streamlined technical approaches to reduce the cost of using an ATM
- Passing legislation that makes ATMs less costly and time consuming
- Extending the Agricultural Water Protection Water Right option from water divisions 1 and 2 into the rest of the state (divisions 3-7)
- Passing legislation that increases opportunities for water banking.

Pros

- ATMs provide water right owners with a longer-term financial alternative to permanent sale. This may incentivize water users to maintain long-term ownership of water rights while also decreasing opportunities for Investment Water Speculation.
- ATMs encourage continued beneficial use around the state and reduction in permanent agricultural dry-up, consistent with the Colorado Water Plan.
- ATMs may reduce the burden on farmers of other concepts that increase restrictions on the sale or permanent change of use of water rights.
- As the Colorado Water Plan states, “alternative transfer methods can keep agriculturally dependent communities whole and continue agricultural production in most years, and if such arrangements can be made more permanent in nature, they will provide certainty to both municipal water providers and agricultural producers.”
- The Colorado Water Plan sets a goal of sharing 50,000 acre-feet of agricultural water

¹¹⁶ The Colorado Water Conservation Board has produced a report providing a detailed definition of alternative transfer methods (ATMs). See Colorado Water Conservation Board, “Alternative Transfer Methods in Colorado: Status Update, Framework for Continued Support, and Recommendations for CWCB Action” (July 2020), pp. 42-44.

with municipal and environmental water users by 2030¹¹⁷, representing a significant volume of water that could be sheltered from Investment Water Speculation.

- Broad adoption of ATMs based on long-term agreements between irrigation water users and municipal, industrial, or environmental water users could remove irrigation water rights from the markets targeted for Investment Water Speculation.

Cons

- Some water users have stated concerns that the types of ATMs that are administratively approved outside of the water court do not receive as thorough of a review as water court-approved ATMs.
- ATMs have been developed with the objective of minimizing permanent dry-up by providing a financially viable alternative to permanent sale of a water right to a non-agricultural water user. However, even if participation in ATMs is increased significantly, investors may still find willing sellers and buyers.
- The Work Group cannot conclude that encouraging the use of ATMs by making them more attractive or feasible would eliminate Investment Water Speculation.
 - The financial benefit from selling to an entity practicing Investment Water Speculation may be difficult to overcome.
- ATMs may provide entities engaged in Investment Water Speculation a way of profiting from their purchase of water rights.

Effective as legislation addressing Investment Water Speculation?

- This concept does not involve strengthening anti-speculation law directly, but dedicated legislative action could create opportunities that incentivize long-term ownership of water rights and shelter water rights from Investment Water Speculation.

Concept S: Ensure safeguards against Investment Water Speculation are included within a Demand Management program or something similar if established in the future.

Description

If Colorado establishes a Demand Management or similar program, the program should include safeguards to prevent Investment Water Speculation through that program. For example, an investor may purchase irrigation water rights with the expectation of getting paid for participation in Demand Management or profiting if Demand Management raises the price of water in a region. The developers of the program should include acceptance and participation criteria to ensure that Investment Water Speculation does not occur through the program. The developers of the program may refer to the criteria used to determine whether Investment Water Speculation is occurring that are described in Section 5c .

¹¹⁷ Colorado Water Plan at 15, available at <https://dnrweblink.state.co.us/cwcb/0/doc/200996/Electronic.aspx?searchid=ab75ea87-7dbe-4fea-98dc-b924c94c17f0>.

Pros

- Any new program, such as Demand Management, could establish rules that prevent exploitation by investors.

Cons

- Depending on how the rules to prevent Investment Water Speculation are established, if not crafted carefully they could prevent participation by water users who are not investors, but seem to be, due to program rules. This could negatively impact participation and, therefore, the success of the program, which is a concern that is independent of preventing Investment Water Speculation

Effective as legislation addressing Investment Water Speculation?

- This concept has the potential to be effective in reducing the amount of Investment Water Speculation but only in specific programs like demand management if implemented by the administration of the program.

6. Presentation to the Water Resources Review Committee

In Section 5 of this report, the Work Group brainstormed and discussed concepts aimed at Traditional and Investment Water Speculation. That discussion includes the pros and cons of 19 concepts. The Work Group wants to stress to the Committee the complexity and nuance of the problem identified in SB 20-048 and the fact that any concept that would be effective in reducing or preventing Investment Water Speculation also comes with significant drawbacks.

Of the 19 concepts, eight of them meet the following criteria, which were the threshold criteria established by the Work Group to include a concept in this final section of the report:

1. The concept requires enacting new law or amending existing law; and
2. The concept has the potential to effectively reduce Investment Water Speculation on a large scale, rather than just in certain limited situations.

The eight concepts that meet those two criteria are discussed below in no particular order. The Work Group believes the General Assembly intended the two criteria in SB20-048 when it directed the Work Group to “explore ways to strengthen current water anti-speculation law” and to “submit a written report to the (Water Resources Review) Committee...regarding any recommended changes.” This section discusses eight concepts that meet the criteria. However, the Work Group did not reach consensus that any concept should be a recommended change in law. Each concept is already discussed in detail in Section 5. To avoid repeating that analysis, the discussion below includes a brief concept description and then focuses on the drawbacks of the concept and whether the drawbacks can be minimized. Common drawbacks include a high cost to implement the concept or impacts to the time and cost of water transactions for all water users, even those who are not speculative investors. Further, the Work Group recognizes that drawbacks that could potentially reduce the sale price of water rights, and therefore, their value as property, present a risk to the current owners of irrigation water rights.

Concept E: Prohibit or penalize compensated non-diversion

The receipt of payment for non-diversion would be made illegal or penalized, unless that payment occurs pursuant to an exception allowed by law. Allowable exceptions would include enrollment in organized conservation programs or a State-approved Demand Management Program, if one is established. Non-diversion pursuant to the CWCB’s instream flow acquisition program would continue to be allowed. Potential penalties for receiving payment for non-diversion include abandonment of the water right.

The primary focus of this concept would be to address speculation near the state line. A potential problem with enforcement is that it may be difficult to determine that a water user is compensated for non-diversion unless the compensation is made by a public entity in a downstream state.

Concept G: Fund and/or create a right of first refusal for the purchase of water rights for long-term irrigation use for public benefit.

This concept would provide funds for a public entity to purchase irrigation rights to keep those rights in irrigation use. Alternatively or in combination, the state or other entities would be granted a right of first refusal to purchase irrigation water rights before those rights can be sold to a speculator.

This concept would result in a great degree of control for the state in water right sales. However, it would be extremely expensive to implement, as the state would need to fund a program to purchase, and then ensure the proper use of a large number of water rights. Relatedly, implementing the program in a manner that does not produce windfalls for existing water rights owners could be difficult. The degree of direct state control entailed by this concept, as opposed to control by the State's citizens and market transactions, would be contrary to Colorado's history of primarily regulating water usage through a system of property rights. Expenditures and the degree of state control might be limited somewhat by limiting the program to only those water rights where there is a proposed sale to speculators. However, this modification would require identification of speculative intent within sales, which is itself a difficult problem. See the discussion of Concept J.

Concept H: Eliminate or reduce the agricultural tax benefit for lands from which water is removed

This concept would reduce the tax benefit for lands converted from irrigated agriculture to non-irrigated agricultural land use types.

Relative to most of the other concepts with significant potential to reduce Investment Water Speculation, this concept would be fairly simple to administer and implement. However, it is also a concept that is uncertain in its effect on Investment Water Speculation. The benefit of agricultural tax status varies depending on the parcel in question, and even on parcels for which the benefit is largest it may be insufficient to disincentivize Investment Water Speculation, particularly if speculators anticipate very large increases in the price of water rights. This concept does not evaluate whether a water transfer is speculative and therefore would penalize all water transactions where the water is removed from the land. With that, it creates a disincentive for changes of use, or agricultural water conservation efforts of a non-speculative nature.

Concept I: Unless irrigated land is going to be changed to a new land use, require water to be tied to the land

This concept would impose stringent limits on when water rights currently used for irrigation use can be changed to other uses. To be effective in reducing Investment Water Speculation, the concept would

need to be applied to a broad swath of lands and water rights, as otherwise the concept might simply increase speculative pressure on water rights for which changes of use are permitted.

This concept would be a dramatic restriction on water rights, both significantly devaluing water rights and making it very difficult to transfer water rights to other beneficial uses. Like Concept H, it would be effective only to the extent that it prevents or discourages any changes of use, not just changes of use subsequent to an Investment Water Speculation purchase. Minimizing the unintended consequences of this concept would also decrease its effectiveness as a method for preventing or reducing Investment Water Speculation.

Concept J: Create a statewide process to identify and prohibit Investment Water Speculation

This concept would create a statewide process through the water courts, a state agency, or another government body by which water rights purchases would be reviewed for speculative intent and blocked if speculative intent is found.

Concept J, by directly targeting Investment Water Speculation, has the potential for lower impact on non-speculative transactions. If successful at identifying transactions in which Investment Water Speculation is occurring, Concept J is also a definitive way of preventing these transactions.

This concept would require intervention in water right transactions by a governmental entity in an area that is not now encumbered by such oversight. Further, identifying appropriate measures of speculative intent may be difficult. Section 5.c contains a detailed list of possible objective criteria for evaluating the intent of a prospective purchaser, such as the type of entity, the type of transaction, the size of the purchasing entity's water rights holdings, and the entity's stated future plans for the water right. Even if workable, these criteria will need to be elaborated upon.

The difficulty involved in objectively identifying transactions in which Investment Water Speculation is occurring means that the process may be costly to administer. Moreover, administration cost trades off with the accuracy and speed of the process. If overly stringent or ineffective at accurately identifying intent, non-speculative transactions may be mistakenly identified as speculative and prevented; some transactions may not even be attempted due to this risk as well as the cost of going through the process. Determining whether a transaction involves Investment Water Speculation would add a time-consuming step to a process that may otherwise be able to move more quickly.

Concept K: Encourage local governments to police Investment Water Speculation through their 1041 powers

Counties already have some powers to regulate water projects under 1041 permitting projects. This concept would significantly expand the reach and usage of these powers by modifying the statutory language governing 1041 powers to explicitly cover review of water rights sales for speculative intent and providing state funding to counties to develop and implement 1041 regulations under the new designation.

The process followed by the counties in Concept K would be similar to the government body considering speculation in Concept J. Relative to Concept J, Concept K has the potential advantages of working through an existing review system (1041 regulations) and facilitating local control.

The drawbacks of Concept K are also similar to Concept J. Like Concept J, Concept K would also require review of individual transactions for speculative intent, which inherently entails governmental oversight in the water market, in an area where there is none now. Local control of the process may make this intent determination even more difficult, raising both the cost of administration and the cost for non-speculative water users of participating in water transactions. Counties have limited existing experience with water transactions compared to a statewide entity. This would further increase the challenge of implementation. Varying requirements across the state could result in a regulatory patchwork, with some counties limiting Investment Water Speculation far more than others. This could make it difficult for individuals to navigate the system and inhibit statewide water planning, and would not uniformly reduce Investment Water Speculation throughout the state. Although the legislature could specify uniform requirements explicitly by law or through required rulemaking, this would remove much of the potential benefit of this concept relative to Concept J.

Concept L: Tax the profit derived from sale or lease of water rights previously purchased for Investment Water Speculation purposes

This concept is similar to Concept J, and would require a similar process to review the intent of a water right purchase. However, instead of outright preventing transactions identified as Investment Water Speculation, this concept would merely disincentivize the transactions by imposing a tax. The tax would apply to all subsequent payments to the purchasing entity involving the water right, at a rate that would make Investment Water Speculation less attractive.

Compared to Concept J, Concept L could avoid some costs of delay, if the review process were to occur after the sale of water rights is complete; however, to have the effect of disincentivizing the Investment Water Speculation, the review would more logically take place at the time of the transaction, as in Concept J. In addition, the negative consequences associated with erroneously identifying a transaction as involving Investment Water Speculation would be reduced relative to Concept J, since the transaction might still go forward.

However, Concept L also introduces several complications relative to Concept J. As Concept L involves identification of profit, it requires more complex (and hence more costly) record-keeping. Concept L may also be less effective at reducing Investment Water Speculation, as taxes may be passed along to water users rather than being borne by the investor. In addition, if review is applied only after transactions are complete, purchasers would face even greater risk from inaccurate identification of speculative intent.

Concept P: Establish maximum rate of water right price increase and impose higher taxes when the rate is exceeded.

This concept would establish a water right price increase rate, above which a high tax rate would need to be paid on water right transactions.

Concept P would be easier to administer because it does not involve identification of Investment Water Speculation. And, at least when water right prices are changing gradually, this concept would likely be less disruptive to transactions that do not involve Investment Water Speculation than the Concepts that have the effect of preventing or disincentivizing changes of use.

However, when supply or demand for water is changing rapidly from year to year, resulting in significant changes to prices for non-speculative water right purchases, this Concept could inhibit necessary water right transfers that do not involve Investment Water Speculation. Conversely, when prices for water rights are relatively stable this concept would be less effective at preventing Investment Water Speculation. In addition, regardless of how water right prices change over time, existence of the tax would immediately decrease the price at which current owners of water rights could sell. Finally, regarding administrability, it may be difficult to obtain accurate information about the original purchase price of the water right.

6.a. Summary of Section 6

The Work Group is diverse, with varied and sometimes conflicting interests. Some members of the Work Group find that any concept, even if further developed to minimize drawbacks, is unacceptable.

The Committee should be aware that there are several concepts discussed in Section 5 that do not meet the two criteria listed above, but might be beneficial to Colorado as a whole with minimal drawbacks and therefore may be worthy of consideration by the Committee and the Colorado water community in other contexts.

While the Work Group does not recommend any concepts for implementation, further concept development could result in proposed law that is both effective against speculation at a large scale and minimizes drawbacks to a degree that is acceptable to the General Assembly. The Work Group recommends that the General Assembly gather feedback from multiple and diverse stakeholders within Colorado for any change in law considered.



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**

BOARD MEMORANDUM

From: Steve Wolff, General Manager

Subject: General Manager Activities

Date: 30 September, 2021

1. Participated on Colorado River District luncheon webinar on Colorado River issues. Other participants included Anne Castle and Andy Mueller.
2. Attended public meeting of Colorado Independent Congressional Redistricting Commission on redistricting process.
3. Attended Animas – La Plata Water Conservancy District board meeting.
4. Invited to participate on Family Farm Alliance Advisory Committee. Thanks to Don Schwindt for arranging this.
5. Had “meet and greet” with Celene Hawkins (The Nature Conservancy).
6. As available, attending Colorado Water Congress State and Federal Affair Committee’s monthly calls.
7. Attended Colorado DWR’s public webinar on West Slope Measurement Rules.
8. Attended Colorado Water Congress summer meetings in Steamboat Springs.
9. Listened in on “Revising the Definition of Waters of the United States” webinar sponsored by EPA.
10. Working with Colorado Airborne Snow Observatory meetings to support future funding efforts.

11. Attended Animas La Plata Operation, Maintenance and Replacement Association board meeting.
12. “Self-guided” filed tour of Treasure Pass Diversion Ditch, relative to current water court case.
13. Attended Water Education Colorado’s President’s Reception in Denver. Mike Preston and John Porter (posthumously) were both recognized during this event.
14. Attended and participated in panel discussion at Club 20 Fall Conference in Grand Junction.
15. Met with Chuck Stevens (La Plata County Administrator) and Amy Huff on potential use of recovery funds received by county for water-related projects.
16. Had phone conversation with Rolf Schmidt-Peterson (New Mexico) on general interstate issues in San Juan basin.
17. Attended Water Information Program’s Water Law course.
18. Traveled to San Miguel County to participate in upper San Miguel river tour sponsored by San Miguel River Partnership.
19. SWCD and Four Corners Water Center at Fort Lewis College put on fall water seminar. Big thanks to Laura Spann and Gigi Richard for all their work on this.
20. Had “meet and greet” with John Whitney (Senator Bennet’s office). Good discussion on a variety of topics.



**COLORADO
LEGISLATIVE
STRATEGIES**
moving mountains since 1980

September 7, 2021

Dear Chris,

Thank you for the opportunity to submit an RFP for lobbying services to represent the Southwestern Water Conservation District (SWCD). Attached is a proposal for Colorado Legislative Strategies (CLS) to monitor the Colorado General Assembly during the 2022 legislative session on behalf SWCD.

Colorado Legislative Strategies (CLS) is well positioned to be a partner with SWCD in water related conversations on the state level. With over 15 years of experience in water policy, we know all too well how the old adage “Whiskeys for drinking, waters for fighting” is more true in Colorado than anywhere in the country. As a headwater state, Colorado’s prior appropriation system lays the groundwork for how water is used in Colorado and the western United States. Increasing demand from sustained population growth and impacts from climate change are the two main drivers of the pressure that Colorado water users face. Agriculture and mining have historically been the primary economic drivers in southwestern Colorado, but tourism and non-consumptive uses of water are becoming a bigger player and are changing how water is managed.

Additionally, ongoing and persistent drought conditions are forcing many farmers out of business, which also leads to changes of how, when and where water is used. Finally, the pressures on the entire Colorado River Basin system are resulting in major implications for all water users in Colorado as water managers struggle to maintain the current system of diverting water through trans-mountain diversions to serve the growing Front Range, support the diverse agricultural economy throughout the state and provide Gold Star recreational opportunities for Coloradoans and tourists alike while still complying with compact requirements. Discussions about the feasibility of a demand management plan, increasing supply through weather modification technologies like cloud seeding and land management techniques such as phreatophyte control, and reducing consumptive use will direct policy discussions in the coming years.

Protecting the quality of water is also a substantial topic of conversation, as government officials on both the state and federal level look at increased regulations. Managing the impacts from wildfires also contributes to water quality pressures.

CLS has the depth of knowledge, experience and drive to work on this issue. We are excited about the possibility of partnering with SWCD. Please let me know if you need additional information with regards to our proposal.

Sincerely,

Garin D. Vorthmann
Partner/Lobbyist



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COLORADO LEGISLATIVE STRATEGIES

Company Overview & Proposed Scope of Services

for

Southwestern Water Conservation District

2021



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Why CLS

Colorado Legislative Strategies (formerly Colorado Legislative Services, LLC) was formed in 1980. The goal is the same today as it was back then—to provide the most professional and results-oriented contract lobbying service in Colorado. We offer our clients polished legislative skills, extensive experience lobbying the legislature, diverse contacts, and the ability to positively affect public policy outcomes.

01. WE HAVE AN EXCELLENT REPUTATION AND TRACK RECORD THAT CAN BE DISTINGUISHED FROM OTHER LOBBYISTS

The CLS team has operated inside of Colorado's Capitol legislative action, promoting policy changes, working with regulatory agencies and many layers of influential leaders for decades. We are a full-service public affairs firm with a focus on challenging and complex issues. Our diverse portfolio of clients demonstrates the breadth of our knowledge—health care, energy, natural resources, water law, tax policy, education, liquor laws and regulations, transportation, finance and banking, and local governments. Our long-standing reputation for honesty, hard-work, and results, has earned us recognition as a top Colorado lobbying firm. Our track record of success is the reason we have kept so many clients for decades, some since the 1980s.

- ✓ **We are a full-service bipartisan lobbying firm.** We have four lobbyists (two Republicans and two Democrats) and a full-time office manager. While we always assign a lead-lobbyist to communicate with clients, our clients have access to all lobbyists and staff to make sure there is always full-coverage of meetings and hearings.
- ✓ **We work the entire legislature.** Our diverse backgrounds and experience enable at least one of us to connect with every member of the legislature. We spend a great deal of time getting to know legislators outside of the session to continually improve our relationships and to gain further insight into their perspectives on the issues facing our clients.
- ✓ **We are good strategists.** Before we ever lobby an issue, we spend time with our clients looking for ways to craft solutions and finding ways to achieve success—not always by running legislation. We help our clients think about pros and cons on possible outcomes and help find the best way to solve a problem. We believe background work and education needs to happen before lobbying in the Capitol begins. This adds credibility to your organization because we make sure issues are researched and well-vetted before we speak on your behalf. We are also known for being honest and comprehensive in our information to legislators. We do not gloss over the truth, instead we take time to explain the issue and why the desired outcome is the appropriate option.
- ✓ **Location.** We have a large professional office, directly across from the capitol building, accessible to our clients with a conference room, full-kitchen, and courtyard to host meetings and fundraisers.



02. OUR LEGISLATIVE PHILOSOPHY — VALUING LEGISLATORS & VOTES ALONG PARTY LINES

Our legislative philosophy is to think of the General Assembly as having 100 distinct personalities—each with a winnable vote. Some lobbyists work only with one party or only with leadership. We choose instead to reach across the aisle, develop coalitions and make room in the middle where success is most likely. For that reason, the cultivation of relationships with legislators is one of our most important activities. We view each legislator as a person to be valued, informed, nurtured and with whom we maintain a great deal of contact. This is important because very few votes come down along party lines.

In this regard, we assist our clients in two ways. First, we ask our clients to think of their issues and possible solutions, in ways that advance a constructive public policy point of view. Our goal is to present information that appeals to a legislator's greater sense of civic responsibility and public policy. This prepares our clients to make presentations and discuss the issues in ways in which legislators can relate. We find this is often the key to achieving the desired result. Second, we ask our clients to cultivate relationships with members of the General Assembly directly. Within the confines of Amendment 41, the Colorado Ethics in Government Amendment, we assist our clients to structure breakfast and luncheon meetings between legislators and clients. We also suggest that our clients give awards to legislators when they have been particularly supportive on the merits of client issues. When possible, we think it is appropriate for clients to invite legislators to business events such as conferences or seminars as guest speakers and/or be available to answer questions as part of a scheduled program. This is done to establish credibility and add a context to what would otherwise be a faceless issue or business. We find that personalizing the legislative process gets greater results than ideas do alone.

Finally, we also develop close relationships through our work in political campaigns. During election years we assess candidates that display strong leadership qualities. We spend time with them walking door-to-door, helping to explain their issues, and understanding the people they could eventually represent. This activity is especially productive because once we have been "in the trenches" with a candidate we develop a very lasting bond.



