

LEGISLATIVE REPORT October 10, 2012
Submitted by Paul Fanning, Legislative Committee

The Interim Water Resources Review Committee held its last scheduled meeting of 2012 at the State Capitol in Denver on September 27th. The Committee considered 11 measures (9 bills and 2 resolutions) to potentially forward with their approval to the 2013 General Assembly in January. Rules limit the Committee to forwarding a maximum of three measures unless the limit is waived by a two-thirds vote of the Committee. This did take place, and eight measures were ultimately approved by the Committee.

The three failed measures were:

Bill 4 - Protection of Historic Consumptive Use Generally (5 voting no, 3 voting yes)

Bill 11 - Authorize Use of Gray Water (4 voting yes, 4 voting no).

Bill 2 - Ground Water Management Districts' Enforcement Authority (This bill was considered late in the day, after some Committee members had to leave, so there were not enough committee members present to constitute a quorum and conduct a vote.)

You will find titles and a brief description of the six recommended bills and the titles of the two resolutions on the following pages.

The first Resolution is a response to the United States Forest Service demanding that water rights that have been developed by lease holders on Forest Service lands be ceded to the Forest Service. This policy is currently being opposed by ski area operators whose rights have been taken by the Forest Service, but there is concern that the same approach might be used with other lease holders, including municipal water systems.

The second Resolution asks that the General Assembly discontinue diverting funds from water project accounts to other sections of the Colorado budget in order to balance the budget, "Robbing Peter to pay Paul," as they have done in recent years.

The full text of all the bills and both resolutions can be found at:
<http://www.colorado.gov/lcs/WRRC>

BILL A - CONCERNING THE DELETION OF THE REQUIREMENT FOR A FINAL PERMIT FOR ALL WELLS WITHDRAWING DESIGNATED GROUND WATER FROM THE DENVER BASIN AQUIFERS.

For most water wells in designated basins, the state engineer issues a conditional permit and then issues a final permit after the water has been put to beneficial use. But under current law, the requirement for a final permit does not apply to wells permitted on or after July 1, 1991, that withdraw designated ground water from the Denver basin aquifers. The bill deletes the requirement for a final permit for all wells withdrawing designated ground water from the Denver basin aquifers.

BILL B - CONCERNING SAFEGUARDS TO PREVENT THE MODIFICATION OF A FINAL DESIGNATED GROUND WATER PERMIT BASED ON REDUCTIONS IN THE USE OF DESIGNATED GROUND WATER.

The bill specifies that once the state engineer issues a final permit for the withdrawal of designated ground water, a reduction in the amount of water used pursuant to the permit due to the conservation of water is not grounds to reduce the maximum annual volume of the appropriation, the maximum pumping rate, or the maximum number of acres that have been irrigated.

BILL C - CONCERNING LIMITATIONS ON A LANDOWNER'S ABILITY TO IMPOSE CONDITIONS ON A WATER RIGHT OWNER AS A CONDITION OF PERMISSION TO USE LAND.

The bill specifies, in the contexts of rights-of-way for water rights and the basic tenets of Colorado water law, that:

- A landowner cannot demand as a condition of granting a right-of-way or special use permit, and a court cannot order as a condition of an eminent domain proceeding, that a water right or conditional water right owner assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right; and
- Any such condition is void and unenforceable as against public policy.

BILL D - CONCERNING POINTS OF DIVERSION THAT ARE NOT LOCATED AT THE PHYSICAL LOCATION SPECIFIED IN THE DECREES FOR DIVERTED WATER RIGHTS.

For a variety of reasons, some points of diversion are erroneously placed at a location that is different from the decreed location established by a water court. The reasons for these erroneous locations include advances in surveying technology and standards, topographical errors in a water rights decree, references in a decree to landmarks that do not exist anymore or have changed, and floods and other natural events affecting the diversion structure. The bill provides a process for a holder of a decreed water right with an erroneously located point of diversion to apply for a correction in the point of diversion without the risk of requantification of the water right if the point of diversion meets the definition of an "established erroneous point of diversion", as set forth in the bill.

BILL E - CONCERNING THE RESOLUTION OF AMBIGUITIES IN OLD WATER RIGHT DECREES REGARDING THE PLACE OF USE OF IRRIGATION WATER.

Current law requires irrigation water right decrees to specify the acreage on which the water

may be used, but some older decrees do not include an acreage limitation. For such decrees, water courts look to the original appropriator's intent in determining the lawful historical consumptive use of a decreed irrigation water right; however, it is often very difficult to determine the original appropriator's intent, which has resulted in cases that substantially decrease the acreage that has historically been irrigated by a water right.

The bill creates a mechanism to determine the amount of acreage for an irrigation water right for which the original decree predates 1937 and is unclear about the amount of acreage that may be irrigated under the water right.

BILL F - CONCERNING A REQUIREMENT THAT THE DIVISION OF ADMINISTRATION OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FOLLOW RULE-MAKING PROCEDURES WHEN PROPOSING CHANGES TO GENERAL PERMITS RELATED TO WATER QUALITY CONTROL.

Currently, the division of administration (division) of the department of public health and environment may adopt new and amended permit requirements for general permits related to water quality control without providing any of the following information to existing and potential permit holders:

- A statement of basis and purpose for the changes;
- Evidence and data in support of the changes; and
- A cost-benefit analysis of the effect the changes will have on permit holders.

The bill requires the division to comply with the rule-making procedures set forth in the "State Administrative Procedure Act" when the division proposes new or amended permit requirements with respect to general permits related to water quality control.

RESOLUTION A - CONCERNING OPPOSITION TO NEW SPECIAL USE PERMIT WATER REQUIREMENTS.

RESOLUTION B - CONCERNING THE ADVERSE EFFECTS THAT THE DIVERSION OF REVENUES HAS HAD ON WATER INFRASTRUCTURE IN COLORADO.