Our Approach

PRINCIPLES OF STRATEGIC IMPLEMENTATION

Strategy is at the heart of our business. It implies careful planning, good decision-making, timing, and a sense of how to mobilize resources and generate support for ideas. Our approach to lobbying is embodied in the following principles:

- ✓ **Mobilizing early support for a controversial issue.** Often a controversial battle can be avoided at the Capitol because your opponents will discover that you already have the votes to prevail and will give up the fight. When a bill is expected to be controversial, early education provides an edge.
- ✓ **Choosing sponsors carefully.** Some legislators routinely pass their bills; some seldom do. Choosing a sponsor that is a proven winner is often helpful. Overcoming a sponsor's negative overtones can sometimes be difficult.
- ✓ **Heading off problem areas.** Anticipation of opposition can lead to an early resolution of the problem. If we know that a group will oppose a bill, or part of a bill, just sitting down and talking with them early in the process may lead to an amendment that cures their opposition.
- ✓ **Finding allies who can help.** The more groups, trade associations, and lobbyists who can support our position, the better. We use them to help, but we never turn our vote counting over to someone else. We believe in personally rechecking each vote.
- ✓ **Counting votes.** Counting votes on an issue is perhaps the most important activity at the Capitol. Things change in this fluid environment. It is important to keep contact with those legislators on our side to ensure votes remain committed.
- ✓ **Identifying good floor leaders.** Every major fight needs allies who are on the floor during Second Reading of a bill. The floor of both legislative houses is "off limits" to lobbyists. A Representative or Senator who not only argues our issue from the microphone, but who also confirms the vote count is a critical ally. Such a person can also quickly tell us what the other side is saying about our issue.
- ✓ **Putting the right spin on an issue.** There are certain words or concepts that play well with certain legislators. Finding the right one can be a great strategic tool. Thus, an issue might be oriented toward saving money, helping small business, promoting economic development, helping the family, saving the small town, being cost effective, or promoting general health. We put the issue in language to which each legislator can relate.



PRINCIPLES OF STRATEGIC IMPLEMENTATION CONT.

- ✓ **Working with the staff.** The staffs of the Legislative Council, Legislative Legal Services, the Joint Budget Committee, and individual legislators operate as a kind of invisible army at the State Capitol. They can be enormously helpful in alerting the lobbyist to committee schedules on bills of interest, problem areas they pick up from legislators, rumors of mounting opposition, etc. We believe in maintaining a good working relationship with staff.
- ✓ **Working with Leadership.** The leadership of the House and Senate decide which committee will hear a bill and the timing of the bill for floor action. Often, they will take your recommendation as to which committee ought to hear a bill. If you know where your votes are, this kind of help is invaluable. Members of leadership, who are friendly to your position, can also nudge a committee chair to hear a bill on which he/she may be reluctant to do so.
- ✓ **Using position papers.** One-page, succinct position papers are an effective tool we use to lobby legislators. We explain the bill's background, what it does and why it is needed. This is also an opportunity to compile in writing an extensive list of supporters or opponents of the bill that legislators can refer to. Legislators often add our position papers to their bill folders and refer to them in committee.
- ✓ **Knowledge of the state budget.** Understanding the state budget process is essential. We have vast experience working on the budget and successfully obtained state funding for many of our clients in the past. We also have strong relationships with not only the Joint Budget Committee members, but also with the JBC staff who provides background and research to members in addition to making recommendations. We attend key department briefings before the legislation session begins so we have more insight into budget requests so we can achieve the best results for our clients.



Working with Clients

We spend a great deal of effort to learn the issues of our client in enough detail to be responsive to legislator's questions. We also do this to recognize opportunities for amendments or funding. We typically communicate with a client contact person, provide routine status reports, and meet with their legislative committee on a regular basis as needed by the client. During those meetings, we work with clients to develop recommendations for action. The goal is to anticipate issues, develop a "bottom line" and determine strategies to get clients what they need. We also make presentations to association boards and members at client conferences or retreats on a variety of topics related to the legislative process, education, issue forecasting and legislative session review. Our mission is to communicate to ensure our client is kept informed and that the client keeps us informed so we may achieve the best outcome on their behalf. Listed below are some services we provide:

- ✓ **Bill Tracking.** We routinely track bills for our clients and provide reports with comments and positions. Our reports can be customized, but at a minimum include a bill summary, calendar notification, bill sponsors and bill status. These are sent to the client on Friday or Monday to get information out prior to meetings of client legislative advisory committees.
- ✓ **Messaging.** Often clients have public messages that they wish to convey. We have dealt with enough controversial issues that we can provide advice that positions the client in a positive way. The message development involves collaboration with the client as part of a greater strategic plan.
- ✓ **Client Legislative Committee Leadership.** We view our role to provide leadership on the topical discussion of bills and emerging issues. We come prepared to meetings with updates of committee activities. Our style is to let our clients know 1) what the bill does, 2) what are the politics surrounding the bill, 3) what is the likelihood of passage, and 4) why it is important to their interests. This last point is especially important because this is how we help our clients connect the dots to their business principles in the short and the long run.
- ✓ **CLS Newsletter.** Each week during session, the CLS team compiles a newsletter of the status of key bills moving through the legislature along with narrative to summarize committee hearings and votes on bills. We write an extensive year-end-wrap up report which is sent to our clients immediately after the session ends. Outside of the session, we use the newsletter to provide updates on interim hearings, legislative news, and spotlighting legislators.



The CLS Team



MELANIE LAYTON **Co-Owner, Lobbyist**

Melanie joined CLS in 2000 and has nearly 25 years of expertise in public policy, lobbying, business, banking, bioscience, and renewable energy. In 2019, Melanie was named one of the “Top Women in Energy” by the Denver Business Journal.

She enjoys working on complex economic development and tax policy and has one of highest success rates passing incentives for varied industry sectors. She also has experience effectively lobbying k-12 education, capital development and healthcare. Melanie’s strong network of relationships with legislators, as well as influencers in the government and public policy arena, ensures CLS’ clients have unparalleled access to policy leaders.

Before beginning her lobbying career, Melanie was the Public Relations Director for the Colorado Trial Lawyers Association, then moved into lobbying as the Legislative Director at Colorado Farm Bureau, while obtaining a Master’s from University of Colorado Denver’s Graduate School of Public Affairs. Prior to that, she received her Bachelor’s from Colorado Christian University. Melanie is a state board member of Girls on the Run, vice-president of the Western Pack Burro Association and has served as an assistant instructor at the Colorado Mountain Club’s High Altitude Mountaineering School.

Melanie is a married mother to three children and an extreme athlete. Her noteworthy accomplishments include finishing the Leadville 100 Ultra-Marathon, climbing all 58 of Colorado’s mountains over 14,000’, along with numerous high-altitude mountains around the world. Her current athletic focus is Pack Burro Racing, Colorado’s official heritage sport, with her two rescued burros. Her dedication to these endeavors translates to the vision, planning and execution it takes to succeed in politics and advocacy.



MELANIE LAYTON

STRENGTHS	Government Relations, Lobbying, Editing, Colorado Tax Policy	
CURRENT POSITION	Co-Owner, Partner, Lobbyist <i>Colorado Legislative Strategies; Denver, CO</i> <ul style="list-style-type: none"> Represents clients at the State Capitol and local governments. Presents client concerns and needs to state legislators. Develops issue papers and testimony. Provides legislative and political strategies. Helps develop client relationship with public officials. 	2000 - Present
PREVIOUS EXPERIENCE	Director of State Affairs <i>Colorado Farm Bureau; Englewood, CO</i> <ul style="list-style-type: none"> Served as chief lobbyist at the State Capitol. Served as chief spokesperson to the media on legislative issues. Published a biweekly newsletter to inform members and legislators of legislative issues. Wrote, researched, and edited news releases, backgrounders and fact sheets. Coordinated Farm Bureau's ballot initiative opposition campaigns. 	1999 – 2000
	Public Relations Director <i>Colorado Trial Lawyers Association; Denver, CO</i> <ul style="list-style-type: none"> Informed public and media of CTLA's position on legislative issues. Assisted lobbyists to develop strategies to support CTLA's legislative agenda. Wrote, researched, and edited new releases, backgrounders and factsheets. Wrote and edited monthly newsletter. Developed and maintained content of website. 	1997 - 1999
	Public Affairs Specialist <i>Colorado Trial Lawyers Association; Denver, CO</i> <ul style="list-style-type: none"> Wrote speeches for executive office and press releases. Researched, wrote, and edited feature articles for company publications. Spoke as company representative at various schools and organizations. 	1995 - 1997
	Editor <i>State Farm Insurance Corporate Headquarters; Bloomington, IL</i> <ul style="list-style-type: none"> Reported and edited two monthly publications. Coordinated nationwide reporter network for 28 regional magazines. Researched, wrote, and edited articles for semi-monthly publications. 	1990 - 1995
EDUCATION	University of Colorado at Denver; Denver, CO Master's Degree, Public Administration Colorado Christian University; Lakewood, CO Bachelor of Science, Organizational Management	
SERVICE ACTIVITIES	State Board Member and Chair of the Governance Committee; Girls on the Run Vice-President; Western Pack Burro Association Past Assistant Instructor; Colorado Mountain Club (High Altitude Mountaineering School)	



JAMES J. COLE

Co-Owner, Lobbyist

Jim is a highly accomplished senior executive, consultant, lobbyist and strategist with over 30 years of success in public policy, politics, government, energy, healthcare, financial services, transportation, state budget, local government, education, and the nonprofit sector. Over the course of his career, he has spearheaded legislation that has resulted in robust energy development, broader access to public k-12 education, enriched opportunities for higher education, higher air and water quality standards, major investments in transportation, and a healthy balance of power between the state and local governments.

Jim immerses himself in learning about his clients' needs and can put complex issues into relatable terms. He moves people to understand issues first and then support the policies he is advancing. It is because of this strategy and his leadership on oil and gas issues that he was presented with the Denver Business Journal's "Who's Who in Energy" award in 2017.

Some of Jim's highest accomplishments include creating the Arkansas River State Park, passing the Clean Air Clean Jobs Act and passing the Colorado School of Mines (CSM) Exemplary Institution Act, which enabled CSM to provide one of the highest quality and rigorous research experiences in the nation.

Jim has a Bachelor of Science degree from Oregon State University. He has been married 38 years and he and his wife, Mary, have two adult children. Jim is an avid cyclist and has completed nine years of Ride the Rockies and Iowa's RAGBRAI. He also loves to fly fish and play guitar. His joy is seeing the humor that presents itself in everyday situations and sharing it whenever possible.



JAMES J. COLE

STRENGTHS Government Relations, Lobbying, Colorado Energy Policy

CURRENT POSITION **Co-Owner, Partner, Lobbyist** **1987 - Present**
Colorado Legislative Strategies; Denver, CO

- Strategic legislative planning.
- Coalition building within business, government and NGO's.
- Election fundraising advice and execution.
- Policy research and development.
- Lobbying state budget issues affecting regulatory and agency funding.
- Representing clients at the State Capitol and local governments.
- Presenting client concerns and needs to state legislators.
- Developing issue papers and testimony.
- Providing suggestions for legislative and permitting strategies.
- Developing client relationships with local and state public officials.
- Testifying on legislation.

PREVIOUS EXPERIENCE **Planner, Management Analyst, Assistant Director** **1979 - 1987**
Colorado Division of Parks and Outdoor Recreation; Denver, CO

- Served as liaison to the legislature, responsible for the division's relationship with the General Assembly.
- Obtained bill sponsors, drafted legislation, and wrote and presented information and testimony on behalf of the division.
- Developed constituent relations with outdoor recreation lobby groups.
- Prepared speeches and talking points, performed liaison role with field staff, and handled politically sensitive citizen complaints.
- Conducted research (statistical and opinion) on issues affecting legislation; also advised director regarding political strategies to improve the state park system.

EDUCATION **Colorado State University; Fort Collins, CO**
Graduate Studies, Natural Resources Management
Oregon State University; Corvallis, OR
Bachelor of Science, Planning

SERVICE ACTIVITIES **Former Member, Vice Chair and Chair; Jefferson County Planning Commission**
Chairman; Arvada YMCA Partners for People Campaign
Former Participant; Arvada YMCA Youth Campaign
Former Northwest Family YMCA Board of Directors
Former Member; North Area Schools Special Project Fund Allocation Committee
Former Chairman; Little Elementary School Accountability Committee, Jefferson County Schools
Member of Board of Director; National Ski Patrol at Ski Estes Park.



GARIN VORTHMANN

Partner, Lobbyist

Garin began her political career in Washington D.C. working for Senator Wayne Allard and ran the government affairs department at Colorado Farm Bureau before joining Colorado Legislative Services in 2007. She became partner in 2012 and steadfastly through her career, Garin has honed her policy knowledge on issues related to agriculture, including water and property rights. She also is highly skilled as a strategist for higher education, business, liquor, and state licensure issues.

Growing up on a ranch in southwest Colorado gave Garin a strong work ethic and her dedication to understanding an issue completely shows up when representing CLS clients. Her adeptness in many policy areas and direct manner of speaking means that she is a trusted resource for legislators on both sides of the aisle. She is regarded as a top water policy expert in Colorado and has been recognized for her work bolstering the Colorado business climate by working to align agriculture and energy-- two of the top five drivers of the Colorado economy--on a variety of issues. Garin was recognized as one of Colorado's "Top Women in Energy" and "Who's Who in Agriculture" by the Denver Business Journal in 2017 and 2019, respectively.

She is a proud graduate of Colorado State University where she earned an Agricultural Business degree. Garin has completed Colorado Farm Bureau's Elite Leaders Academy, is a member of the Women's Energy Network of Colorado and has served on the Colorado Agricultural Leadership Program board and Butterfly Pavilion's Fund Development Committee.

In her free time, Garin cherishes time with her husband and two daughters, especially during trips to the mountains. She is an avid reader, sous-chef for her husband and wine connoisseur who frequents the Napa Valley.



GARIN VORTHMANN

STRENGTHS	Government Relations, Lobbying, Colorado Water Policy	
CURRENT POSITION	Partner, Lobbyist <i>Colorado Legislative Strategies; Denver, CO</i> <ul style="list-style-type: none"> • Policy research; presenting the who, what, why, where, and how of public policy. • Representing clients at the State Capitol and local governments. • Presenting client concerns and needs to state legislators. • Developing issue papers and testimony. • Providing suggestions for legislative and permitting strategies. 	2007 - Present
PREVIOUS EXPERIENCE	Director of State Affairs <i>Colorado Farm Bureau; Centennial, CO</i> <ul style="list-style-type: none"> • Chief lobbyist at the state capitol. Organized and presented testimony regarding legislative issues important to the interests of CFB and Colorado agriculture. • Coordinated year-round grassroots policy development program, which determined Farm Bureau's position on bills and regulations. • Annually identified and recommended state legislative priorities. • Prepared other staff and members to present testimony in a clear, concise manner. 	2003 – 2007
	Policy and Research Specialist <i>Colorado Trial Lawyers Association; Denver, CO</i> <ul style="list-style-type: none"> • Developed and coordinated organizational policy and research programs to inform Colorado Farm Bureau members on current statute and regulations. • Wrote correspondence regarding the organization's stance on regulatory issues. • Led policy division on endangered species, wildlife and water quality issues. 	2002 - 2003
	Regional Manager <i>Colorado Trial Lawyers Association; Pueblo, CO</i> <ul style="list-style-type: none"> • Worked one-on-one with 10 individual county Farm Bureau boards to implement CFB programs, grassroots policy development and member activities. • Provided educational information and training to county Farm Bureau members. 	2000 - 2002
	Intern <i>United States Senator Wayne Allard; Washington, DC</i> <ul style="list-style-type: none"> • Provided support for Senatorial staff and learned about the federal legislative process. • Worked with other staff to answer constituent questions and address concerns learning excellent customer relation skills. 	2000
EDUCATION	Colorado State University; Fort Collins, CO Bachelor of Science, Agriculture Business	
SERVICE ACTIVITIES	Member; Arapahoe County Extension Advisory Committee Treasurer, Executive Committee; Colorado Agricultural Leadership Program (CALP) Former Participant; Colorado Agricultural & Rural Leadership Program (CARL), Class III Chair; Lawton-Taylor Academy Parent Partnership Group	



ANDREW WOOD

General Counsel, Lobbyist

Andrew is a skilled attorney with extensive government, legal, and political experience in Colorado. Prior to joining CLS in late 2019, Andrew was the Policy Director for the Colorado House Majority Office. Andrew also has substantial legal experience and has been involved with Democratic campaigns at the highest level since 2016.

After graduating from the University of Denver Sturm College of Law, Andrew began his legal career as a Deputy District Attorney on the western slope. Andrew honed his skills in advocacy and now utilizes those skills when advocating for clients at the Capitol. Additionally, Andrew uses his experience in legal negotiations when helping clients negotiate favorable amendments to improve legislation.

Andrew has also been intimately involved with campaigns and the Democratic Party in Colorado. During the 2016, 2018, and 2020 campaigns, Andrew successfully led a statewide voter protection program that included working with state election officials, coordinating campaign legal efforts, and recruiting and training thousands of volunteers. Andrew is also a board member for the Democratic Party of Denver and the Denver Young Democrats.

The relationships that Andrew has with legislators also stem from his time as the Policy Director for the House Democrats, where Andrew was also involved first-hand on numerous policy areas. Andrew helped to lead the way during the historic 2019 legislative session, where Democrats newly in power at all levels of government were able to pass several historic bills on everything from health care, education, economic growth, environment, criminal justice, and government. Andrew also has deep insight into how the legislative process works.

Andrew brings all these things together when advocating on behalf of CLS clients – knowledge of the law, policy, politics, and players. Andrew also brings an easy-going and likeable personality that can achieve results for clients when working with members of both parties.

Lastly, Andrew also holds a Bachelor of Science in psychology from Texas A&M University in addition to his Juris Doctorate from the University of Denver Sturm College of Law. In his free time, Andrew enjoys spending time with his fiancé Nicky and dog Baloo.



ANDREW WOOD, ESQ.

STRENGTHS	Government Relations, Lobbying, Writing, Campaign Strategy	
CURRENT POSITION	General Counsel, Lobbyist <i>Colorado Legislative Strategies; Denver, CO</i> <ul style="list-style-type: none"> Represents clients at the State Capitol and at various local governments. Presents client concerns and needs to state legislators as it relates to specific legislative action. Develops issue papers and write testimony for clients. Provides recommendations for legislative and permitting strategies. Assists in the development of strong client relationship with public officials at all levels of government. Attends committee hearings and provide detailed communication to clients. Writes weekly newsletter for clients that includes updates on important legislation. 	2019 - Present
PREVIOUS EXPERIENCE	Policy Director <i>Colorado House of Representatives Majority Office; Denver, CO</i> <ul style="list-style-type: none"> Supervised operations of the House Majority policy team, supported the Speaker of the House, Majority Leader, Democratic caucus, and staff in developing/executing House Democrats' legislative agenda. Staffed the Judiciary, Transportation & Local Gov't, and Rural Affairs & Ag. Committees, conducted policy research and analysis, provided strategic recommendations to committee chairs and Chief of Staff. Served as floor manager for the House Democratic caucus, monitored debate on bills, provided political recommendations to House leadership regarding politically harmful votes for vulnerable members. Worked with legislators to help develop/pass bills, conducted in-depth research of issues as they arose. 	2019
	Director of Voter Protection <i>Colorado Democratic Party; Denver, CO</i> <ul style="list-style-type: none"> Ensured all eligible Coloradans were able to vote and ballots were processed correctly according to the law, managed all planning, budgeting, materials development, volunteer recruitment, training, and credentialing of the party's Voter Protection Program. Monitored and responded to all legal electoral issues and questions that arose during the 2018 General Election, helping to expand access to the ballot for thousands of Coloradans. 	2018
	Attorney-at-Law <i>Pearson & Paris, P.C.; Lakewood, CO</i> <ul style="list-style-type: none"> Represented clients in County and District Courts in the areas of Criminal Defense, Family Law, and Civil Litigation, helping to secure just and reasonable outcomes. Managed all aspects of each case, including client recruitment, case analysis, legal research, factual investigation, motions practice, plea negotiations, and jury trials. 	2017 – 2019
	Deputy Director of Voter Protection <i>Colorado Democratic Party; Denver, CO</i> <ul style="list-style-type: none"> Provided support for Senatorial staff and learned about the federal legislative process. Worked with other staff to answer constituent questions and address concerns learning excellent customer relation skills. 	2016
EDUCATION	University of Denver, Sturm College of Law, Denver, CO Juris Doctorate Texas A & M University, College Station, TX Bachelor of Science, Psychology, Business	2019 - Present
VOLUNTEER EXPERIENCE	Board Member; Denver Young Democrats Regional Lead; Phil Weiser for Colorado Attorney General Political Fellow; Michael Bennet for US Senate	



CONNIE GRIDER

Office Manager

Since 1999, Connie has been contributing her extensive organizational talents and keen attention to detail to the CLS lobby team and clients, by handling all business operations including information production, research, legislative tracking, bookkeeping, human resources, vendor management, supply management, client interface and event planning.

Connie expertly handles one of the most important functions of the firm — compliance required by the State of Colorado that includes campaign finance disclosures, lobbyist registration and monthly reporting of all client positions on bills to the Secretary of State's Office. She stays current with reporting requirements to communicate updates and changes to clients. Connie's accuracy and precision ensures CLS is 100 percent compliant and meets all reporting and registration deadlines. Her tremendous experience, resourcefulness and organization are an asset to the firm and the clients alike.

Prior to and over the course of her years with CLS, Connie has pursued her passion for art and has established herself as a professional, gallery-represented, and award-winning abstract painter. Her work has been featured in Acrylic Artist Magazine, on the DIY Network show "Bargain Mansions" and is in corporate and private collections throughout the country.



Client List

CLIENT NAME	CLIENT SINCE
<i>References upon request.</i>	
American Massage Therapy Association—Colorado Chapter	2002
Amgen	2004
Anheuser-Busch	2013
Audio Information Network of Colorado	1999
Auraria Higher Education Center	1983
CardX	2021
Citizens for Arts to Zoo	1996
Colorado Bankers Association	1980
Colorado BioScience Association	2013
Colorado Farm Bureau	2007
Colorado Health Facilities Authority	1990
Colorado Oil & Gas Association	1991
Colorado School for the Deaf and Blind	2002
Colorado School of Miens	1981
Consumer Healthcare Products Association	2011
Ed and Shirley, Inc.	2008
Emergent Biosolutions	2019
Friends of the Colorado Talking Book Library	2018
InState Partners (Advantage Capital Partners)	1999
Instacart	2021
Lafarge Holcim USA	2000
NextEra Energy Resources	2013
Novo Nordisk	2018
PDC Energy	2012
Rocky Mountain Home Association	1978



**COLORADO
LEGISLATIVE
STRATEGIES**
moving mountains since 1980

South Metro Denver Chamber	2015
Stride, Inc. <i>(formerly K12, Inc.)</i>	2002
TechNet	2021
United Rotocraft	2021
University of Colorado Health	2016
Weld County, Colorado	2008



Proposed Scope of Services

for

Southwestern Water Conservation District

September 2021



Proposed Scope of Services

Colorado Legislative Strategies (CLS) proposes a Lobbying Agreement for monitoring with a term of fourteen (14) months, beginning on November 1, 2021 and ending on December 31, 2022. CLS will serve as a government affairs representative in the state of Colorado, on behalf of CLIENT and provide the following Scope of Services:

- During the legislative session of the Colorado General Assembly, screen all introduced legislative bills for relevance to CLIENT issues and send any potentially significant bills to CLIENT's contact person for further review.
- Track all legislation that would impact the CLIENT, including the CLIENT's positions and comments; maintain a legislative bill dossier; and on a weekly basis email updated dossiers which include the current status of each bill.
- Monitor all legislative and regulatory activity that is thought to affect the CLIENT and update the CLIENT on the status of any legislation of concern, including monitoring the Water Resources Review Committee and the Wildfire Matters Review Committee.
- Participate in CLIENT conference calls, as needed.
- Provide CLIENT with a written end-of-session recap with the outcome of any bills of interest to the CLIENT.
- Participate in Colorado Water Congress

Fee for Services

For the Scope of Services as described above, Colorado Legislative Strategies proposes a fee of \$20,000 paid in monthly installments of \$1,666.67, and up to \$1,000.00 per contract term for incidental expenses.

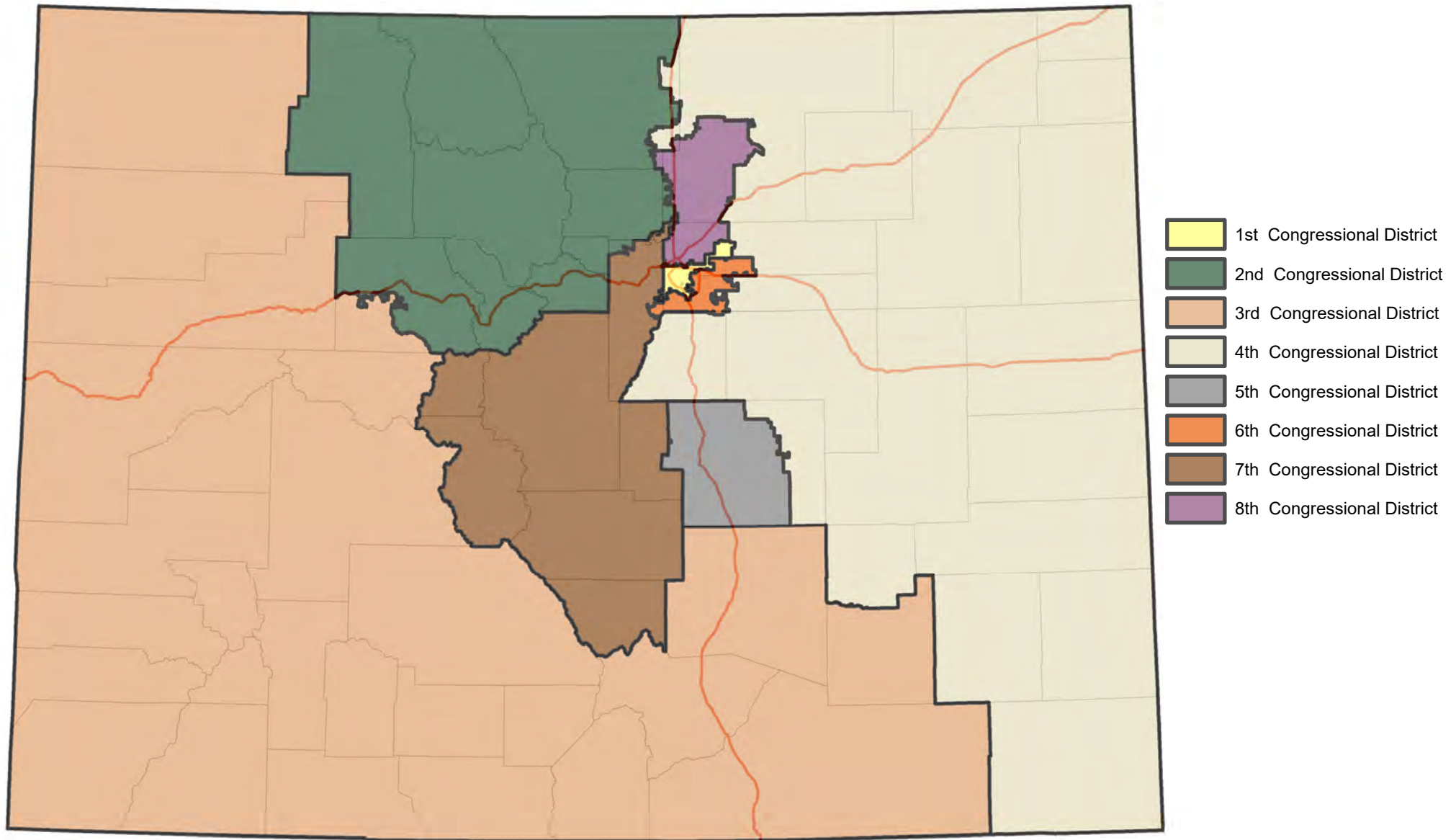


Conflict of Interest

The subject of conflict of interest is very important to us because it speaks to issues of integrity, honesty, candor, and principle. We pride ourselves on our integrity in all our relationships. Honest dealings with all our clients have allowed us to prosper as a company and retain an increasing base of clients over a long period of time.

Full disclosure and open and honest discussion of issues with clients is the key to dealing with the issue. The potential for a conflict exists at any time if a lobbyist represents more than one client. It is important to talk through potential areas of conflict at the outset of a relationship and then immediately raise any new problem areas as the relationship continues.

Colorado Congressional Districts (Final Approved Plan)



PRESS RELEASES

Bennet Seeks Input on Dolores River National Conservation Area Proposal

September 13, 2021

Bennet to Introduce Legislation Following 45-Day Comment Period

Submit Feedback at [Bennet.Senate.Gov/DoloresRiverProposal](https://www.bennet.senate.gov/public/index.cfm/2021/9/bennet-seeks-input-on-dolores-river-national-conservation-area-proposal)



Washington, D.C. -- Today, Colorado U.S. Senator Michael Bennet announced he is seeking input on draft legislation to designate a National Conservation Area (NCA) for a portion of the Dolores River Canyon within Dolores and San Miguel Counties.

“After years of collaboration with local leaders in Southwest Colorado, I’m pleased to announce this proposal to protect a portion of the Dolores River Canyon,” **said Bennet**. “This bill was requested by a bipartisan coalition of interests, including Dolores and San Miguel Counties, who share an interest in protecting the area’s recreational and agricultural value as well as its natural resources. With this proposal, they are aiming for the type of balanced approach to the management of our public lands that we strive for in Colorado. I look forward to gathering more feedback in the weeks ahead so that we can move forward with a bill in the Senate.”

The legislation follows two decades of local discussion and collaboration on the Dolores River and comes at the request of Dolores and San Miguel Counties in Southwest Colorado. Bennet invites input and welcomes Coloradans’ thoughts and suggestions to improve the bill during an initial 45-day comment period.

The deadline to submit input is October 28, 2021. The form and additional information about the discussion draft is available [HERE](#) .

After reviewing the input, Bennet intends to introduce the legislation in the U.S. Senate.

“Since the Dolores River became suitable and eligible for Wild and Scenic designation Dolores County has worked diligently with citizens, stakeholders, Montezuma, San Miguel and Montrose counties to establish a legislative process to keep the Dolores River in local control. This bipartisan grassroots efforts have been made possible by the willingness of Senator Bennet’s office to carry this bill. The Dolores River is a beautiful geological area full of scenery, wildlife, natural resources, recreation, whitewater boating, cultural, archaeological, important watershed and scientific resources that need conserved and protected. We are grateful to San Miguel County for their continued support and efforts in the collaboration of this two-county bill. We look forward to working with all counties involved in this National Conservation Area Proposal,” **said the Dolores County Commission**.

“On behalf of San Miguel County, it has been an honor to work with our colleagues in Dolores County and regional stakeholders to create a locally-driven designation for the Dolores River corridor. We are grateful to Senator Bennet for being responsive to the request from our counties and supportive of local and bipartisan collaborations. As we collectively face the challenge of drought and reduced water, we must work together to protect the shared Dolores watershed and local economies that depend on it. We will continue to support this bill and we look forward to working with our regional colleagues to address the challenges we face together,” **said Hilary Cooper, San Miguel County Commissioner.**

"We are excited for this important step toward protecting conservation and recreation values of the Dolores River corridor. We are thankful for the leadership of Dolores and San Miguel Counties, and for Senator Bennet’s willingness to support this effort. The river is beloved by people from all walks of life, for many reasons. For more than a decade, diverse stakeholders have worked together, found common ground, and created a sensible proposal that balances various interests. There is still a lot of work to do moving forward, and to that end we look forward to continuing to collaborate with other stakeholders and supporting this proposed legislation as it moves towards introduction and passage,” **said Amber Clark, Executive Director, Dolores River Boating Advocates.**

“This process on the Dolores River started taking shape with the government to government roundtable that started in 2005 to discuss our concerns with a possible Wild and Scenic designation on the Dolores River, which would be an overreaching designation that would not protect our values and rights. After those conversations the Dolores River Working Group decided we could do something to protect the Dolores River Canyon and keep management of the Dolores River in local control. We wanted a designation that was more balanced than Wild and Scenic that would protect private property, agriculture, all existing rights including water rights, energy development, livestock grazing and private property access. Through working on this process we have been able to learn better management of our water releases from McPhee Reservoir, in order to provide better management of the fish in the Dolores

River so that they do not end up as endangered and cause us to lose local control of water use in our community. We feel this proposed NCA legislation is the best way forward to accomplish these needs,” **said Al Heaton, rancher and farmer in the proposed Dolores River National Conservation Area.**

Background

In 2008 the U.S. Forest Service and Bureau of Land Management requested that the Dolores River Dialogue -- a coalition of diverse interests in the region -- convene a broad-based community group, which became the Lower Dolores Plan Working Group to study pressing management issues in the Dolores River corridor from McPhee to Bedrock, including the possibility of a Wild and Scenic River designation. The working group, through consensus agreement, decided to explore the possibility of an NCA and appointed a Legislative Subcommittee, including counties, water managers, conservation groups, landowners, recreationists, energy companies, and staff from federal elected officials’ offices, to draft a legislative proposal for further vetting. Bennet’s NCA proposal is a result of this collaborative process.

Permalink: <https://www.bennet.senate.gov/public/index.cfm/2021/9/bennet-seeks-input-on-dolores-river-national-conservation-area-proposal>

Summary of the Proposed Dolores River National Conservation Area (NCA)

September 2021

Purposes

The overarching purposes of the proposed National Conservation Area bill are to:

- Ensure protection of all identified Outstandingly Remarkable Values (ORVs).
- Respect and protect water rights, private property rights, the use of the Dolores Project and its allocations, and other historic uses.
- Develop an alternative to Wild and Scenic River suitability and potential designation.

Background

A proposed National Conservation Area (NCA) for the Dolores River from below McPhee Dam to Bedrock has been discussed for many years. In 2008 the Dolores River Dialogue, which is a coalition of diverse interests in the region, at the request of the U.S. Forest Service (USFS) and Bureau of Land Management (BLM), convened a broad-based community group called the Lower Dolores Plan Working Group. The charge to the group was to study pressing issues in the Dolores River corridor from McPhee to Bedrock. At that time the river had already been found suitable for a Wild and Scenic River (WSR) federal designation. The group was tasked with submitting a report to the public land managers to inform an update of the then 19-year old Dolores River Corridor Plan, which provides management direction for the river, and determine if any agreement could be reached for an alternative to a potential WSR designation.

The Lower Dolores Plan Working Group, through consensus agreement, decided to explore the concept of an NCA and appointed a small group (Legislative Subcommittee) to draft a proposal for further vetting. The Legislative Subcommittee included counties, water managers, conservation groups, landowners, recreationists, energy companies, and staff from the federal elected officials' offices (more specifics below).

This proposal has been brought forth in the spirit of the Dolores River Dialogue's Purpose Statement:

The DRD is a coalition of diverse interests, whose purpose is to explore management opportunities, build support for and take action to improve the ecological conditions downstream of McPhee Reservoir while honoring water rights, protecting agricultural and municipal water supplies, and the continued enjoyment of rafting and fishing.

Why did the Working Group believe an NCA is needed? Why not just leave things as they are?

Local communities have raised a number of key issues about future management of the Dolores River below McPhee Reservoir. Many of the concerns can be resolved and improved through NCA legislation:

- Dating back to the 1970s, the BLM has found the river "suitable" for designation under the Wild and Scenic Rivers Act. "Suitability" means a river is a candidate for full designation. A

full designation would require an Act of Congress and would include a federal reserved water right.

- Populations of three native fish species in the river (Flannelmouth Sucker, Roundtail Chub, and Razorback Sucker) have declined throughout the Colorado River Basin and there is a potential that they could be listed under the Endangered Species Act.
- Some interests support the long-term protection of the Dolores River Corridor and are supportive of suitability and eventual designation, but are willing to support another tool that would also maintain protections for Outstandingly Remarkable Values (ORVs). ORVs are values identified by federal agencies that make a river or stream eligible or suitable for Wild and Scenic River designation.

These factors, along with others, create a lot of uncertainty regarding management on the Dolores River due to existing or potential federal actions. Therefore, proposed federal legislation would provide long-term certainty for interests in the region.

What was contained in the *ORIGINAL (2015) NCA proposal?*

- Establishment of a new NCA; establishment of a Special Management Area (SMA) on USFS lands adjacent to the NCA; and establishment of a new Wilderness Area inside the NCA where there is an existing Wilderness Study Area. Lands included in the original NCA/SMA proposal were in Montezuma, Dolores, San Miguel, and Montrose Counties.
- The permanent release of portions of the Dolores River and tributaries within the NCA boundary from consideration for Wild and Scenic River status.
- Protection for existing water rights and private property rights.
- Continued recognition of and adherence to Dolores Project commitments.
- Will not affect jurisdiction over county roads (section 6.a. below).
- Travel would be restricted to designated routes and local travel management policies.
- A commitment to continue to work to improve native fish habitat and status through a cooperative effort with the Dolores River Native Fish Monitoring and Recommendation Team, within the constraints of existing Colorado water law and Dolores Project contracts and allocations.
- Whitewater boating will continue to be protected and managed for in the NCA, within available water supplies.
- Protection of the Outstandingly Remarkable Values (ORVs, values identified by federal agencies that make a river or stream eligible or suitable for Wild and Scenic River designation) associated with Wild and Scenic suitability, within available water supplies.
- A mineral withdrawal for the NCA, meaning no *new* mining claims or oil and gas leases would be allowed within the river corridor. Valid existing rights would be honored.

- A prohibition on new dams within the NCA. Small structures such as irrigation diversions and stock ponds would still be allowed.

What is different with the *CURRENT (2021)* NCA proposal?

- Several years ago, Montezuma and Montrose Counties removed themselves from the NCA/SMA discussions and therefore the lands in their counties have been removed from the draft legislation. That includes removing the proposed wilderness designation (currently a Wilderness Study Area) which is entirely in Montrose County.
- All of the other provisions described in the original proposal above would still apply to the portion of the NCA/SMA in Dolores and San Miguel Counties. These two counties have informed Senator Bennet's office that they are strongly committed to seeing legislation enacted and hope that Montezuma and Montrose Counties will re-join the efforts.

Future Management of the NCA/SMA

- The Bureau of Land Management would primarily manage the NCA with a smaller portion of land included in this legislation managed by the Forest Service as a Special Management Area.
- *Note: SMAs are only done on USFS lands and NCAs are more typically done on BLM lands. Wilderness can be designated on either USFS or BLM lands.*
- Following the passage of the bill, an Advisory Council made up of a diverse set of local stakeholders would be appointed by the Secretary of the Interior. These stakeholders will represent the same variety of interests covered by the Working Group. The Advisory Council would advise the Secretaries of Interior and Agriculture on preparation, implementation, and monitoring of the Management Plan.

The NCA/SMA and Native Fish

The Dolores River Native Fish Monitoring and Recommendation Team exists to address the protection and ongoing management of the fisheries. The team, which is currently meeting and actively working together, is made up of diverse stakeholders interested in the native fish and whitewater boating in the Lower Dolores. The team's *only* role is to make recommendations to reservoir operators and fishery managers for improving native fish habitat and viability in concert with whitewater boating below McPhee Dam. Any adjustments to reservoir operations recommended by the team is at the discretion of the Bureau of Reclamation (BOR) and Dolores Water Conservancy District in conformance with Dolores Project and NEPA requirements.

The *ORIGINAL (2015)* NCA proposal recommended that the Dolores River Native Fish Monitoring and Recommendation Team be formalized through state legislation, so that the team could be specifically referred to in federal legislation.

The *CURRENT (2021)* proposal does not refer directly to the Dolores River Native Fish Monitoring and Recommendation Team, but does require the Secretary of the Interior to collaborate with

interested stakeholders regarding the management of flows below McPhee Dam for native fish and whitewater boating. This is already happening with the Monitoring and Recommendation Team.

The proposed legislation includes no requirements for changes in flow regimes or releases from the dam. It also does not mandate any water be appropriated to the fisheries or whitewater boating.

Detailed Summary of Legislative Proposal

1. Name of Designated Area

- a. BLM Portion: Dolores River Canyon National Conservation Area (NCA)
- b. USFS Portion: Dolores River Canyon Special Management Area (SMA)

2. Purpose:

“The National Conservation Area (and Special Management Area) will be managed to conserve, protect, and enhance the native fish, whitewater boating, recreational, scenic, cultural, archaeological, natural, geological, historical, ecological, watershed, wildlife, educational, and scientific resources.”

3. Water

- a. The portion of the Dolores River and tributaries within the designated area will no longer be studied for suitability under the Wild and Scenic Rivers Act.
- b. Water rights decreed under Colorado Water Law and water rights that are vested absolute or conditional, upon passage of this legislation, shall not be diminished by this legislation.
- c. No federal reserved or appropriative water rights express or implied will be established by the legislation.
- d. Nothing in the legislation will preclude access to valid existing water diversion, storage and management facilities established under state decrees or pursuant to Bureau of Reclamation laws and contracts.
- e. Any changes to Dolores Project allocations designed to further the purposes of the Act shall be instituted within the framework of Dolores Project Contracts, Reclamation law, the Colorado Ute Settlement Agreement and obligations to Dolores Project allocation holders.
- f. The Bureau of Reclamation has committed to work with other entities to acquire water from willing sellers to expand the base pool, or for other fish and wildlife purposes, in the 1996 Environmental Assessment and the 2000 Operating Agreement. To date no willing sellers have offered to sell water to the fish pool.
- g. The management of flows below McPhee Dam intended to conserve, protect and enhance the native fish resources within the NCA, will be in accordance with Reclamation law and Dolores Project contracts and whitewater boating commitments,

and will be guided by input from interested stakeholders (including the Dolores River Native Fish Monitoring and Recommendation Team and others). Such guidance will include the ongoing adaptive management science that evolves from flow management experiments, and the monitoring of the results of such experiments.

- h. The Bureau of Reclamation will report each year on progress toward conserving, protecting and enhancing the native fishery using, in so far as possible, the Implementation, Monitoring and Evaluation Report prepared annually by the Dolores River Native Fish Monitoring and Recommendation Team.
- i. New dams and large-scale water developments are prohibited in the NCA. This is meant to encompass new large water developments such as storage facilities and hydroelectric facilities, but not to include things like existing small diversion dams or stock ponds, new minor developments according to existing decreed water rights, or changed circumstances that could require a modification.
- j. Subject to valid existing rights, ensure that any large-scale water development with a potential impact on the section of the Dolores River within the NCA will not unreasonably diminish the scenic, recreational and fish and wildlife values within the NCA.
- k. Nothing in this legislation will alter the United States' trust responsibility to the Ute Mountain Ute Tribe regarding the land, water, and other Indian Trust Assets of the Ute Mountain Ute Tribe.
- l. The Ute Mountain Ute Tribe's federal reserved water rights allocations in the Dolores Project shall not be diminished or altered by this legislation.

4. *Private Property and Other Existing Rights*

- a. Valid existing rights will be honored and protected.
- b. The legislation will not infringe upon private property rights nor on the authorities of county governments. The Management Plan is only applicable to public land in the designated area. Nothing in the legislation or the management plan will dictate or prohibit actions on private property.
- c. Acquisition of private property within or adjacent to the NCA will only be allowed if there are willing sellers or through voluntary exchanges.
- d. The legislation will not burden any private landowner with costs associated with management plan.
- e. The Secretary shall provide adequate and feasible access:
 - i. to private property that is located within and adjacent to the NCA; and
 - ii. through the NCA to owners of private property located within or adjacent to the NCA, if other routes to the property are blocked by physical barriers.

- f. The Secretaries are authorized to lease or purchase easements on private lands from willing lessors or sellers for recreation, access, conservation, or other permitted uses that fulfill the purposes of the NCA.
- g. The legislation will provide for continued use of and access to the Dove Creek Pump Station.
- h. Valid rights-of-way, including utility corridors, will be honored.

5. *Management Plan*

- a. The Secretary of Interior will appoint the Dolores River National Conservation Area Advisory Council made up of a diverse set of stakeholders to advise the Secretary throughout development and ongoing implementation of the Management Plan.
- b. Completion of a Management Plan for the NCA will be required within three (3) years of designation of the National Conservation Area and will consider recommendations from the Dolores River National Conservation Area Advisory Council, other stakeholders, and the public and interested stakeholders.

6. *Motorized Use in the NCA/SMA*

- a. Motorized use will be on designated routes only. Designated routes will be established as part of the travel management plan required in the NCA Management Plan. The route commonly known as the Dolores River Road, which begins at the Dove Creek Pump Station and follows the river north until it becomes San Miguel County Road N14, will still be subject to the seasonal wildlife closure (as managed by Colorado Parks and Wildlife) currently in effect just north of the Dolores/San Miguel County line. The Dolores River Road will be unaffected by the legislation, except that the non-county portion of the road north of the wildlife closure can be maintained but may not be improved beyond a primitive state, as it is now.
- b. The construction of new roads will only be allowed for administrative purposes, protection of public health and safety, or to provide reasonable access to private property.
- c. Nothing in the proposal affects the jurisdiction over, use, or maintenance of county roads in the designated area.

7. *Grazing Management*

- a. Grazing shall continue within the designated area. Leases and allotments will be administered in accordance with applicable USFS and BLM laws and regulations.

8. *Minerals*

- a. Minerals can continue to be developed where valid claims and leases exist. New mining claims or mineral leases will not be allowed.

- b. The legislation will not change uranium production on Department of Energy leases where it is currently allowed.

9. *Ponderosa Gorge Roadless Area*

- a. The Ponderosa Gorge Roadless Area will be managed to preserve its existing primitive character. This area is located on both sides of the river between Bradfield Bridge Campground and the Dove Creek Pump Station and on the east side of the river from the Pump Station to just north of Snaggletooth Rapid.

117TH CONGRESS
1ST SESSION

S. _____

To establish the Dolores River National Conservation Area and the Dolores River Special Management Area in the State of Colorado, to protect private water rights in the State, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish the Dolores River National Conservation Area and the Dolores River Special Management Area in the State of Colorado, to protect private water rights in the State, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Dolores River National Conservation Area and Special
6 Management Area Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
8 this Act is as follows:

2

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—DOLORES RIVER NATIONAL CONSERVATION AREA

Sec. 101. Establishment of Dolores River National Conservation Area.

Sec. 102. Management of Conservation Area.

Sec. 103. Dolores River National Conservation Area Advisory Council.

TITLE II—DOLORES RIVER SPECIAL MANAGEMENT AREA

Sec. 201. Designation of Dolores River Special Management Area.

Sec. 202. Management of Special Management Area.

TITLE III—TECHNICAL MODIFICATIONS TO POTENTIAL
ADDITIONS TO NATIONAL WILD AND SCENIC RIVERS SYSTEM

Sec. 301. Purpose.

Sec. 302. Release of Dolores River study area.

Sec. 303. Applicability of continuing consideration provision.

TITLE IV—GENERAL PROVISIONS

Sec. 401. Management of covered land.

Sec. 402. Protection of water rights and other interests.

Sec. 403. Effect on private property and regulatory authority.

Sec. 404. Tribal rights and traditional uses.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) CONSERVATION AREA.—The term “Con-
4 servation Area” means the Dolores River National
5 Conservation Area established by section 101(a).

6 (2) COUNCIL.—The term “Council” means the
7 Dolores River National Conservation Area Advisory
8 Council established under section 103(a).

9 (3) COVERED LAND.—The term “covered land”
10 means—

11 (A) the Conservation Area; and

12 (B) the Special Management Area.

13 (4) DOLORES PROJECT.—The term “Dolores
14 Project” has the meaning given the term in section

1 3 of the Colorado Ute Indian Water Rights Settle-
2 ment Act of 1988 (Public Law 100–585; 102 Stat.
3 2974).

4 (5) MAP.—The term “Map” means the map
5 prepared by the Bureau of Land Management enti-
6 tled “Proposed Dolores River National Conservation
7 Area and Special Management Area” and dated
8 June 22, 2021.

9 (6) PUBLIC LAND.—The term “public land”
10 has the meaning given the term “public lands” in
11 section 103 of the Federal Land Policy and Manage-
12 ment Act of 1976 (43 U.S.C. 1702).

13 (7) SECRETARY.—The term “Secretary”
14 means—

15 (A) in title I, the Secretary of the Interior;

16 (B) in title II, the Secretary of Agri-
17 culture; and

18 (C) in title IV—

19 (i) the Secretary of the Interior, with
20 respect to land under the jurisdiction of
21 the Secretary of the Interior; and

22 (ii) the Secretary of Agriculture, with
23 respect to land under the jurisdiction of
24 the Secretary of Agriculture.

1 (8) SPECIAL MANAGEMENT AREA.—The term
2 “Special Management Area” means the Dolores
3 River Special Management Area established by sec-
4 tion 201(a).

5 (9) STATE.—The term “State” means the State
6 of Colorado.

7 **TITLE I—DOLORES RIVER NA-**
8 **TIONAL CONSERVATION AREA**

9 **SEC. 101. ESTABLISHMENT OF DOLORES RIVER NATIONAL**
10 **CONSERVATION AREA.**

11 (a) ESTABLISHMENT.—

12 (1) IN GENERAL.—Subject to valid existing
13 rights, there is established the Dolores River Na-
14 tional Conservation Area in the State.

15 (2) AREA INCLUDED.—The Conservation Area
16 shall consist of approximately 45,455 acres of Bu-
17 reau of Land Management land in the State, as gen-
18 erally depicted on the Map.

19 (b) PURPOSE.—The purpose of the Conservation
20 Area is to conserve, protect, and enhance the native fish,
21 whitewater boating, recreational, scenic, cultural, archae-
22 ological, natural, geological, historical, ecological, water-
23 shed, wildlife, educational, and scientific resources of the
24 Conservation Area.

25 (c) MAP AND LEGAL DESCRIPTION.—

1 (1) IN GENERAL.—As soon as practicable after
2 the date of enactment of this Act, the Secretary
3 shall file a map and legal description of the Con-
4 servation Area with the Committee on Natural Re-
5 sources of the House of Representatives and the
6 Committee on Energy and Natural Resources of the
7 Senate.

8 (2) EFFECT.—The map and legal description
9 prepared under paragraph (1) shall have the same
10 force and effect as if included in this title, except
11 that the Secretary may correct minor errors in the
12 map or legal description.

13 (3) PUBLIC AVAILABILITY.—A copy of the map
14 and legal description shall be on file and available
15 for public inspection in the appropriate offices of the
16 Bureau of Land Management.

17 **SEC. 102. MANAGEMENT OF CONSERVATION AREA.**

18 (a) IN GENERAL.—The Secretary shall manage the
19 Conservation Area in accordance with—

20 (1) this Act;

21 (2) the Federal Land Policy and Management
22 Act of 1976 (43 U.S.C. 1701 et seq.); and

23 (3) other applicable laws.

24 (b) USES.—The Secretary shall allow only such uses
25 of the Conservation Area as the Secretary determines

1 would further the purpose of the Conservation Area, as
2 described in section 101(b).

3 (c) MANAGEMENT PLAN.—

4 (1) PLAN REQUIRED.—

5 (A) IN GENERAL.—Not later than 3 years
6 after the date of enactment of this Act, the Sec-
7 retary shall develop a management plan for the
8 long-term protection, management, and moni-
9 toring of the Conservation Area.

10 (B) REVIEW AND REVISION.—The manage-
11 ment plan under subparagraph (A) shall, from
12 time to time, be subject to review and revision,
13 in accordance with—

14 (i) this Act;

15 (ii) the Federal Land Policy and Man-
16 agement Act of 1976 (43 U.S.C. 1701 et
17 seq.); and

18 (iii) other applicable laws.

19 (2) CONSULTATION AND COORDINATION.—The
20 Secretary shall prepare and revise the management
21 plan under paragraph (1)—

22 (A) in consultation with—

23 (i) the State;

24 (ii) units of local government;

25 (iii) the public; and

1 (iv) the Council; and

2 (B) in coordination with the Secretary of
3 Agriculture, with respect to the development of
4 the separate management plan for the Special
5 Management Area, as described in section
6 202(c).

7 (3) RECOMMENDATIONS.—In preparing and re-
8 vising the management plan under paragraph (1),
9 the Secretary shall take into consideration any rec-
10 ommendations from the Council.

11 (4) TREATY RIGHTS.—In preparing and revis-
12 ing the management plan under paragraph (1), tak-
13 ing into consideration the rights and obligations de-
14 scribed in section 402, the Secretary shall ensure
15 that the management plan does not alter or dimin-
16 ish—

17 (A) the treaty rights of any Indian Tribe;

18 (B) any rights described in the Colorado
19 Ute Indian Water Rights Settlement Act of
20 1988 (Public Law 100-585; 102 Stat. 2973);
21 or

22 (C) the operation or purposes of the Dolo-
23 res Project.

24 (d) INCORPORATION OF ACQUIRED LAND AND IN-
25 TERESTS.—Any land or interest in land located within the

1 boundary of the Conservation Area that is acquired by the
2 United States in accordance with section 401(c) after the
3 date of enactment of this Act shall—

- 4 (1) become part of the Conservation Area; and
- 5 (2) be managed as provided in this section.

6 (c) DEPARTMENT OF ENERGY LEASES.—

7 (1) IN GENERAL.—Nothing in this title affects
8 valid leases or lease tracts existing on the date of en-
9 actment of this Act issued under the uranium leas-
10 ing program of the Department of Energy within the
11 boundaries of the Conservation Area.

12 (2) MANAGEMENT.—

13 (A) IN GENERAL.—Subject to subpara-
14 graph (B), land designated for the program de-
15 scribed in paragraph (1) shall be—

- 16 (i) exempt from section 401(b); and
- 17 (ii) managed in a manner that allow
18 the leases to fulfill the purposes of the pro-
19 gram, consistent with the other provisions
20 of this title and title IV.

21 (B) DESIGNATION.—Land subject to a
22 lease described in paragraph (1) shall be con-
23 sidered part of the Conservation Area and man-
24 aged in accordance with other provisions of this
25 title on a finding by the Secretary that—

1 (i)(I) the lease has expired; and

2 (II) the applicable lease tract has been
3 removed from the leasing program by the
4 Secretary of Energy; and

5 (ii) the land that was subject to the
6 lease is suitable for inclusion in the Con-
7 servation Area.

8 (C) EFFECT.—Nothing in subparagraph
9 (B) prevents the Secretary of Energy from ex-
10 tending any lease described in paragraph (1).

11 **SEC. 103. DOLORES RIVER NATIONAL CONSERVATION AREA**
12 **ADVISORY COUNCIL.**

13 (a) ESTABLISHMENT.—Not later than 180 days after
14 the date of enactment of this Act, the Secretary shall es-
15 tablish an advisory council, to be known as the “Dolores
16 River National Conservation Area Advisory Council”.

17 (b) DUTIES.—The Council shall advise—

18 (1) the Secretary with respect to the prepara-
19 tion, implementation, and monitoring of the manage-
20 ment plan prepared under section 102(c); and

21 (2) the Secretary of Agriculture with respect to
22 the preparation, implementation, and monitoring of
23 the management plan prepared under section 202(c).

24 (c) APPLICABLE LAW.—The Council shall be subject
25 to—

1 (1) the Federal Advisory Committee Act (5
2 U.S.C. App.);

3 (2) the Federal Land Policy and Management
4 Act of 1976 (43 U.S.C. 1701 et seq.); and

5 (3) this Act.

6 (d) MEMBERSHIP.—

7 (1) IN GENERAL.—The Council shall include 11
8 members to be appointed by the Secretary, of whom,
9 to the extent practicable—

10 (A) 2 members shall represent agricultural
11 water user interests in the Conservation Area;

12 (B) 2 members shall represent conserva-
13 tion interests in the Conservation Area;

14 (C) 2 members shall represent recreation
15 interests in the Conservation Area, 1 of whom
16 shall represent whitewater boating interests;

17 (D) 1 member shall be a representative of
18 Dolores County, Colorado;

19 (E) 1 member shall be a representative of
20 San Miguel County, Colorado;

21 (F) 1 member shall be a private landowner
22 that owns land in immediate proximity to the
23 Conservation Area;

1 (G) 1 member shall be a holder of a graz-
2 ing-allotment permit in the Conservation Area;
3 and

4 (II) 1 member shall be a representative of
5 the Ute Mountain Ute Tribe.

6 (2) REPRESENTATION.—

7 (A) IN GENERAL.—The Secretary shall en-
8 sure that the membership of the Council is fair-
9 ly balanced in terms of the points of view rep-
10 resented and the functions to be performed by
11 the Council.

12 (B) REQUIREMENTS.—

13 (i) IN GENERAL.—The members of
14 the Council described in subparagraphs
15 (A), (B), (C), (F), and (G) of paragraph
16 (1) shall be residents of Dolores, San
17 Miguel, Montezuma, Montrose, or La Plata
18 County in the State.

19 (ii) COUNTY REPRESENTATIVES.—The
20 members of the Council described in sub-
21 paragraphs (D) and (E), of paragraph (1)
22 shall be—

23 (I) residents of the respective
24 counties referred to in those subpara-
25 graphs; and

1 (II) capable of representing the
2 interests of the applicable board of
3 county commissioners.

4 (e) TERMS OF OFFICE.—

5 (1) IN GENERAL.—The term of office of a
6 member of the Council shall be 5 years.

7 (2) REAPPOINTMENT.—A member may be re-
8 appointed to the Council on completion of the term
9 of office of the member.

10 (f) COMPENSATION.—A member of the Council—

11 (1) shall serve without compensation for service
12 on the Council; but

13 (2) may be reimbursed for qualified expenses of
14 the member.

15 (g) CHAIRPERSON.—The Council shall elect a chair-
16 person from among the members of the Council.

17 (h) MEETINGS.—

18 (1) IN GENERAL.—The Council shall meet at
19 the call of the chairperson—

20 (A) not less frequently than quarterly until
21 the management plan under section 102(e) is
22 developed; and

23 (B) thereafter, at the call of the Secretary.

24 (2) PUBLIC MEETINGS.—Each meeting of the
25 Council shall be open to the public.

1 (3) NOTICE.—A notice of each meeting of the
2 Council shall be published in advance of the meeting.

3 (i) TECHNICAL ASSISTANCE.—The Secretary shall
4 provide, to the maximum extent practicable in accordance
5 with applicable law, any information and technical services
6 requested by the Council to assist in carrying out the du-
7 ties of the Council.

8 (j) RENEWAL.—The Secretary shall ensure that the
9 Council charter is renewed as required under applicable
10 law.

11 (k) DURATION.—The Council—

12 (1) shall continue to function for the duration
13 of existence of the Conservation Area; but

14 (2) on completion of the management plan,
15 shall only meet—

16 (A) at the call of the Secretary; or

17 (B) in the case of a review or proposed re-
18 vision to the management plan.

19 **TITLE II—DOLORES RIVER**
20 **SPECIAL MANAGEMENT AREA**

21 **SEC. 201. DESIGNATION OF DOLORES RIVER SPECIAL MAN-**
22 **AGEMENT AREA.**

23 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—Subject to valid existing
2 rights, there is established the Dolores River Special
3 Management Area in the State.

4 (2) AREA INCLUDED.—The Special Manage-
5 ment Area shall consist of approximately 10,828
6 acres of Federal land in the San Juan National For-
7 est in the State, as generally depicted on the Map.

8 (b) PURPOSE.—The purpose of the Special Manage-
9 ment Area is to conserve, protect, and enhance the native
10 fish, whitewater boating, recreational, scenic, cultural, ar-
11 chaeological, natural, geological, historical, ecological, wa-
12 tershed, wildlife, educational, and scientific resources of
13 the Special Management Area.

14 (c) MAP AND LEGAL DESCRIPTION.—

15 (1) IN GENERAL.—As soon as practicable after
16 the date of enactment of this Act, the Secretary
17 shall file a map and legal description of the Special
18 Management Area with the Committee on Natural
19 Resources of the House of Representatives and the
20 Committee on Energy and Natural Resources of the
21 Senate.

22 (2) EFFECT.—The map and legal description
23 prepared under paragraph (1) shall have the same
24 force and effect as if included in this title, except

1 that the Secretary may correct minor errors in the
2 map or legal description.

3 (3) PUBLIC AVAILABILITY.—A copy of the map
4 and legal description shall be on file and available
5 for public inspection in the appropriate offices of the
6 Forest Service.

7 **SEC. 202. MANAGEMENT OF SPECIAL MANAGEMENT AREA.**

8 (a) IN GENERAL.—The Secretary shall manage the
9 Special Management Area in accordance with—

10 (1) this Act;

11 (2) the National Forest Management Act of
12 1976 (16 U.S.C. 1600 et seq.); and

13 (3) other applicable laws.

14 (b) USES.—The Secretary shall allow only such uses
15 of the Special Management Area as the Secretary deter-
16 mines would further the purpose of the Special Manage-
17 ment Area, as described in section 201(b).

18 (c) MANAGEMENT PLAN.—

19 (1) PLAN REQUIRED.—

20 (A) IN GENERAL.—Not later than 3 years
21 after the date of enactment of this Act, the Sec-
22 retary shall develop a management plan for the
23 long-term protection, management, and moni-
24 toring of the Special Management Area.

1 (B) REVIEW AND REVISION.—The manage-
2 ment plan under subparagraph (A) shall, from
3 time to time, be subject to review and revision
4 in accordance with—

5 (i) this Act;

6 (ii) the National Forest Management
7 Act of 1976 (16 U.S.C. 1600 et seq.); and

8 (iii) other applicable laws.

9 (2) CONSULTATION AND COORDINATION.—The
10 Secretary shall prepare and revise the management
11 plan under paragraph (1)—

12 (A) in consultation with—

13 (i) the State;

14 (ii) units of local government;

15 (iii) the public; and

16 (iv) the Council; and

17 (B) in coordination with the Secretary of
18 the Interior, with respect to the development of
19 the separate management plan for the Con-
20 servation Area, as described in section 102(c).

21 (3) RECOMMENDATIONS.—In preparing and re-
22 vising the management plan under paragraph (1),
23 the Secretary shall take into consideration any rec-
24 ommendations from the Council.

1 (4) TREATY RIGHTS.—In preparing and revis-
2 ing the management plan under paragraph (1), tak-
3 ing into consideration the rights and obligations de-
4 scribed in section 402, the Secretary shall ensure
5 that the management plan does not alter or dimin-
6 ish—

7 (A) the treaty rights of any Indian Tribe;

8 (B) any rights described in the Colorado
9 Ute Indian Water Rights Settlement Act of
10 1988 (Public Law 100–585; 102 Stat. 2973);
11 or

12 (C) the operation or purposes of the Dolo-
13 res Project.

14 (d) INCORPORATION OF ACQUIRED LAND AND IN-
15 TERESTS.—Any land or interest in land located within the
16 boundary of the Special Management Area that is ac-
17 quired by the United States in accordance with section
18 401(c) after the date of enactment of this Act shall—

19 (1) become part of the Special Management
20 Area; and

21 (2) be managed as provided in this section.

1 **TITLE III—TECHNICAL MODI-**
2 **FICATIONS TO POTENTIAL**
3 **ADDITIONS TO NATIONAL**
4 **WILD AND SCENIC RIVERS**
5 **SYSTEM**

6 **SEC. 301. PURPOSE.**

7 The purpose of this title is to release portions of the
8 Dolores River and certain tributaries from designation for
9 potential addition under the Wild and Scenic Rivers Act
10 (16 U.S.C. 1271 et seq.) or from further study under that
11 Act.

12 **SEC. 302. RELEASE OF DOLORES RIVER STUDY AREA.**

13 Section 5(a)(56) of the Wild and Scenic Rivers Act
14 (16 U.S.C. 1276(a)(56)) is amended by inserting “and the
15 segments of the Dolores River located in the Dolores River
16 National Conservation Area designated by the Dolores
17 River National Conservation Area and Special Manage-
18 ment Area Act” before the period at the end.

19 **SEC. 303. APPLICABILITY OF CONTINUING CONSIDERATION**
20 **PROVISION.**

21 Section 5(d)(1) of the Wild and Scenic Rivers Act
22 (16 U.S.C. 1276(d)(1)) shall not apply to—

23 (1) the Conservation Area; or

24 (2) the Special Management Area.

TITLE IV—GENERAL PROVISIONS

SEC. 401. MANAGEMENT OF COVERED LAND.

(a) MOTORIZED VEHICLES.—

(1) IN GENERAL.—Except in cases in which motorized vehicles are needed for administrative purposes or to respond to an emergency, the use of motorized vehicles in the covered land shall be permitted only on designated routes.

(2) ROAD CONSTRUCTION.—Except as necessary for administrative purposes, protection of public health and safety, or providing reasonable access to private property, the Secretary shall not construct any permanent or temporary road within the covered land after the date of enactment of this Act.

(b) WITHDRAWALS.—Subject to valid existing rights, all public land within the covered land, including any land or interest in land that is acquired by the United States within the covered land after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

1 (3) operation of the mineral leasing, mineral
2 materials, and geothermal leasing laws, except as
3 provided in section 102(c).

4 (c) WILLING SELLERS.—Any acquisition of land or
5 interests in land under this Act shall be only by purchase
6 from willing sellers, donation, or exchange.

7 (d) GRAZING.—The Secretary shall issue and admin-
8 ister any grazing leases or permits and trailing permits
9 and administer allotments in the covered land in accord-
10 ance with the laws (including regulations) applicable to the
11 issuance and administration of leases and permits on other
12 land under the jurisdiction of the Bureau of Land Man-
13 agement or Forest Service, as applicable.

14 (e) ACCESS TO PRIVATE LAND.—To ensure reason-
15 able use and enjoyment of private property (whether in
16 existence on the date of enactment of this Act or in an
17 improved state), the Secretary shall grant reasonable and
18 feasible access through the covered land to any private
19 property that is located within or adjacent to the covered
20 land, if other routes to the private property are blocked
21 by physical barriers, such as the Dolores River or the cliffs
22 of the Dolores River.

23 (f) EASEMENTS.—The Secretary may lease or ac-
24 quire easements on private land from willing lessors, do-
25 nors, or sellers for recreation, access, conservation, or

1 other permitted uses, to the extent necessary to fulfill the
2 purposes of the Conservation Area or Special Management
3 Area, as applicable.

4 (g) WILDFIRE, INSECT, AND DISEASE MANAGE-
5 MENT.—The Secretary may take any measures that the
6 Secretary determines to be necessary to control fire, in-
7 sects, and diseases in the covered land, (including, as the
8 Secretary determines to be appropriate, the coordination
9 of the measures with the State or a local agency).

10 (h) MANAGEMENT OF PONDEROSA GORGE.—

11 (1) IN GENERAL.—The Secretary shall manage
12 the areas of the Conservation Area and Special Man-
13 agement Area identified on the Map as “Ponderosa
14 Gorge” in a manner that maintains the wilderness
15 character of those areas as of the date of enactment
16 of this Act.

17 (2) PROHIBITED ACTIVITIES.—Subject to para-
18 graph (3), in the areas described in paragraph (1),
19 the following activities shall be prohibited:

20 (A) New permanent or temporary road
21 construction or the renovation of nonsystem
22 roads in existence on the date of enactment of
23 this Act.

24 (B) The use of motor vehicles, motorized
25 equipment, or mechanical transport, except as

1 necessary to meet the minimum requirements
2 for the administration of the Federal land and
3 to protect public health and safety.

4 (C) Projects undertaken for the purpose of
5 harvesting commercial timber (other than ac-
6 tivities relating to the harvest of merchantable
7 products that are byproducts of activities con-
8 ducted for ecological restoration or to further
9 the purposes of this Act).

10 (3) UTILITY CORRIDOR.—Nothing in this sub-
11 section affects the operation, maintenance, or loca-
12 tion of the utility right-of-way within the corridor, as
13 depicted on the Map.

14 (i) EFFECT.—Nothing in this Act prohibits the Sec-
15 retary from issuing a new permit and right-of-way within
16 the covered land for a width of not more than 150 feet
17 for a right-of-way that serves a transmission line in exist-
18 ence on the date of enactment of this Act, on the condition
19 that the Secretary shall relocate the right-of-way in a
20 manner that furthers the purposes of this Act.

21 **SEC. 402. PROTECTION OF WATER RIGHTS AND OTHER IN-**
22 **TERESTS.**

23 (a) DOLORES PROJECT.—

24 (1) OPERATION.—The Dolores Project and the
25 operation of McPhee Reservoir shall continue to be

1 the responsibility of, and be operated by, the Sec-
2 retary, in cooperation with the Dolores Water Con-
3 servancy District, in accordance with applicable laws
4 and obligations.

5 (2) EFFECT.—Nothing in this Act affects the
6 Dolores Project or the operation of McPhee Res-
7 ervoir, in accordance with—

8 (A) the reclamation laws;

9 (B) any applicable—

10 (i) Dolores Project water contract,
11 storage contract, or carriage contract; or

12 (ii) allocation of Dolores Project
13 water;

14 (C) the environmental assessment and
15 finding of no significant impact prepared by the
16 Bureau of Reclamation Upper Colorado Region
17 and approved August 2, 1996;

18 (D) the operating agreement entitled “Op-
19 erating Agreement, McPhee Dam and Res-
20 ervoir, Contract No. 99-WC-40-R6100, Dolores
21 Project, Colorado” and dated April 25, 2000
22 (or any subsequent renewal or revision of that
23 agreement);

(E) mitigation measures for whitewater boating, including any such measure described in—

(i) the document entitled “Dolores Project Colorado Definite Plan Report” and dated April 1977;

(ii) the Dolores Project final environmental statement dated May 9, 1977; or

(iii) a document referred to in subparagraph (C) or (D);

(F) applicable Federal or State laws relating to the protection of the environment, including—

(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(G) the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

(b) MANAGEMENT OF FLOWS.—

(1) IN GENERAL.—In managing available flows below McPhee Dam for the native fish and white-

1 water boating resources in the Conservation Area,
2 the Secretary shall seek to provide regular and
3 meaningful consultation and collaboration with inter-
4 ested stakeholders in the initial phase of, and
5 throughout, the process of decisionmaking with re-
6 spect to managing flows below McPhee Dam.

7 (2) ANNUAL REPORT.—Beginning on the date
8 that is 1 year after the date of enactment of this Act
9 and annually thereafter, the Commissioner of Rec-
10 lamation shall prepare and make publically available
11 a report that describes any progress with respect to
12 the conservation, protection, and enhancement of na-
13 tive fish in the Dolores River.

14 (c) LARGE-SCALE WATER DEVELOPMENT.—Subject
15 to valid existing rights and subsection (e), the Secretary
16 shall ensure that any new large-scale water development
17 located outside the Conservation Area or Special Manage-
18 ment Area with the potential to affect any portion of the
19 Dolores River in the Conservation Area or Special Man-
20 agement Area would not unreasonably diminish (as that
21 term is used in section 7(a) of the Wild and Scenic Rivers
22 Act (16 U.S.C. 1278(a)) and as that term is applied in
23 Appendix D of the Technical Report of the Interagency
24 Wild and Scenic Rivers Coordinating Council entitled
25 “Wild & Scenic Rivers: Section 7” and dated October

1 2004) the scenic, recreational, and fish and wildlife values
2 of the Conservation Area or Special Management Area.

3 (d) PROHIBITION OF NEW DAMS.—Subject to sub-
4 section (e), no new dams shall be constructed on the cov-
5 ered land.

6 (e) LIMITATION.—Subject to the requirements of this
7 section, nothing in subsection (c) or (d) prevents the con-
8 struction of small diversion dams or stock ponds, new
9 minor water developments according to existing decreed
10 water rights, or modifications to existing structures on the
11 covered land.

12 (f) EXISTING WATER RESOURCE FACILITIES.—
13 Nothing in this Act—

14 (1) affects any existing water resource facilities
15 on the covered land, including irrigation and pump-
16 ing facilities, pumps, equipment, mobile pumps or
17 pumping equipment, reservoirs, water conservation
18 works, aqueducts, canals, ditches, pipelines, wells,
19 hydropower projects, and transmission and other an-
20 cillary facilities including power lines, and other
21 water diversion, storage, and carriage structures; or

22 (2) impedes or restricts access to facilities de-
23 scribed in paragraph (1) for operation, maintenance,
24 repair, or replacement.

25 (g) EFFECT.—Nothing in this Act—

1 (1) affects—

2 (A) any water right that is—

3 (i) decreed under the laws of the
4 State; and

5 (ii) in existence on the date of enact-
6 ment of this Act;

7 (B) the use, allocation, ownership, or con-
8 trol, in existence on the date of enactment of
9 this Act, of any water or water right;

10 (C) any vested absolute or decreed condi-
11 tional water right in existence on the date of
12 enactment of this Act, including any water
13 right held by the United States;

14 (D) any interstate water compact in exist-
15 ence on the date of enactment of this Act; or

16 (E) State jurisdiction over any water law,
17 water right, or adjudication or administration
18 relating to any water resource;

19 (2) imposes—

20 (A) any mandatory streamflow require-
21 ment within the covered land; or

22 (B) any Federal water quality standard
23 within, or upstream of, the covered land that is
24 more restrictive than would be applicable if the
25 covered land had not been designated as the

1 Conservation Area or Special Management Area
2 under this Act; or

3 (3) constitutes an express or implied reservation
4 by the United States of any reserved or appropria-
5 tive water right within the covered land.

6 **SEC. 403. EFFECT ON PRIVATE PROPERTY AND REGU-**
7 **LATORY AUTHORITY.**

8 (a) EFFECT.—Nothing in this Act—

9 (1) affects valid existing rights;

10 (2) requires any owner of private property to
11 bear any costs associated with the implementation of
12 the management plan under this Act;

13 (3) affects the jurisdiction or responsibility of
14 the State with respect to fish and wildlife in the
15 State;

16 (4) requires a change in or affects local zoning
17 laws of the State or a political subdivision of the
18 State; or

19 (5) affects—

20 (A) the jurisdiction over, use, or mainte-
21 nance of county roads in the covered land; or

22 (B) the administration of the portion of
23 the road that is not a county road and that is
24 commonly known as the “Dolores River Road”
25 within the Conservation Area, subject to the

1 condition that the Secretary shall not improve
2 the road beyond the existing primitive condition
3 of the road.

4 (b) ADJACENT MANAGEMENT.—

5 (1) NO BUFFER ZONES.—The designation of
6 the Conservation Area and the Special Management
7 Area by this Act shall not create any protective pe-
8 rimeter or buffer zone around the Conservation Area
9 or Special Management Area, as applicable.

10 (2) PRIVATE LAND.—Nothing in this Act re-
11 quires the prohibition of any activity on private land
12 outside the boundaries of the Conservation Area or
13 the Special Management Area that can be seen or
14 heard from within such a boundary.

15 **SEC. 404. TRIBAL RIGHTS AND TRADITIONAL USES.**

16 (a) TREATY RIGHTS.—Nothing in this Act affects the
17 treaty rights of any Indian Tribe, including rights under
18 the Agreement of September 13, 1873, ratified by the Act
19 of April 29, 1874 (18 Stat. 36, chapter 136).

20 (b) TRADITIONAL TRIBAL USES.—Subject to any
21 terms and conditions as the Secretary determines to be
22 necessary and in accordance with applicable law, the Sec-
23 retary shall allow for the continued use of the covered land
24 by members of Indian Tribes—

25 (1) for traditional ceremonies; and

- 1 (2) as a source of traditional plants and other
- 2 materials.



Dolores River Canyon National Conservation Area Proposal

Two-County Bill Briefing

September 2021

Find the draft legislation and accompanying materials here:

Bennet.Senate.Gov/DoloresRiverProposal

- Bill Text
- Map
- Summaries
- Input form

Initial public comment period goes until October 28, 2021

Where Did The NCA Proposal Come From?

- The NCA Proposal grew out of local collaborative discussions about the Dolores River Corridor.
- In 2008 the Dolores River Dialogue, which was a coalition of diverse interests in the region, at the request of the USFS and BLM convened a broad-based community group called the Lower Dolores Plan Working Group.
- The Working Group was open to all interested stakeholders and had over 40 members including: Counties, Ute Mountain Ute Tribe, water managing entities, agriculture interests, conservation interests, recreation interests, landowners, mineral development interests, and others.
- The charge to the group was to study pressing management issues in the Dolores River corridor from McPhee to Bedrock, including the suitability finding for Wild and Scenic River (WSR) federal designation.
- Along with concern that Wild and Scenic designation would carry a federal reserved water right, there were other concerns about the native fish and a potential ESA listing, or outside designations. While some stakeholders supported Wild and Scenic suitability and eventual designation, they were willing to look at other tools that would still protect values.
- The Working Group, through consensus agreement, decided to explore the concept of an NCA and appointed a smaller group called the Legislative Subcommittee to draft a proposal for further vetting. The Legislative Subcommittee included counties, water managers, conservation groups, landowners, recreationists, energy companies, and staff from the federal elected officials' offices.

Timeline

- 2004 Dolores River Dialogue (DRD) formed
- 2005 “Government to Government Roundtable” meetings were convened by public land management agencies and pointed out a need for local communities to get involved in water issues related to the USFS and BLM Land Management Plans.
- 2007 Draft BLM Land Management Plan released in 2007, which reaffirmed Wild and Scenic “suitability” for the Dolores River, and included the native fish as an “outstandingly remarkable value.”
- 2008 DRD approached by the Dolores Public Lands Office (USFS and BLM) to form a community group related to Lower Dolores management issues; DRD agreed and appointed a diverse stakeholder group called the Lower Dolores Plan Working Group (first meeting held 12/2008)
- 2010 After over a year of meetings, field trips, and speakers, the Lower Dolores Plan Working Group arrived at consensus to do a “special area” to resolve management issues on the Lower Dolores River, protect rights and achieve conservation goals; group appointed Legislative Subcommittee to work out details and develop a draft proposal for community/multi-county review and discussion. The group quickly went to work developing a NCA proposal.
- 2011 “A Way Forward” scientific inquiry into native fish was commissioned by the Legislative Subcommittee because talks on flow and fish issues were stalled and people wanted more accurate information on the science and on water availability/protection. The “Implementation Team” (now called the *Native Fish Monitoring and Evaluation Team*) started to discuss and potentially respond to the opportunities identified in the “A Way Forward” report.

Timeline

- 2013 Final BLM Land Management Plan was released, which maintained Wild and Scenic “suitability” for the Dolores River, and included the native fish as an “outstandingly remarkable value.”
- 2014 *Native Fish Implementation, Monitoring and Evaluation* Plan was finalized by the Native Fish Monitoring and Evaluation Team
- 2015 Legislative Subcommittee released draft, proposed NCA legislative bill for community and multi-county vetting and review. Various groups reviewed the bill and gave input. A subset of the Legislative Subcommittee, called the Drafting Team, went to work responding to input. Water attorney David Robbins was hired by four counties to help with the negotiations and to develop water language for the draft bill.

- 2017 Montezuma County took a vote to oppose the Proposal and stepped away from discussions. Montrose County also later stepped away from discussions.
- 2018 - 2019 Discussions quieted down, but Dolores and San Miguel Counties were still interested in moving forward. After efforts were made to re-engage others, they decided to focus on the area within their boundaries.
- 2020 Dolores and San Miguel counties formally asked Senator Bennet to introduce legislation for the portion of the proposal within their boundaries, while remaining open to working with Montezuma and Montrose counties.
- 2021 September 13 - Senator Bennet released two-county bill for formal public comment.

Summary of Modifications in Two-County Bill

- Removed provisions and language specific to Montezuma and Montrose Counties
- Removed reference to M&R Team and replaced with requirement for consultation with interested stakeholders
- Added additional language regarding Tribal rights
- Modified language regarding Dolores River Road



Draft Legislation - Walk Through Language Section by Section

Bennet.Senate.Gov/DoloresRiverProposal

Sections 1 & 2

Section 1. Short title and table of contents

- Generally self-explanatory
- Identifies title of the Act as “Dolores River National Conservation Area and Special Management Area Act”
- Provides a table of contents for entire bill

Section 2. Definitions

- Streamlines bill by use of shorthand terms
- **Example:**

(7) Secretary.—The term “Secretary” means—

(A) in title I, the Secretary of the Interior;

(B) in title II, the Secretary of Agriculture; and

(C) in title IV—

(i) the Secretary of the Interior, with respect to land under the jurisdiction of the Secretary of the Interior; and

(ii) the Secretary of Agriculture, with respect to land under the jurisdiction of the Secretary of Agriculture.

Title I - Dolores River National Conservation Area

Section 101. Establishment of Dolores River National Conservation Area.

(a) Establishment – the Conservation Area is established on BLM land only, **subject to valid existing rights**, and the acreage is specified.

(b) Purpose of area.

Actual draft language: (b) Purpose.—The purpose of the Conservation Area is to conserve, protect, and enhance the native fish, whitewater boating, recreational, scenic, cultural, archaeological, natural, geological, historical, ecological, watershed, wildlife, educational, and scientific resources of the Conservation Area.

(c) Maps and legal description.

NOTE: The Purpose section is overall guidance to the managing agencies. More specific legislative provisions always supersede purpose language.

Title I - Dolores River National Conservation Area (Continued)

Section 102. Management of Conservation Area.

Dictates how the BLM shall manage the area, including:

- (a) Other laws that must be complied with.
- (b) Ensuring that use of the Conservation Area matches the Purpose.
- (c) Requiring a management plan (including consultation with other agencies and the Advisory Council [established in Section 103]), and honoring of treaty rights.
- (d) Incorporation of acquired land (by willing sellers only, see Sec 401).
- (e) Effect on Department of Energy uranium leases.

NOTE: Some management direction is specific to the Conservation Area (Title I), since it's managed by the BLM; some is specific to the Special Management Area (Title II), since it's managed by the Forest Service. Other provisions, such as grazing, motorized travel, etc, apply to the entire area (defined as "Covered Land"), and so have their own section, Title IV General Provisions.

Title I - Dolores River National Conservation Area (Continued)

Section 103. Dolores River National Conservation Area Advisory Council

- (a) Establishes an Advisory Council, for both the Conservation Area AND Special Management Area.
- (b) The Council advises BLM and the Forest Service on preparation of the management plan.
- (c) Ensures compliance with relevant federal laws.
- (d) Defines the membership of the Council. (actual language on next slide)
- (e) Specifies length of terms of office.
- (f) Compensation policy.
- (g) Chairperson elected by councilmembers.
- (h) Meeting frequency.
- (i) Technical assistance.
- (j) Renewal of Council charter.
- (k) Duration of Council.

(d) Membership.—

(1) In general.—The Council shall include 11 members to be appointed by the Secretary, of whom, to the extent practicable—

(A) 2 members shall represent agricultural water user interests in the Conservation Area;

(B) 2 members shall represent conservation interests in the Conservation Area;

(C) 2 members shall represent recreation interests in the Conservation Area, 1 of whom shall represent whitewater boating interests;

(D) 1 member shall be a representative of Dolores County, Colorado;

(E) 1 member shall be a representative of San Miguel County, Colorado;

(F) 1 member shall be a private landowner that owns land in immediate proximity to the Conservation Area;

(G) 1 member shall be a holder of a grazing-allotment permit in the Conservation Area; and

(H) 1 member shall be a representative of the Ute Mountain Ute Tribe.

(2) Representation.—

(A) In general.—The Secretary shall ensure that the membership of the Council is fairly balanced in terms of the points of view represented and the functions to be performed by the Council.

(B) Requirements.—

(i) In general.—The members of the Council described in subparagraphs (A), (B), (C), (F), and (G) of paragraph (1) shall be residents of Dolores, San Miguel, Montezuma, Montrose, or La Plata County in the State.

(ii) County representatives.—The members of the Council described in subparagraphs (D) and (E), of paragraph (1) shall be—

(I) residents of the respective counties referred to in those subparagraphs; and

(II) capable of representing the interests of the applicable board of county commissioners.

Title II - Dolores River Special Management Area

Section 201. Designation of the Dolores River Special Management Area.

(a) Establishment – the Special Management Area is established on Forest Service land only, subject to valid existing rights, and the acreage is specified.

(b) Purpose of area.

Actual draft language: *(b) Purpose.—The purpose of the Conservation Area is to conserve, protect, and enhance the native fish, whitewater boating, recreational, scenic, cultural, archaeological, natural, geological, historical, ecological, watershed, wildlife, educational, and scientific resources of the Conservation Area.*

(c) Maps and legal description.

NOTE: The Purpose section is overall guidance to the managing agencies. More specific legislative provisions always supersede purpose language.

Title II - Dolores River Special Management Area (Continued)

Section 202. Management of Special Management Area.

Dictates how the Forest service shall manage the area, including:

- (a) Other laws that must be complied with.
- (b) Ensuring that use of the Conservation Area matches the Purpose.
- (c) Requiring a management plan (including consultation with other agencies and the Advisory Council [established in Section 103]), and honoring of treaty rights.
- (d) Incorporation of acquired land (by willing sellers only, see Sec 401).

Title III - Technical Modifications to Potential Additions to the National Wild and Scenic Rivers System

Section 301. Purpose.

- To release portions of the Dolores River within the Conservation Area and Special Management Area from potential addition under the Wild and Scenic Rivers Act.

Section 302. Release of Dolores River Study Area.

- Removes portions of the Dolores River inside the designated area from the list of study rivers in the Wild and Scenic Rivers Act.

Section 303. Applicability of Continuing Consideration Provision.

- States that the Dolores River within the Conservation Area and Special Management Area may no longer be studied for potential wild and scenic designation.

Title IV - General Provisions

Section 401. Management of Covered Land.

- (a) Motorized Vehicles. Motorized use is limited to designated routes, except for administrative purposes (ie. grazing) or emergencies. No new roads may be constructed, except for the reasons above, or allowable access to private land (see subsection (c) below).
- (b) The Covered Land is withdrawn from new mining or leasing activities, though valid existing claims can be continued.
- (c) Any land or interests acquired in the Conservation Area or Special Management Area may only be from willing sellers.
- (d) Grazing. Grazing is to be managed the same as it is under other lands managed by the BLM and Forest Service, ie no additional restrictions.
- (e) Access to Private Land. Requires the agencies to grant reasonable access to private land in the Conservation Area and Special Management Area, if other routes are blocked by physical barriers, such as the Dolores river and cliffs of the river.

Title IV - General Provisions (Continued)

Section 401. Management of Covered Land. (Continued)

- (f) Easements. The agencies may lease or acquire easements on private land, from willing lessors or sellers, to recreation access, conservation, or other uses that are consistent with the Purpose of the Conservation Area or Special Management Area.
- (g) Wildfire, Insect, and Disease Management. The agencies may take any steps they determine necessary for the control of wildfire, insects, and disease.
- (h) Management for Ponderosa Gorge. Ponderosa Gorge includes the entire Conservation Area/Special Management Area from Bradfield Bridge to the Dove Creek Pump Station, and the eastern side of the canyon from Dove Creek Pump Station to roughly 2 miles north of Joe Davis Hill. The Ponderosa Gorge is to be managed to maintain its wilderness character, with roads, motorized use, and timber cutting prohibited except for administration and emergencies.
- (i) The bill does not affect the operation, maintenance, or issuance of new permits associated with the existing utility corridor that crosses the river in this section.

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests.

(a) Dolores Project.

The Dolores Project and operation of McPhee Reservoir will remain under the jurisdiction of the Bureau of Reclamation and Dolores Water Conservancy District. Nothing in the bill affects the Project and operation, subject to the existing laws and regulations that already apply.

Actual Draft Language:

(a) Dolores Project.—

(1) Operation.—The Dolores Project and the operation of McPhee Reservoir shall continue to be the responsibility of, and be operated by, the Secretary, in cooperation with the Dolores Water Conservancy District, in accordance with applicable laws and obligations.

(2) Effect.—Nothing in this Act affects the Dolores Project or the operation of McPhee Reservoir, in accordance with—

(A) the reclamation laws;

(B) any applicable—

(i) Dolores Project water contract, storage contract, or carriage contract; or

(ii) allocation of Dolores Project water;

(C) the environmental assessment and finding of no significant impact prepared by the Bureau of Reclamation Upper Colorado Region and approved August 2, 1996;

(D) the operating agreement entitled “Operating Agreement, McPhee Dam and Reservoir, Contract No. 99-WC-40-R6100, Dolores Project, Colorado” and dated April 25, 2000 (or any subsequent renewal or revision of that agreement);

(E) mitigation measures for whitewater boating, including any such measure described in—

(i) the document entitled “Dolores Project Colorado Definite Plan Report” and dated April 1977;

(ii) the Dolores Project final environmental statement dated May 9, 1977; or

(iii) a document referred to in subparagraph (C) or (D);

(F) applicable Federal or State laws relating to the protection of the environment, including—

(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(iii) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(G) the Colorado Ute Indian Water Rights Settlement Act of 1988 (Public Law 100–585; 102 Stat. 2973).

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests. (Continued)

(b) Management of Flows.

In managing flows below McPhee Dam, the Bureau of Reclamation shall seek to provide regular and meaningful consultation and collaboration with interested stakeholders.

Actual Draft Language:

(b) Management of Flows.—

(1) In general.—In managing available flows below McPhee Dam for the native fish and whitewater boating resources in the Conservation Area, the Secretary shall seek to provide regular and meaningful consultation and collaboration with interested stakeholders in the initial phase of, and throughout, the process of decisionmaking with respect to managing flows below McPhee Dam.

(2) Annual report.—Beginning on the date that is 1 year after the date of enactment of this Act and annually thereafter, the Commissioner of Reclamation shall prepare and make publically available a report that describes any progress with respect to the conservation, protection, and enhancement of native fish in the Dolores River.

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests. (Continued)

(c) Large-Scale Water Development.

The managing agencies must ensure that any large-scale water development located outside the Conservation Area or Special Management Area do not unreasonably diminish the scenic, recreational, and fish and wildlife values of the Conservation Area or Special Management Area.

Actual Draft Language:

(c) Large-scale Water Development.—Subject to valid existing rights and subsection (e), the Secretary shall ensure that any new large-scale water development located outside the Conservation Area or Special Management Area with the potential to affect any portion of the Dolores River in the Conservation Area or Special Management Area would not unreasonably diminish (as that term is used in section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278(a)) and as that term is applied in Appendix D of the Technical Report of the Interagency Wild and Scenic Rivers Coordinating Council entitled “Wild & Scenic Rivers: Section 7” and dated October 2004) the scenic, recreational, and fish and wildlife values of the Conservation Area or Special Management Area.

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests. (Continued)

(d) No new dams shall be constructed on the covered land.

Actual Draft Language:

(d) Prohibition of New Dams.—Subject to subsection (e), no new dams shall be constructed on the covered land.

(e) Section (c) and (d) above do NOT apply to small diversion dams, stock ponds, new minor water developments, or maintenance of existing structures.

Actual Draft Language:

(e) Limitation.—Subject to the requirements of this section, nothing in subsection (c) or (d) prevents the construction of small diversion dams or stock ponds, new minor water developments according to existing decreed water rights, or modifications to existing structures on the covered land.

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests. (Continued)

(f) Existing Water Resource Facilities. Nothing in the bill affects any existing water resource facility (long list of examples included), or access and maintenance of such.

Actual Draft Language:

(f) Existing Water Resource Facilities.—Nothing in this Act—

(1) affects any existing water resource facilities on the covered land, including irrigation and pumping facilities, pumps, equipment, mobile pumps or pumping equipment, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities including power lines, and other water diversion, storage, and carriage structures; or

(2) impedes or restricts access to facilities described in paragraph (1) for operation, maintenance, repair, or replacement.

Title IV - General Provisions (Continued)

Section 402. Protection of Water Rights and Other Interests. (Continued)

(g) Effect. Nothing in the bill affects any decreed water right, vested absolute or decreed conditional right, interstate water compact, or State jurisdiction over water rights, in existence at the time the bill is enacted. Nothing in the bill imposes any new flow requirements or water quality standards. No federal water rights are created by the bill.

Actual Draft Language:

Effect.—Nothing in this Act—

(1) affects—

(A) any water right that is—

(i) decreed under the laws of the State; and

(ii) in existence on the date of enactment of this Act;

(B) the use, allocation, ownership, or control, in existence on the date of enactment of this Act, of any water or water right;

(C) any vested absolute or decreed conditional water right in existence on the date of enactment of this Act, including any water right held by the United States;

(D) any interstate water compact in existence on the date of enactment of this Act; or

(E) State jurisdiction over any water law, water right, or adjudication or administration relating to any water resource;

(2) imposes—

(A) any mandatory streamflow requirement within the covered land; or

(B) any Federal water quality standard within, or upstream of, the covered land that is more restrictive than would be applicable if the covered land had not been designated as the Conservation Area or Special Management Area under this Act; or

(3) constitutes an express or implied reservation by the United States of any reserved or appropriative water right within the covered land.

Title IV - General Provisions (Continued)

Section 403. Effect on Private Property and Regulatory Authority.

(a) Effect. Nothing in the bill -

- (1) Affects valid existing rights;
- (2) Requires private landowners to bear any costs associated with management;
- (3) Affects the jurisdiction of the State over fish and wildlife;
- (4) Affects local zoning laws; or
- (5) Affects jurisdiction, use, or maintenance of county roads in the covered land. This applies to the Dolores River Road as well, except that it must be maintained in its present primitive condition.

(b) Adjacent Management. No buffer zones are created around the Conservation Area/Special Management Area, and the bill does not affect activities conducted on private land.

Title IV - General Provisions (Continued)

Section 404. Tribal Rights and Traditional Uses.

Actual draft language:

(a) Treaty Rights.—Nothing in this Act affects the treaty rights of any Indian Tribe, including rights under the Agreement of September 13, 1873, ratified by the Act of April 29, 1874 (18 Stat. 36, chapter 136).

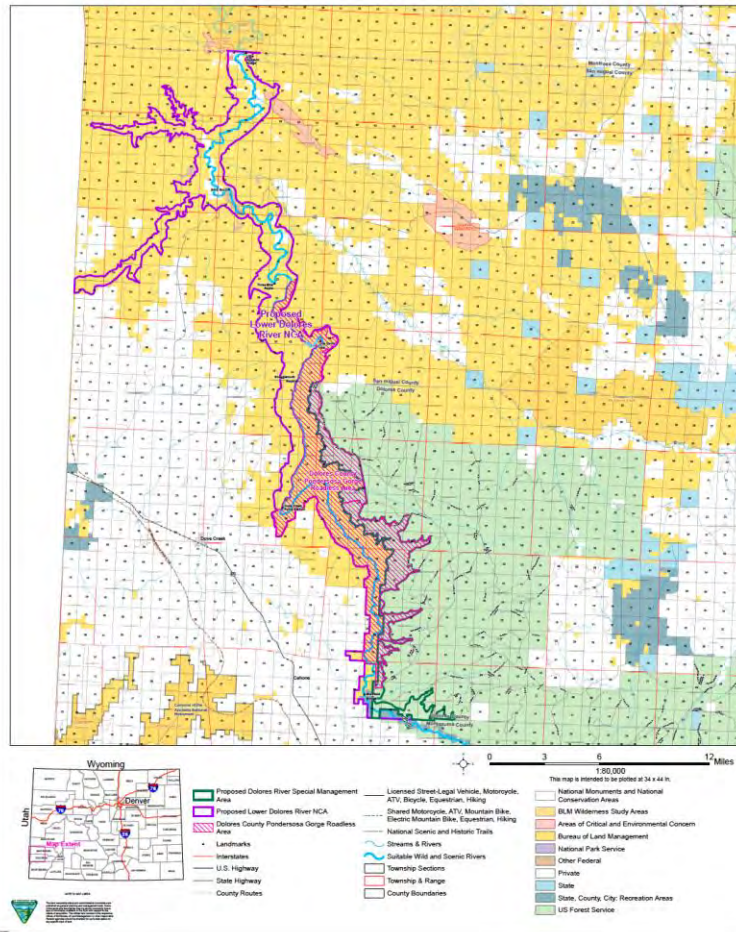
(b) Traditional Tribal Uses.—Subject to any terms and conditions as the Secretary determines to be necessary and in accordance with applicable law, the Secretary shall allow for the continued use of the covered land by members of Indian Tribes—

(1) for traditional ceremonies; and

(2) as a source of traditional plants and other materials.

Proposed Dolores River National Conservation Area and Special Management Area June 22, 2021

This map prepared at the request of Senator Michael Bennet



Process Moving Forward/How to Comment

October 28th will be the initial comment deadline

Bennet.Senate.Gov/DoloresRiverProposal

Please feel free to call John Whitney, Senator Bennet's Western Slope Regional Director, at 970-903-4467 to discuss the bill further or reach any member of the team who gave this presentation today.

Senator Bennet's office will review all input and comments on the bill and we hope to have the bill ready for formal introduction in the US Senate by the end of the year.

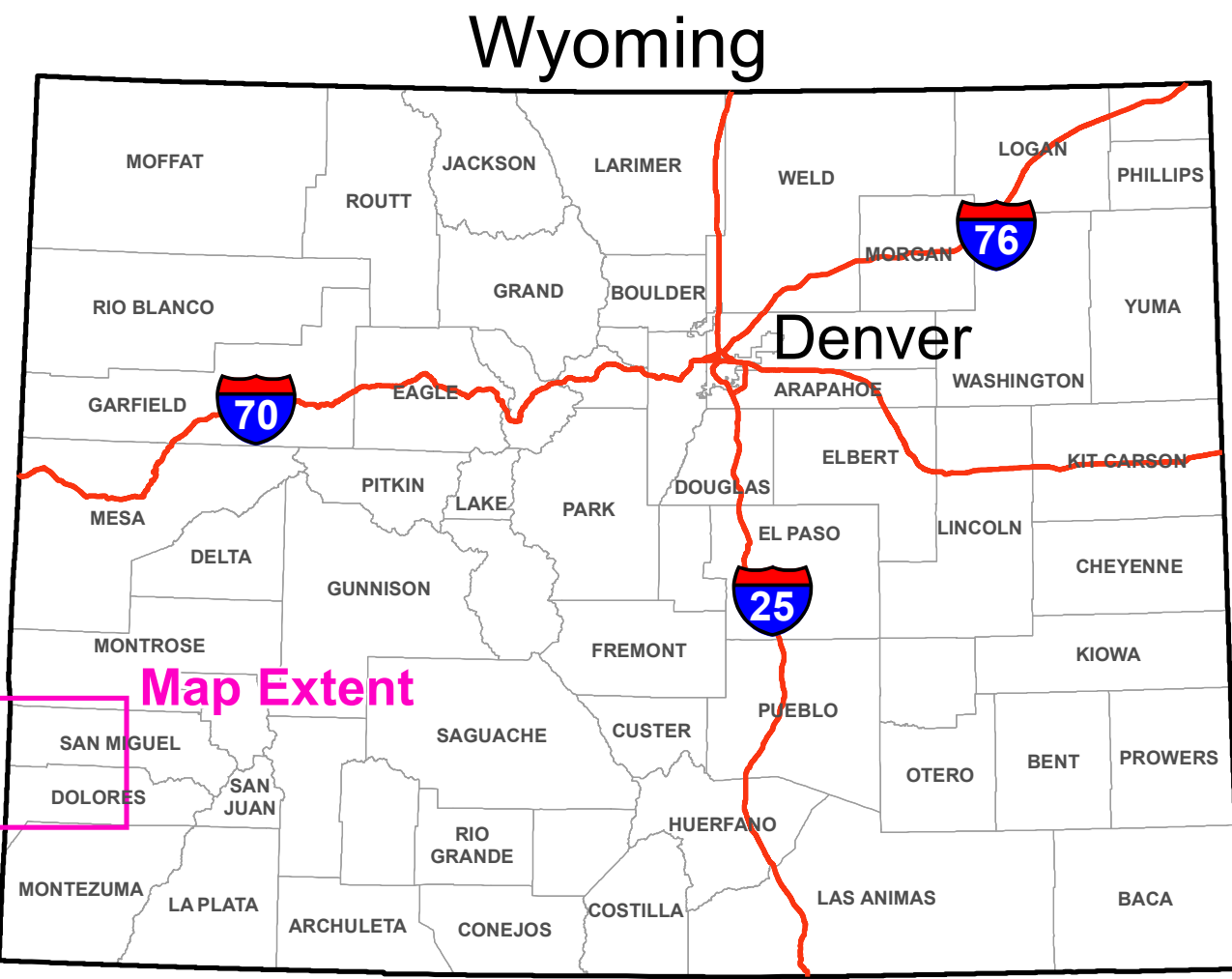
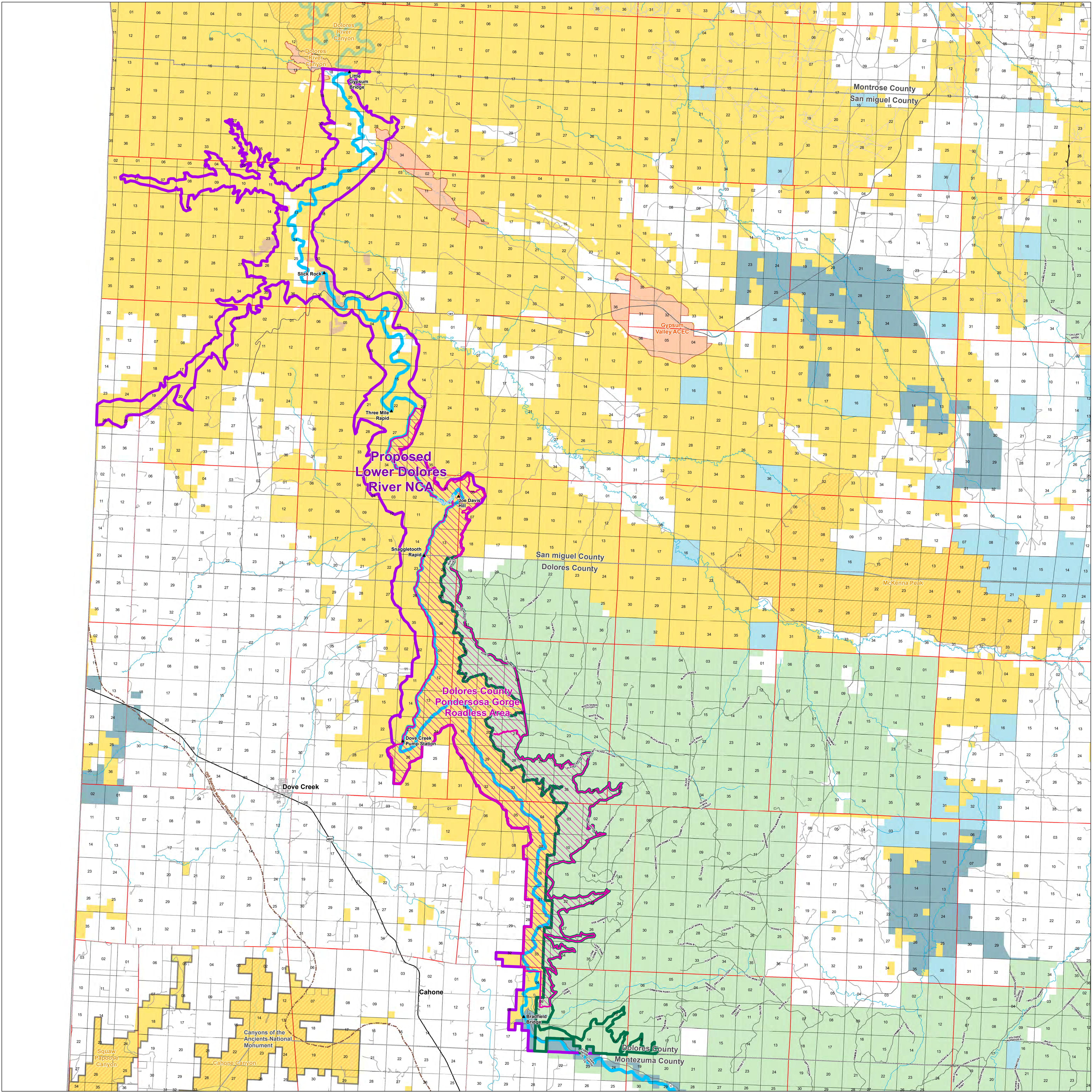
Questions?



Proposed Dolores River National Conservation Area and Special Management Area

June 22, 2021

This map prepared at the request of Senator Michael Bennet

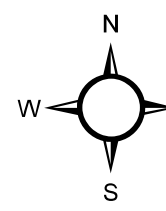


NOTE TO MAP USERS

- Proposed Dolores River Special Management Area
- Proposed Lower Dolores River NCA
- Dolores County Pondersosa Gorge Roadless Area
- Landmarks
- Interstates
- U.S. Highway
- State Highway
- County Routes

- Licensed Street-Legal Vehicle, Motorcycle, ATV, Bicycle, Equestrian, Hiking
- Shared Motorcycle, ATV, Mountain Bike, Electric Mountain Bike, Equestrian, Hiking
- National Scenic and Historic Trails
- Streams & Rivers
- Suitable Wild and Scenic Rivers
- Township Sections
- Township & Range
- County Boundaries

- National Monuments and National Conservation Areas
- BLM Wilderness Study Areas
- Areas of Critical and Environmental Concern
- Bureau of Land Management
- National Park Service
- Other Federal
- Private
- State
- State, County, City: Recreation Areas
- US Forest Service



0 3 6 12 Miles

1:80,000

This map is intended to be plotted at 34 x 44 in.



The land ownership status and administrative boundaries are published as general planning and management tools. Some of the lands and boundaries may be shown incorrectly due to lack of information available to the BLM with respect to the status of acquisition. The official records in the respective offices of the Bureau of Land Management or other responsible Federal agencies should be consulted for up-to-date status on any specific tract of land.

SAN MIGUEL RIVER ENHANCEMENT PROGRAM

September 2021



Background

Mining and reclamation at the New Horizon Mine occurred contemporaneously through August 2018, when mining activities ceased. About half of the land within the historic mine permit boundary has been returned to surface landowners as dryland or irrigated pastures or prime farmland, and the majority of the 400 acres still within the mine permit boundary have been reclaimed and returned to agricultural production. The remaining reclamation work is about 100 acres associated with the Dakota Spring.

The Dakota Spring, which is decreed as the New Horizon 2 Mine Pump, is a groundwater right that recharges regionally and surfaces within the New Horizon Mine permit boundary. Before mining occurred on the property, there was natural seepage from the existing coal seams. After mining occurred and backfill material replaced the coal, the seepage is collecting in the backfill and feeding the Dakota Spring. As those who live in the area know, the groundwater in the region has a long history of not meeting water quality standards. Dakota Spring water is no different and given its valuable contribution to regional surface flows, Tri-State has developed options to manage the spring long-term.

Proposed Management Plan for Dakota Spring

Tri-State looked at dozens of options for managing Dakota Spring, including deep well injection, reverse osmosis, evaporation ponds, and this proposed management plan. After analyzing these options, Tri-State's preference is to pipe Dakota Spring water to seepage-resistant ponds on Nucla Station property, where it would be blended with Tri-State's Nucla Station water rights from the San Miguel River, to moderate temperature and chemistry balance before routing the blended water back to the river. Tri-State's Nucla Station water rights, supplemented by Dakota Spring water, would provide enhanced flow volume above the town of Naturita, increasing options for a variety of uses, including agricultural, recreational, piscatorial, and environmental uses.

Benefit of the Proposed Management Plan

Despite the region's low-quality groundwater, which the community is familiar with treating, Tri-State appreciates the considerable value in keeping Dakota Spring water within the regional watershed, including:

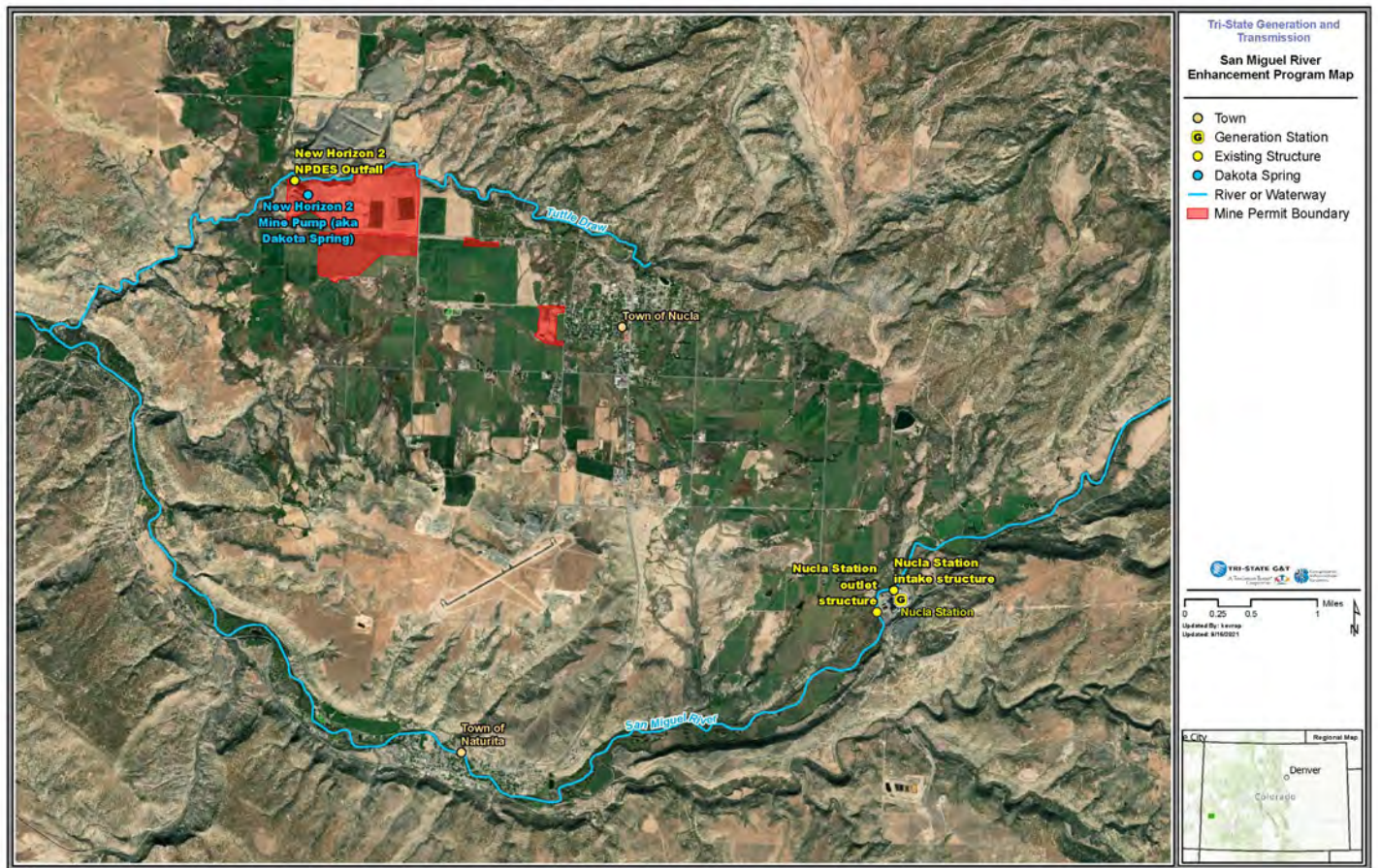
- Improving Dakota Spring water quality for various uses along the San Miguel River
- Enhancing the volume of water in the San Miguel River above the town of Naturita, to the benefit of water users and the ecosystem downstream

Nucla Water Rights Change Application

As part of the Proposed Management Plan, Tri-State applied to the Colorado Water Court, Division 4, to change its Nucla Station water rights from power plant cooling and industrial uses to an industrial/environmental use. The change will allow Tri-State to blend Nucla Station and Dakota Spring water at the station site before release to the San Miguel River. Tri-State's application also includes a request to "re-use" and "successively use" a portion of its changed water rights which, if granted, may provide additional water flow and additional beneficial uses on the San Miguel River under a senior decreed water right. The application was filed on August 27, 2021 and the case number is 2021CW3039.

Since the option to supplement the San Miguel River flows at Nucla Station has higher costs than some alternatives for managing Dakota Spring water, Tri-State hopes to find partners to share those costs. Tri-State looks forward to further conversations with water users on the Proposed Management Plan.

Regional Map of Horizon Mine and Nucla Generating Station Site





www.scienceonthefly.org
allie@scienceonthefly.org
(508) 748-0632
149 Woods Hole Road
Falmouth, MA, 02540-1644

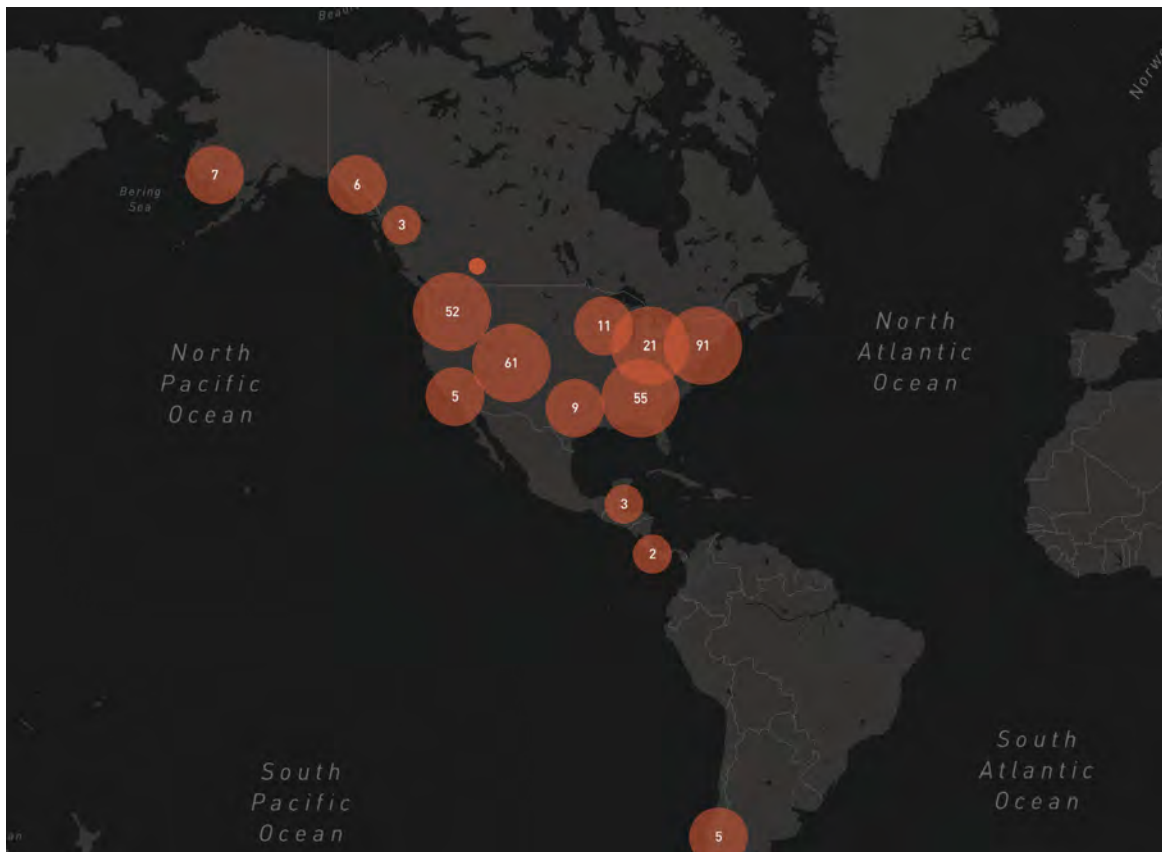
Science on the Fly is a project out of Woodwell Climate Research Center, a non-profit with top researchers leading the charge on climate science data collection, understanding climate change, and creating an impact on climate change policies. We are also partnered with Fishpond, a sustainable fly-fishing bag company. Science on the Fly (SOTF) seeks to further our understanding of changing watersheds around the world through long-term, world-class river science. With a growing list of partners and supporters, we aim to bridge the gap between science and public policy and to activate and inspire a broad community of river stewards to take ownership of that process.



Science on the Fly strategically partners with the enthusiastic and passionate fly fishing community around the world to increase the number of rivers that are subject to long-term studies of water quality and watershed health. These anglers (citizen scientists) collect water samples monthly in designated locations around their watershed. These samples then get shipped to Woodwell Climate Research Center to be analyzed by climate scientists. In our water samples, we are looking at the nutrients and organic compounds found within the watershed,

over time. This includes Nitrate, Phosphate, Silica, Ammonium, Dissolved Organic Carbon and Total Dissolved Nitrogen, air temperature, and water temperature. We want to see how our watershed and river systems change over time due to climate change and other human impacts. Along with adding to the dataset of water climate science, we plan on using this data to help have an impact when creating or enforcing policies on our watersheds, especially when it comes to the subject of climate change. All of our data is public and available on our website.

Science on the Fly began in 2019 with a few sites near Telluride, Colorado. We've grown far faster than we ever imagined was possible- thanks to the incredible fly fishing community that understands the risks they are facing with their changing climate. Our program now has over 100 volunteers, 330 sites, 39 states, 6 countries, and over 3600 sample bottles in circulation. This remarkable growth is a testament to the power of our mission, the awesomeness of our volunteers, and the generosity of our donors!



Due to our rapid growth, we have slowed down our onboarding so that we can focus on the sustainability of our program. Each bottle costs roughly \$100 to analyze, and if we have over 300 locations getting analyzed monthly, this can add up to a pretty penny. We have put in place our new program, "Sponsor A River", where organizations can sponsor the cost of water samples on a river for an entire year. We are also taking the time to listen and review the

program with our current volunteers so that we can find ways to make the program better, lower our own carbon footprint and become more efficient.

We have a small yet mighty team for Science on the Fly. Our SOTF team includes:

Dr. Max Holmes - Acting President and Executive Director of Woodwell Climate Research Center.

Allie Cunningham - Director for Science on the Fly

John Land Le Coq - Founder and CEO of Fishpond

Anya Suslova - Assistant at Woodwell Climate Research Center

Greg Fiske - Senior Geospatial Analyst at Woodwell Climate Research Center


Lindsay Scott - Lab Manager and Research Assistant at Woodwell Climate Research Center


Stash Wislocki - Film Director


Jack Reis - Director of Marketing at Fishpond


Stephen Rockwood - Graphic Designer at Patagonia

You can check out our website at www.scienceonthefly.org. We have interactive maps of sampling locations as well as nutrient densities maps. Our data is public on the website under the "rivers" tab. If you have any comments, questions, or suggestions for Science on the Fly, we would love to hear from you! Please reach out to Allie at allie@scienceonthefly.org.

	A	B	C	D	E	F	G	H	I
1		SOUTHWESTERN WATER CONSERVATION DISTRICT PROPOSED 2022 BUDGET 						Version 9-28-21	
2	StratPlan Priority		ACTUAL 2020	ADOPTED BUDGET 2020	ADOPTED BUDGET 2021	YEAR TO DATE 8/31/21	ESTIMATED YEAR END	PROPOSED BUDGET 2022	NOTES FOR BOARD & STAFF
3		Beginning Fund Balance	3,202,268	3,116,867	3,776,368	3,756,612	3,756,612	4,094,366	
4									
5		REVENUES							
6		Property Tax	1,593,812	1,620,102	1,588,850	1,533,819	1,588,850	1,576,934	2022 mill levy .407; 2022 preliminary assessed valuation \$3,874,531,469
7		Specific Ownership Tax	147,681	100,000	130,000	87,455	130,000	120,000	Reduced to reflect board comments
8		Interest, PILT & Other Tax Revenue	36,781	35,500	35,500	30,103	35,500	35,500	
9		Other Income	173,224	172,679	161,868	109,698	128,614	107,633	
10		Interest Earned	61,688	40,000	40,000	33,367	50,000	30,000	Investment interest
11		Loan Interest	275	275	139	139	139	0	No outstanding loans
12		Miscellaneous	4,878	5,000	5,000	3,739	4,800	5,200	CWCB reimbursement of Roundtable recorder duties + ALP/WIP
13		Water Seminar Registration	0	6,000	2,000	0	0	6,000	
14		WIP Cost Sharing	93	200	100	390	450	0	Moved to Miscellaneous
15		San Juan Recovery Program Water User Committee	50,873	50,873	50,873	-	0	0	No longer collecting assessments on behalf of Committee
16		Stream Gaging	18,613	32,481	28,656	26,125	27,125	27,633	
17		Water Information Program	36,804	37,850	35,100	45,938	46,100	38,800	*Recommended by WIP Steering Committee
18		County Treasurer Fees	(46,660)	(52,668)	(52,631)	(43,847)	(52,631)	(51,973)	
19		TOTAL REVENUES	1,904,838	1,875,613	1,863,588	1,717,228	1,830,333	1,788,094	
20		TOTAL RESOURCES	5,107,106	4,992,480	5,639,956	5,473,840	5,586,945	5,882,460	
21									
22		EXPENSES							
23		District Adminstration	630,402	820,325	822,310	453,530	789,533	862,362	
24	All	Management	167,491	272,629	234,998	117,817	203,011	237,222	
25		Wages - Executive Director	71,794	146,450	-	-	-	-	
26		Wages - General Manager	-	-	130,000	23,250	70,500	130,000	
27		Wages - Programs Coordinator	49,703	50,393	50,393	34,011	50,393	51,905	\$24.96/hour for estimated 2,080 hours; includes 2022 3% raise - sww
28		Wages - Payroll Taxes	9,896	17,716	16,235	4,412	10,880	16,371	
29		Wages - Retirement Benefit	5,787	11,811	9,020	-	-	9,095	5% employer match
30		Wages - Health & Life Insurance	19,986	46,260	29,350	14,256	29,350	29,350	Up to \$1200/month/employee + \$307.08 life insurance
31		Bonus - Executive Director or General Manager	-	-	-	-	-	-	
32		Bonus - Programs Coordinator	500	-	-	-	-	-	
33		Recruitment	9,825	-	-	41,888	41,888	500	Treese admin/policy/hiring, postings, moving costs
34									
35	1, 3	Legal	258,123	240,000	325,000	181,623	318,380	292,000	
36		Attorney Fees/General Counsel	184,299	140,000	180,000	134,364	235,880	200,000	
37		Attorney Travel Exps/General Counsel	1,152	15,000	15,000	2,798	3,000	12,000	
38		Litigation/General Counsel	42,701	30,000	40,000	21,762	35,000	40,000	
39		Colorado River Litigation/General Counsel	-	40,000	40,000	-	-	-	
40		Attorney Fees/Special Counsel	29,971	10,000	45,000	22,700	44,500	35,000	Trout Raley, Magruder
41		Attorney Exps/Special Counsel	-	5,000	5,000	-	-	5,000	
42									
43	1, 2, 3, 4	Engineering and Technical Services	78,816	120,000	120,000	76,967	160,000	190,000	
44		Engineering Fees/ General	34,523	45,000	45,000	16,585	30,000	45,000	Harris Water
45		Engineering Fees/Special Projects	8,168	25,000	25,000	34,922	70,000	45,000	Wright Water

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46		Engineering Fees/Modeling	36,125	50,000	50,000	16,540	45,000	50,000	Hydros
47		Other Technical Services	0	0	0	8,920	15,000	50,000	
48									
49	All	Board of Directors	32,934	52,000	31,000	15,349	25,000	30,000	
50		Director Fees	27,700	21,000	20,000	13,350	20,000	20,000	
51		Director Travel	5,234	31,000	11,000	1,999	5,000	10,000	
52									
53	All	Office Expenses	93,038	135,696	111,312	61,773	83,142	113,140	
54		Accounting	3,975	500	5,000	3,225	5,000	5,000	
55		Audit	8,200	8,400	8,600	8,700	8,700	10,000	*Awaiting auditor selection
56		Capital Outlay	15,260	15,000	5,000	2,890	2,890	5,000	
57		Casual Labor	-	200	200	-	-	200	
58		SDA Membership	1,236	1,900	1,900	1,238	1,238	1,500	
59		Equipment Leasing	1,800	1,800	1,800	1,200	1,800	1,800	
60		Insurance - General Liability	6,734	6,000	7,300	7,577	7,577	8,000	
61		Legal Notice	189	600	600	-	300	600	
62		Manager's Discretionary Budget	759	2,000	2,000	-	-	-	
63		Meeting Expenses	1,165	10,000	5,000	1,095	2,500	5,000	
64		Miscellaneous Expenses	162	500	500	69	200	500	
65		Office Expenses	4,597	7,500	6,000	2,656	4,000	6,000	
66		Postage	1,828	1,000	1,500	2,390	3,000	3,000	
67		Registration Fees	6,348	8,500	8,500	3,349	6,000	8,500	
68		Rent	29,476	30,796	31,412	22,515	31,412	32,040	2% contractual increase
69		Staff Training & Professional Development	-	2,500	2,500	25	25	2,500	
70		Staff Travel	8,150	35,000	20,000	2,421	5,000	20,000	
71		Telecommunications	3,159	3,500	3,500	2,423	3,500	3,500	
72									
73		Water Supply - Quantity & Quality	550,188	1,728,080	687,634	333,839	513,633	552,891	
74	1, 2, 3, 4	Regional and Interstate Water Planning, including protection of compact entitlements	175,347	1,096,246	228,746	72,913	115,873	128,112	
75		SWCD Water Defense	0	350,000	0	0	0	0	
76		SWCD Water Development	0	500,000	0	0	0	0	
77		San Juan Recovery Program Water User Cmt	101,147	101,746	101,746	50,873	50,873	38,112	Reduced to reflect SWCD's cost only, contractors are now paid by San Juan Water Commission
78		Southwestern Colorado Permanent Radar	-	10,000	10,000	-	-	-	
79		Water Bank Working Group	11,000	17,500	-	-	-	-	
80		Weather Modification (SW Colorado)	63,200	117,000	117,000	22,040	65,000	90,000	
81									
82		SWCD Project Water Rights	-	10,000	10,000	-	-	-	
83									
84	1, 2, 3, 4	Public Forums, Data Collection and Related Efforts	123,621	136,140	127,594	17,516	125,794	130,385	
85		Bonita Peak Community Advisory Group	5,000	5,000	5,000	5,000	5,000	5,000	
86		Center for Snow & Avalanche Studies	7,000	7,000	7,000	7,000	7,000	7,000	
87		Stream Gaging/Federal	97,111	108,500	99,954	4,016	99,954	102,745	\$100,957+\$1788 Slick Rock
88		Stream Gaging/Colorado	2,400	2,640	2,640	-	2,640	2,640	Cherry Creek and Long Hollow DWR

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89		Water Quality Studies	12,110	13,000	13,000	1,500	11,200	13,000	CPW/CDPHE mercury testing, San Miguel Watershed Coalition & Pine River Watershed Group
90									
91	2, 3, 4	Local Water Community Financial Support	247,016	400,000	230,000	162,142	185,642	250,000	
92		Previously Committed Local Financial Support	4,204	85,694	91,294	81,268	86,324	44,394	*Awaiting final decisions on grant extensions
93		Farmers Water Development Company						27,642	2021 disbursement or 2022 grant extension TBD
94		Montezuma School to Farm Project						5,000	2021 disbursement or 2022 grant extension TBD
95		Town of Ophir					23,500		2021 disbursement planned
96		Town of Silverton						11,752	2022 grant extension request
97									
98		Water Policy & Legislation	72,351	75,950	90,950	71,963	84,563	103,300	
99	1, 2, 3, 4	Federal	50,708	55,500	55,500	37,500	50,000	55,500	
100		Lobbying Fees	50,000	50,000	50,000	37,500	50,000	50,000	
101		Lobbying Expenses	708	5,500	5,500	-	-	5,500	
102									
103	1, 2, 3, 4	State	0	0	10,000	9,825	9,825	21,300	
104		Lobbying Fees	-	-	10,000	9,825	9,825	20,300	
105		Lobbying Expenses	-	-	-	-	-	1,000	
106									
107	1, 2, 3, 4	Dues & Memberships	21,643	20,450	25,450	24,638	24,738	26,500	
108		Club 20	300	300	300	300	300	300	
109		CO River Water Users Assn	-	100	100	-	100	200	
110		CO Water Congress	11,293	10,000	15,000	14,288	14,288	15,000	\$10,000 as dues, etc; \$5,000 reserved for board discretion for other requests
111		Ditch & Reservoir Co. Alliance	250	250	250	250	250	500	
112		Family Farm Alliance	9,300	9,300	9,300	9,300	9,300	10,000	
113		4 Corners Farmers & Ranchers Coalition	500	500	500	500	500	500	
114									
115	1, 2, 3	Water Education / Outreach	97,550	137,095	138,795	56,708	104,850	140,795	
116		Water Info Program	65,012	72,095	72,295	40,878	65,000	85,295	2022 SWCD Match Estimate \$32,600; total revenues and costshare \$71,000, \$85,295, diff of \$13895
117		SWCD Children's Water Festival	658	9,500	10,500	350	350	10,500	
118		Water Leader Program Scholarship	3,500	5,000	5,000	4,000	4,000	5,000	
119		Watershed Education Program	6,000	6,000	6,000	-	6,000	6,000	San Miguel Basin
120		Water Education Colorado	10,500	10,500	11,000	11,000	11,000	10,000	
121		SWCD Educational Events	880	18,000	18,000	-	6,000	18,000	Seminars or webinars
122		Event Sponsorships	1,000	6,000	6,000	480	2,500	6,000	GM discretionary approval of requests up to \$1,000
123		Demo CSU Farm/Water Efficiency	10,000	10,000	10,000		10,000		Consider as grant applicant
124									

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125		TOTAL OPERATING EXPENSES	1,350,491	2,761,450	1,739,689	916,040	1,492,579	1,659,348	
126		TABOR Contingency Reserve	-	84,424	52,191	-	-	49,780	3% of total budgeted expenses
127		SWCD Contingency Reserve	-	96,414	75,000	-	-	75,000	To support unanticipated expenses
128		TOTAL APPROPRIATED FUNDS	1,350,491	2,942,288	1,866,879	916,040	1,492,579	1,784,128	
129		Excess Revenue Over (Under) Expenses	554,347	(1,066,675)	(3,291)	801,188	337,754	3,965	*Reflects \$13,895 deficit spending in WIP budget (recommended by SC)
130		ENDING FUND BALANCE	3,756,615	2,050,192	3,773,077	4,557,800	4,094,366	4,098,331	
131		<i>Restricted - 3% TABOR reserve</i>					49,780		Projected year end fund balance detail for board discussion
132		<i>Committed - Undisbursed grants</i>					44,394		
133		<i>Assigned - WIP year end carryover</i>					140,000		
134		<i>Assigned - SWCD Water Defense</i>					2,016,115	256,115	increase from total of 1,760,000 as of 12/31/20 (60% of remainder)
135		<i>Assigned - SWCD Water Development</i>					1,344,077	204,077	increase from total of 1,140,000 as of 12/31/20 (40% of remainder)
136		<i>Unassigned - i.e. general operating for 1Q 2022</i>					500,000		



SOUTHWESTERN WATER CONSERVATION DISTRICT

DRAFT 2022 BUDGET MESSAGE

Highlighted sections are subject to change prior to final December budget adoption.

ABOUT SWCD

The Southwestern Water Conservation District ("SWCD") consists of all or part of nine counties in southwestern Colorado: Archuleta, Dolores, La Plata, Montezuma, San Juan, San Miguel, and parts of Hinsdale, Mineral, and Montrose counties. Each Board of County Commissioners appoints a representative to the SWCD Board of Directors. The board meets regularly, and the schedule (while subject to change) is available at swwcd.org.

SWCD was formed by the Colorado General Assembly on April 16, 1941, and charged with the conservation, use, and development of the water resources of the San Juan and Dolores rivers basins. SWCD is charged by statute ([C.R.S. §37-47-101](#)) to safeguard for Colorado all waters to which the state of Colorado is equitably entitled and has such powers as are necessary to carry out this mandate. Within [SWCD's boundaries](#) are the San Juan and Dolores River Basins, in which there are nine distinct watersheds.

Following this mandate, SWCD maintains a broad strategic role on behalf of its diverse constituents. SWCD advocates for southwestern Colorado's water interests at the local, state, regional, and federal level.

For more information about SWCD, please visit swwcd.org, call 970-247-1302, or email lauras@swwcd.org. The SWCD office is located at 841 East Second Avenue in Durango, Colorado.

BRIEF BUDGET OVERVIEW

SWCD will provide the following services during the 2022 budget year: support the conservation, development and management of water use in southwestern Colorado; safeguard all waters to which the State is equitably entitled; participate in and provide funding for data collection; support, participate in, and lead local policy efforts; represent southwestern Colorado on federal and state policy concerns; and provide a variety of public education on water-related issues. Finally, SWCD will seek to serve constituents in providing general water information as requested.

SWCD's accounting is performed on a modified accrual basis, consistent with generally accepted accounting practices. SWCD's financial statements are [audited annually](#).

BUDGET DETAIL: REVENUE AND EXPENSES

This budget reflects estimated revenues and proposed expenditures for 2022. For your reference and information, please find below a detailed description of the budget by line item.

SWCD's total budgeted revenues for 2022 are \$1,788,094.

Property Tax. SWCD is supported through a mill levy, which is assessed on property located within the District boundaries. Property tax revenues are expected to be approximately \$1,576,934, based on a mill levy of .407. This revenue is based on a combined assessed valuation across nine counties of \$3,874,531,469.

Specific Ownership Tax. This is a property or ad valorem tax levied in addition to sales (or use) taxes on a motor vehicle and is paid annually when the vehicle is registered within a county. SWCD receives a portion of these taxes collected by the nine counties.

Interest, PILT, and Other Tax Revenue. SWCD receives revenue from delinquent tax from prior years that has been recently collected, payment in lieu of tax (PILT), and other miscellaneous taxes.

Other Income. SWCD receives income from interest on investments (**Interest Earned**), reimbursements from the Colorado Water Conservation Board for staff time and meeting expenses dedicated to coordination of the Southwest Basins Roundtable (**Miscellaneous**), and registration fees for SWCD's Annual Water Seminar (**Water Seminar Registration**). SWCD also receives income for the Water Information Program from the 30 partner entities that support the program, along with any educational event registration fees (**Water Information Program**) and local partners that support federal stream gages in southwest Colorado (**Streamgaging**).

SWCD's total budgeted expenses are **\$1,784,128**.

County Treasurer Fees. This line item covers fees charged by the nine counties to collect and disburse property tax revenue on behalf of SWCD. County Treasurer Fees are estimated at three percent of total tax revenue budgeted.

DISTRICT ADMINISTRATION

Management.

- **Wages – Executive Director.** This position was eliminated in 2020.
- **Wages – General Manager.** This line item estimates the salary for a general manager, a new position created in 2020.
- **Wages – Programs Coordinator.** This line item includes a three percent increase.
- **Wages – Payroll Taxes.** This line item includes SWCD's payroll taxes for two employees.
- **Wages – Retirement Benefit.** This line item includes SWCD's retirement plan contributions for two employees. SWCD equally matches each employee's personal contributions to their retirement plan, up to 5% of their annual salary.
- **Wages – Health & Life Insurance.** This line item includes the maximum cost of the health and life insurance benefits offered to SWCD's two employees.
- **Bonus – General Manager.** No amount is currently budgeted for 2022.
- **Bonus – Programs Coordinator.** No amount is currently budgeted for 2022.
- **Recruitment.** This line item includes the cost of potential recruitment of additional staff and related needs.

Legal.

- **Attorney Fees/General Counsel.** This line item covers attorney fees and legal costs for representation on general matters currently provided by Van Vurst Law.
- **Attorney Travel Expenses/General Counsel.** This line item covers travel time and expenses for representation on general legal and litigation matters currently provided by Van Vurst Law.
- **Litigation/General Counsel.** This line item covers attorney fees and legal costs for representation currently provided by Van Vurst Law for litigation.
- **Colorado River Litigation/General Counsel.** This line item will be discontinued.
- **Attorney Fees/Special Counsel.** This line item covers fees for special legal counsel Trout Raley, which currently represents SWCD in matters related to the SWCD "Project" Water Rights, and Robinson, Waters & O'Dorisio, which currently represents SWCD on certain employment matters.
- **Attorney Expenses/Special Counsel.** This line item covers expenses for special legal counsel.

Engineering and Other Technical Services.

- **Engineering Fees/General.** This line item covers fees and expenses related to general engineering activities carried out by Harris Water Engineering..
- **Engineering Fees/Special Projects.** This line item covers fees and expenses related to special engineering activities potentially performed by other consultants, such as Wright Water Engineers.
- **Engineering Fees/Modeling.** This line item covers modeling efforts necessary to support and assess inter- and intrastate water administration scenarios.
- **Other Technical Services.** This line item covers other contracted technical services that may arise during the course of the year, such as additional engineering work or other technical needs.

Board of Directors.

- **Director Fees.** The board members receive \$100 per day while engaged in SWCD business.
- **Director Travel.** This line item includes mileage, lodging, flights, meals, and any other travel costs incurred by board members while conducting SWCD business.

Office Expenses.

- **Accounting.** This line item covers any costs related to SWCD accounting, such as accounting software or consultation with Fredrick Zink and Associates.
- **Audit.** This line item covers the cost of the annual audit of SWCD's financial statements, which is provided to the state by July 31 each year.
- **Capital Outlay.** This line item covers any purchases of items such as computers, other office equipment, or furniture.
- **Casual Labor.** This line item covers any one-time labor needs, such as movers or event support.
- **SDA Membership.** This line item covers the Special District's Association membership.
- **Equipment Leasing.** This line item includes the monthly cost of leasing a copier.
- **Insurance – General Liability.** This line item covers general liability insurance for SWCD, public officials' liability, and excess liability, along with SWCD's worker's compensation policy.
- **Legal Notice.** This line item includes SWCD's noticing of the budget hearing annually in local papers in each of the nine counties.
- **General Manager's Discretionary Budget.** This line item will be discontinued.
- **Meeting Expenses.** This line item covers all meals, venue costs, facilitation, and other meeting-related expenses. This line also includes all costs related to coordination of the board's remote meeting and basin tour.
- **Miscellaneous Expenses.** This line items covers any expenses that do not clearly fall into another category, such as flowers for a hospitalized colleague or director.
- **Office Expenses.** This line item includes office supplies, consumable supplies, copy costs, software purchases, subscriptions, and other office-related needs.
- **Postage.** This line item covers postage costs for office mailings, principally board packets.
- **Registration Fees.** This line item covers conference, seminar or other event registration fees for board or staff.

- **Rent.** This line item includes monthly rent for SWCD's current office space, related utilities, parking spaces, and storage.
- **Staff Training & Professional Development.** This line item covers the cost of courses or training for staff.
- **Staff Travel.** This line item reimburses staff for mileage, lodging, flights, meals, and any other travel costs incurred in course of conducting SWCD business.
- **Telecommunications.** This line item includes SWCD's phone, internet, teleconferencing, and website services.

WATER SUPPLY – QUANTITY AND QUALITY

Regional and Interstate Water Planning, including Protection of Compact Entitlements.

- **SWCD Water Defense.** This line item was historically referred to as the Project Reserve and included in previous budgets as an expense. SWCD discontinued this practice in the 2021 budget and instead assigned a portion of the fund balance to what is now be referred to as the SWCD Water Defense for the purpose of defending the water resources of the District.
- **SWCD Water Development.** This line item was historically referred to as the Emergency Contingency Reserve and included in previous budgets as an expense. SWCD discontinued this practice in the 2021 budget and instead assigned a portion of the fund balance to the SWCD Water Development for the purpose of developing and maintaining the water resources of the District.
- **San Juan Recovery Program Water User Committee.** This line item covers SWCD's 50% cost share for the cost of the two consultants, who participate in the broader San Juan River Basin Recovery Implementation Program (SJRBRIP) on behalf of water users in New Mexico and Colorado. This program works to recover the endangered Colorado pikeminnow and razorback sucker populations in the San Juan River, and its ongoing success protects water uses across the basin.
- **Southwestern Colorado Permanent Radar.** This line item covers up to \$10,000 to equally match local commitments to an operation and maintenance fund for the permanent radar scheduled to be installed in La Plata County. Installation is not expected in 2022, so there is no amount budgeted for 2022.
- **Water Bank Working Group.** This line item has previously supported studies currently being undertaken by the Water Bank Working Group. No funding is budgeted for 2022.
- **Weather Modification (SW Colorado).** SWCD matches up to \$90,000 in local partner commitments to winter cloud seeding (also known as weather modification).

SWCD "Project" Water Rights. This line item covers costs associated with maintenance and development of the SWCD "Project" Water Rights, which are conditional rights on the Animas River held by SWCD. As these costs are currently embedded in line items such as special counsel fees, this line item will be discontinued.

Public Forums, Data Collection and Related Efforts.

- **Bonita Peak Community Advisory Group.** This line item supports operational costs for the Bonita Peak Mining District Community Advisory Group.
- **Center for Snow & Avalanche Studies.** This line item supports the Center for Snow & Avalanche Studies, which conducts valuable research on the impacts of dust on snow to runoff.
- **Stream Gaging/Federal.** This line item covers SWCD's cost share with the US Geological Survey for operation and maintenance of several regional stream gages., SWCD also supports operation of the Dolores

River near Slick Rock gage via a cost share with San Miguel County. As noted in the revenue line, SWCD receives partial reimbursement from local partners for some of the stream gages, which is estimated at **\$27,633** for 2022.

Stream Gaging/Colorado. This line item covers the cost for Colorado Division of Water Resources to operate their Cherry Creek and Long Hollow stream gages.

Water Quality Studies. This line item covers support for water quality studies across the region, including regular monitoring by the San Miguel Watershed Coalition and the Pine River Watershed Group. This also covers over-budget costs for the Colorado Department of Public Health and Environment's partnership with Colorado Parks and Wildlife to test mercury levels in several local reservoirs.

Local Water Community Financial Support. This line item covers grants that may be awarded through SWCD's Financial Assistance Program to qualified entities that are carrying out projects consistent with SWCD's statutory purposes.

Previously Committed Local Financial Support. This line item covers any previously committed aid, approved in a prior year, for which the SWCD staff or board approves an extension through 2022.

WATER POLICY AND LEGISLATION

Federal.

- **Federal Lobbying Fees.** This line item covers fees related to federal lobbying efforts on behalf of SWCD carried out by Christine Arbogast with Kogovsek and Associates.
- **Federal Lobbying Expenses.** This line item covers principally travel expenses related to federal lobbying efforts on behalf of SWCD carried out by Kogovsek and Associates.

State.

- **State Lobbying Fees.** This line item covers fees related to potential state lobbying efforts on behalf of SWCD. **The board currently does not have a state lobbyist.**
- **State Lobbying Expenses.** This line item covers principally travel expenses related to potential state lobbying efforts on behalf of SWCD. **The board currently does not have a state lobbyist.**

Dues & Memberships. This line item covers memberships to organizations that provide benefits to SWCD and its constituents. SDA's membership provides administrative benefits and therefore is not included here.

WATER EDUCATION & OUTREACH

Water Information Program (WIP). This line item covers all program expenses related to operation of WIP, which is presently financially supported by 30 partners in southwestern Colorado, with a dollar-for-dollar match from SWCD for partner contributions. Also included are any revenue generated from sponsored events. (i.e. "Water Law in a Nutshell"). WIP provides balanced water-related educational content and programming to our nine-county region. This line item includes the cost of the independent contractor who manages the Water Information Program. As noted under budgeted revenue, among the Water Information Program's revenue is an estimated \$32,600 from local partners for 2022.

SWCD Educational Events. This line item covers all costs related to SWCD's Annual Water Seminar, at which nearly 200 people attend each year to hear from state and local water experts. If the in-person event cannot be held in 2022

due to public health concerns, this line item will cover any costs related to virtual educational event(s) that SWCD may host.

Water Education Colorado. This line item covers SWCD's support for the programming and content produced by Water Education Colorado, a statewide educational organization.

Water Leader Program Scholarship. This line item allows SWCD to potentially support all or a portion of tuition for any professionals from southwestern Colorado accepted to the statewide Water Leaders Program.

SWCD Children's Water Festival. This line item covers all cost related to SWCD's Annual Children's Water Festival, at which more than 700 fifth graders from across southwestern Colorado engage in educational programs for a full day at Fort Lewis College each May. If the in-person event cannot be held in 2022 due to public health concerns, this line item will cover any costs related to virtual or other educational events that SWCD may host for children.

Watershed Education Program. This line item covers support for the Watershed Education Program, which provides water-related field trips throughout the year to elementary students in the Upper and Lower San Miguel basin.

Event Sponsorships. This line item covers SWCD support for water-related events regionally and locally.

Demo CSU Farm/Water Efficiency. This line item supports the CSU Southwestern Colorado Research Center, which conducts valuable research on dryland farming and water efficiency, among other relevant agricultural topics. This line item will be discontinued.

TABOR Contingency. This line item is required by the TABOR amendment to the state constitution, which mandates that at least three percent of SWCD's fiscal year spending (excluding bonded debt service) be set aside as a contingency reserve for declared emergencies.

SWCD Contingency Reserve. This line item allows for expenses which may be incurred in 2022 but which are uncertain at the time of budget adoption. It is intended that the contingency may be used to cover any line item in the budget or cover new SWCD expenses.

CHRISTOPHER J. TREESE

1302 Mountain Dr.
Glenwood Springs, CO 81601

MEMORANDUM

September 23, 2021

To: Steve Wolff

From: Chris Treese

SUBJECT: Proposition 120, November ballot question

Action: The Board may wish to take a public position on Proposition 120. A board position is one of the few actions the District can take on ballot measures. A position in opposition would give the District at least the opportunity to educate constituents regarding the adverse fiscal impacts and consequential reductions in Southwestern's mission that could result from Proposition 120's passage and resulting reduction in District revenues.

Warning. This memo is a bit complicated and involved. Readers will benefit by recognizing that Senate Bill 21-293 passed this past session and has been signed into law. What I referred to as "Citizen's Initiative #27" in my August 4 memo is now "Proposition 120" and will appear on the November ballot. This memo is principally intended to provide the potential fiscal impact to SWCD if Proposition 120 is approved by voters in November.

Bottom Line. While precise revenue projections are difficult to make because of mitigating legislation passed this year, the District should be prepared for a worst case reduction of property tax revenue annually (with no end date) in the neighborhood of \$20-25,000 due to Proposition 120. This would be in addition to the \$4,500 reduction I projected in my August 4 memo attributable to passage of Senate Bill 21-293. In addition to size, the important difference between the impact of Proposition 120 and SB 293 is SB 293's reductions are just for 2023 and 2024 budget years; Proposition 120, if passed, will be permanent – or until the Legislature amends or repeals it. *Proposition 120 is a referred law and therefore subject to subsequent legislative action; it is not a Constitutional initiative. As a referred law initiative, it passes with a simple majority vote.

SB 293. In my August 4 memo to you that you subsequently shared with the Board and public, I projected that the impact to the District from Senate Bill 01-293 will be minor. My projections suggest that the District will suffer between a one-quarter and one-third of one percent reduction in property tax collections in 2023 and 2024 budget years or roughly \$4,500 annually for two years. [SB21-293](#) passed and has been signed into law.

The legislature passed SB 293 at the very end of 2021 legislative session primarily to dampen the potential impacts of a then threatened Citizen's Initiative #27. Citizen's Initiative #27 has been certified for the November ballot and with its qualification for the ballot has been renamed Proposition 120.

For budget years 2023 and 2024 only, SB 293 reduced the property tax assessment rate for all residential properties, with new and separate rates for multi-family residential property, agricultural property, and property used for renewable energy production.

For property tax years 2022 and 2023 (affecting budget years 2023 and 2024), SB 293 reduced the assessment rates for subclasses of property as follows:

- the assessment rate for multifamily residential property is reduced to 6.80%*;
- the assessment rate for all other residential property is reduced to 6.95%;
- the assessment rate for agricultural, non-residential property is reduced to 26.40%; and
- the assessment rate for non-residential property used to produce renewable energy is reduced to 26.40%.

*The provision of SB 293 that reduced the assessment rate for multifamily residential property takes effect only if Proposition 120 is not approved at the November 2021 statewide election.

Senate Bill 293 also amended the existing property tax deferral program. However, since the state "back fills" revenue losses to local governments under this program, it is not important to SWCD nor relevant to this analysis.

Proposition 120. Also in my August 4 memo I included a short discussion of Citizen's Initiative #27, which was then gathering signatures in order to qualify for the November ballot. Proponents submitted a reported 190,000 signatures on the petitions for Initiative #27. 124,632 valid signatures were required to qualify an initiative for the ballot. The Secretary of State verified sufficient signatures, and Initiative 27 is now "Proposition 120" and will appear on the statewide November ballot.

The approved ballot title and submission clause of Proposition 120 is:

Shall there be a change to the Colorado Revised Statutes concerning property tax reductions, and, in connection therewith, reducing property tax revenue by an estimated \$1.03 billion in 2023 and by comparable amounts thereafter by reducing the residential property tax assessment rate from 7.15% to 6.5% and reducing the property tax assessment rate for all other property, excluding producing mines and lands or leaseholds producing oil or gas, from 29% to 26.4% and allowing the state to annually retain and spend up to \$25 million of excess state revenue, if any, for state fiscal years 2022-23 through 2026-27 as a voter-approved revenue change to offset lost revenue resulting from the property tax rate reductions and to reimburse local governments for revenue lost due to the homestead exemptions for qualifying seniors and disabled veterans?

If passed, Proposition 120 would reduce the residential assessment rate from 6.95% (the new rate set by SB 293) to 6.5%. In contrast to SB 293, Proposition 120 would reduce the assessment rate on nearly all non-residential property from 29% to 26.4%. These are greater reductions than created by SB 293 and most significantly reduces by 9% the non-residential property assessment ratio pretty much across the board. The only exceptions are the reduced assessment rates for agriculture's non-residential properties and renewable energy properties; these were already reduced to 26.4% by SB 293.

There are language conflicts between Senate Bill 293 and Proposition 120. SB 293 amends the underlying statutes that the proposition proposes to change. Unlike SB 293, Proposition 120 does not create any new classifications of property and thereby creates inevitable litigation and/or legislation. SB 293 created new assessment categories, while Proposition 120 simply reduces the assessment ratio of the two property categories (residential and non-residential) that existed prior to passage of SB 293. Whether and how Proposition 120's reductions will be applied to the new assessment categories created by SB 293 on multi-family residential, agricultural non-residential and renewable energy production properties is impossible to predict. Accordingly, a fully accurate projection of the fiscal impact of Proposition 120 to SWCD is not possible. However these language conflicts are resolved, there will be significant reductions in property tax collections to all local governments statewide.

The attorneys and fiscal analysts at the Capitol originally estimated a total, statewide reduction to local governments in excess of \$1 billion for Initiative #27. That was before the passage of SB 293. Using what I consider very aggressive/optimistic assumptions regarding resolution to the conflicting language of the Senate Bill and the Proposition, the state's revised statewide estimate of property tax reductions to local governments is closer to \$50 million, or just 5% of the original projected impact prior to passage of SB 293. The state's revised analysis assumes that the lower residential assessment rate in Proposition 120 (6.5%) will apply only to multifamily housing properties, and the lower nonresidential rate (26.4%) will apply only to lodging properties.

Note: While the most recent fiscal impact analysis from the state projects a much more modest \$50 million statewide hit to local governments, the language that will appear on the November ballot reads *"reducing property tax revenue by an estimated \$1.03 billion in 2023 and by comparable amounts thereafter."* The fiscal impact analysis for the submission clause was projected prior to the passage of SB 293.

However the legal conflicts are resolved – and they may not be for quite some time – Southwestern is facing a further reduction in property tax revenues of between a negligible \$1,250, if you believe the state, or \$20,000 - \$25,000, if you assume the proponents of Proposition 120 prevail with their intended reduction (and upon which Coloradans will vote in November). Regardless, if Proposition 120 passes, there will be an impact to SWCD starting with the 2023 budget year and may be revised later based on final resolution of the language conflicts.

Additionally, since SWCD relies predominantly on property taxes for its annual budget, the District will be disproportionately affected relative to most other local governments, most of which have more diversified revenue sources.

If Proposition 120 passes in November, I anticipate additional legislation in 2022 attempting to resolve the conflicts and at least partially mitigate the impacts to local governments.

Other November Ballot Questions. Ballot measures eligible for the statewide ballot in Colorado during odd years are constitutionally limited to topics that concern taxes or state fiscal matters arising under TABOR, the Taxpayer’s Bill of Rights.

Two other initiatives have been certified for the November 2021 ballot.

- Proposition 119 would create an out-of-school education program and increase the marijuana sales tax rate to partially fund the program.
- Amendment 78 would transfer the power to appropriate “custodial funds” (state revenue not generated through taxes) from the state treasurer to the state legislature.

Odd-numbered year initiatives are rare post-TABOR. The last time an initiative appeared on an odd-year ballot in Colorado was 2013. That measure would have changed Colorado’s flat personal income tax rate to a graduated income rate with generally increased rates. This measure was defeated.

EXHIBIT A – SCOPE OF SERVICES

It is anticipated that Consultant will provide the following services over the term of the Agreement:

1. Coordinate the SWCD Annual Children's Water Festival ("Festival"). The Festival is usually held on the first Wednesday in May each year and rotates approximately 750 fifth grade students through various water-related presentations given by experts and volunteers. The Parties anticipate the Festival may be held earlier or later than usual in 2022 due to public health concerns. If SWCD elects to cancel the Festival due to public health concerns, then the Consultant shall coordinate a Water Cycle Drawing contest or alternative activity for fifth graders within the nine-county region in lieu of the Festival.
2. Regularly update the WIP website (www.waterinfo.org), on at least a monthly basis, so that it includes the most recent WIP e-newsletter as well as current information on Program Partners, stakeholder groups, and upcoming events.
3. Contribute WIP event announcements and any other WIP related updates to SWCD-WIP newsletter every other month (January, March, May, July, September & November).
4. Provide event logistics support for SWCD's annual spring water seminar, including managing registration via Eventbrite, coordinating the speaker dinner (extend invitations, track RSVPs arrange bar sponsors), organizing hotel arrangements for SWCD board and speakers, event promotion, vendor coordination, A/V and IT support planning, venue preparation, gathering and preparing speaker digital presentations, leading practice hybrid session with speakers and hosts, and coordinating educational booths.
5. Coordinate at least one, one-half day (approximately 4 hours) fall water workshop (e.g., Water Law in a Nutshell course, Water 101 and/or Water 202 seminar).
6. Conduct educational outreach at regional events and meetings, such as SWCD's Annual Water Seminar (held by SWCD staff in early April), SWCD board meetings, other water district meetings, watershed organization meetings, statewide and local conferences and seminars, etc.
7. Expand WIP's presence on social media sites, such as Facebook and Twitter, by posting at least twice each week on local events and local water stories, among other content.
8. Develop or update and disseminate at least two WIP brochures regarding current water topics.

9. Collaborate with WIP partners on funding opportunities, newsworthy stories, and educational opportunities.
10. Identify and pursue additional program partners.
11. Respond to public requests for water information, which includes presenting or coordinating presenters at local events (e.g. Rotary or Kiwanis).
12. Assist with other workshops or training opportunities approved by SWCD's General Manager, including water-related events co-sponsored by WIP and other entities or funding partners, such as the "Forests-to-Faucets Teacher Training Workshop."
13. Fulfill general WIP administration duties including, but not limited to, the coordination of three or more WIP Steering Committee meetings annually, provide budget recommendations, materials reordering, and WIP lending library updating.
14. Via discussion of program priorities with the WIP Steering Committee, work to increase the program's footprint and outreach in southwestern Colorado by identifying new audiences, additional opportunities and strategies, and new educational tools.

Other educational opportunities and projects may be presented by Consultant to the WIP Steering Committee for consideration and for possible ratification by the SWCD Board.

Guideline 2021-1

PROCEDURE FOR THE STATE ENGINEER TO CONFIRM THE EXTENT OF CLAIMED UNADJUDICATED USES OR EXCHANGES OF WATER BEING MADE ON THE DATE OF APPROPRIATION OF AN INSTREAM FLOW WATER RIGHT

Objective

Describe the process for a water user to request that the State Engineer confirm the extent of claimed unadjudicated uses or exchanges being made on the date of appropriation of an instream flow water right consistent with section 37-92-502(2)(c), C.R.S.

Relevant Statutes

The following statutes are relevant to this guideline:

Section 37-92-102(3)(b), C.R.S. Basic tenets of Colorado water law

Any such [instream flow] appropriation shall be subject to the present uses or exchanges of water being made by other water users pursuant to appropriation or practices in existence on the date of such appropriation, whether or not previously confirmed by court order or decree.

Section 37-92-502(2)(c), C.R.S. Orders as to waste, diversions, distribution of water

Upon a claim made to the State Engineer for administration pursuant to section 37-92-102(3)(b), the State Engineer shall confirm the extent of the claimed unadjudicated use or exchange of water being made pursuant to appropriation or practices in existence on the date of appropriation of an instream flow water right. The State Engineer's confirmation is reviewable by the water court on a de novo basis. Nothing in this subsection (2)(c) requires or prohibits a water user from seeking water court confirmation or adjudication of the preexisting uses or exchanges.

Procedure

This procedure provides for situations where beneficial uses or exchanges of water were in



existence on the date of the appropriation of an instream flow water right (“present uses”).¹ Water users may request that the State Engineer² confirm the extent of claimed present uses to allow that practice to continue without being curtailed when the Colorado Water Conservation Board (CWCB) requests that the water commissioner place a call to fulfill an instream flow water right. Water users may submit a request to the State Engineer at any time but are encouraged to request confirmation of present uses prior to any request for a call to allow time to review the claim. To request confirmation from the State Engineer, a water user shall:

1. Submit to the State Engineer³ an affidavit from a person with personal knowledge of the present uses, including:
 - a. the water division where the present uses occur and the name of the related instream flow,
 - b. the type of present uses,
 - c. the rate diverted to accomplish such use without waste. For water that was stored, the volume stored,
 - d. the point of diversion and place where water was used,
 - e. the approximate date of first use or exchange and a list of the years water was diverted,
 - f. how the present uses were legal under Colorado’s priority system. For instance, a diversion was during free river, when all beneficial uses on the stream were fulfilled, pursuant to a futile call determination, or pursuant to a written administrative approval,
 - g. the typical season of use (beginning and ending month and day of month). If the season of use or amount of use varies under certain conditions, how and why that variation occurs, and
 - h. attachments to the affidavit, which may include:
 - i. relevant evidence showing that the use was in existence at the time of the instream flow appropriation. Such evidence may include aerial or other photographs, letters from knowledgeable parties, business records (such as livestock counts), government records, personal or DWR records of water use, or other information
 - ii. any other information supporting the claim.
2. The State Engineer will forward the request to CWCB staff requesting they provide any

¹ For simplicity, the procedure refers to the term present uses, which includes exchanges that were administratively approved prior to an instream flow appropriation.

² The State Engineer may delegate this task to the Division Engineer or other staff of the Division of Water Resources (“DWR”).

³ Submit an email with the affidavit as an attachment to DWRPermitsOnline@state.co.us with a subject line of, “102(3)(b) request to confirm pre-existing use in Water Division X”, where X is the DWR water division in which the use or exchange occurs.

comments within 35 days.

3. The State Engineer will notify the water user within 35 days of the request if there is not enough information to confirm the request or if the request is contrary to other information available to the State Engineer.
4. Upon the CWCB's response or the expiration of 35 days, the State Engineer will evaluate all information available related to the request.
5. The State Engineer's decision on the extent of present uses and the rationale for that decision will be documented in a letter to the water user and the CWCB. The letter will also describe the instream flow(s) associated with the confirmation.
6. The State Engineer will add the appropriate documentation to DWR's database and imaged documents to allow for proper administration consistent with section 37-92-102(3)(b), C.R.S.

Approval

This guideline may only be modified or revoked in writing by the State Engineer.

Approved this 15th day of September, 2021.

A handwritten signature in cursive script, appearing to read "Kevin G. Rein".

Kevin G. Rein, P.E.
State Engineer/Director