WATER MANAGEMENT PERFORMANCE AUDIT

Follow-up Report

by

Colorado Department of Natural Resources

and

Colorado Department of Public Health and Environment

Submitted to

Legislative Audit Committee

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Water Management Performance Audit

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INTRODUCTION:

An audit was conducted of selected Colorado water programs from February through October of 1993. The audit focused on three separate areas including: the need for integrating and coordinating activities of various state agencies involved with water resource management in Colorado; compliance with existing legislation among five agencies required to coordinate and carry out certain water quality responsibilities; and, shared regulatory responsibilities between the Water Quality Control Division and the Division of Minerals and Geology.

During the hearing regarding the water management performance audit before the Legislative Audit Committee (L.A.C.) on June 20, 1994, members of the Committee requested the Departments of Natural Resources and Public Health and Environment to respond to several additional questions. Three sets of questions were forwarded to the agencies by the Legislative Audit Committee on June 21, 1994. The following report, jointly prepared by the Departments of Natural Resources and Public Health and Environment, responds to the questions raised by the Legislative Audit Committee.

In some cases the specific questions asked by the Committee were addressed in considerable detail in a report submitted to the General Assembly on November 1, 1992, pursuant to House Bill 92-1200. House Bill 1200 mandated an evaluation of the following concerns:

a. Maintaining the most effective water quality programs for the State of Colorado;

b. Integration of water quality control programs with public health, environmental protection and natural resources programs;

c. Integration of water quality and water quantity considerations in a manner that will create the best public policy for the State of Colorado;

d. The most efficient utilization of human and fiscal resources within CDPHE and DNR to promote the protection of the state's water quality and water rights.

The H.B. 1200 study process involved a task force which was established by an executive order and a series of focus group

meetings designed to receive maximum public input from the diverse interests concerned about water management issues. A list of task force participants is attached as Appendix A. A number of specific references to that report are included in the agencies' responses to the Committee. Therefore, the H.B. 1200 report is attached for ease of reference.

L.A.C. Question 1(a): What are the major issues regarding water management in Colorado?

Agencies' Response: Major Water Management Issues

The Department of Natural Resources and the Department of Public Health and the Environment believe that the major issues affecting water management in Colorado can be organized into six broader categories. These six categories are discussed in this section and include the following:

1. Interstate Litigation
2. Demands of Downstream States
3. Development of New Supplies
4. Emerging and Expanding Federal Involvement in the Water Resources Arena
5. Protection of Existing Supplies
6. Protection of the Environment

I. INTERSTATE LITIGATION

Colorado is involved in two lawsuits in the United States Supreme Court: Kansas v. Colorado and Nebraska v. Wyoming. Both of these cases are matters of original jurisdiction concerning the interpretation of interstate water compacts and Supreme Court decrees. These cases are reviewed below, as are Colorado's positions regarding the central issues and related considerations of these cases.

A. Kansas v. Colorado

In Kansas v. Colorado, Kansas originally claimed that post-compact well development in Colorado had depleted flows at the state line by 1.378 million acre feet, from the period 1950 to 1985. The Kansas Attorney General has also publicly declared that Kansas claims a $100 million judgment against the State of Colorado for economic injury stemming from these alleged depletions.

A Special Master has taken testimony for several years in response to Kansas' claims, and recently has issued a final report. Exceptions to the report may be filed with the United States Supreme Court by either state. The Supreme Court will then hear arguments and enter an order that either adopts,

modifies, or rejects the Master's report. The briefing before the Supreme Court will be scheduled this year. Oral argument may be held in the summer of 1995, with a decision possible in the fall or winter of 1995. This decision will address issues of liability only and will not relate to any damages that might be owed from Colorado to Kansas. The damages phase (Phase 2) will determine the quantity of any damages owed. Trial in Phase 2 may be held sometime in late 1996 or early 1997, with a final Master's decision in 1997, and a final Supreme Court determination coming sometime late in 1998.

The Master's report addresses the three major issues that formed the core of Kansas' claims. (1) The first issue involves operation of Trinidad Reservoir. The Master found Colorado's historic operation and administration of Trinidad Reservoir has not violated the Compact. (2) The second issue involves operation of the winter water storage program in Pueblo Reservoir. The Master found that Colorado's operation and administration of the winter storage program has not violated the Compact. (3) The third issue involves groundwater withdrawals by post-compact wells. The Master held that Colorado has violated the Compact with regard to its administration of post-compact wells.

The Master did not determine a specific amount of water which Colorado might owe to Kansas, nor did the Master find that Colorado owes any monetary damages to Kansas. The Master did give some direction on how to determine depletions to useable stateline flows by post-compact wells. Based upon that direction, we currently believe Colorado may be required to repay Kansas approximately 300,000 to 400,000 acre-feet. Additionally, Colorado's administration of post-compact well depletions will need to change and replacement water be provided for those depletions.

B. Nebraska v. Wyoming

Colorado is not directly a party in the case of Nebraska v. Wyoming, since this litigation involves the decree allocating waters of the North Platte River between Wyoming and Nebraska. However, because the North Platte River originates in Colorado, and because ultimate disposition of the case could affect water users in Colorado, Colorado has been involved with and is closely monitoring this litigation.

C. Colorado's Response to Interstate Litigation Considerations

Colorado's response to issues raised in these litigations has taken several forms. First, it is important to recognize that Colorado is a defendant in both litigations. Colorado's position on matters of interstate water allocation has, and will continue to be, one of vigorously defending and protecting the State's compact entitlements, in whatever forum. However, Colorado has

also expressed interest in settlement negotiations on reasonable grounds. It has always been the State's position that amicable negotiation and settlement of contested claims is far preferable to the expense and risk of interstate litigation.

Although the State continues to vigorously defend the case of Kansas v. Colorado, we are also taking active steps to respond to any adverse ruling that might be forthcoming from the U.S. Supreme Court. The State Engineer, for example, has already promulgated rules and regulations relating to the administration of wells in the Lower Arkansas River. These rules and regulations will eventually require the full replacement of post-compact well depletions in order to meet the terms of the decree that may ultimately issue from the Supreme Court.

Governor Romer also has created a thirty-member committee of Arkansas River Basin residents and community leaders to work with the State in developing a coordinated and integrated response to possible changes in water administration, or any liability, that Colorado might ultimately owe to Kansas. The committee also is working to integrate the State's efforts to respond to the litigation with efforts to provide water for recreational and wildlife purposes in Trinidad, Great Plains, and John Martin Reservoirs. The Governor is committed to the proposition that it is in the interest of all affected water users in the basin to work cooperatively and strategically in the acquisition of water for these purposes, and for replacement purposes, so as to achieve the greatest economic, recreational and wildlife benefit for the people of the Arkansas River Basin.

The State will continue to closely monitor the litigation in Nebraska v. Wyoming. Recently, Nebraska raised in this litigation the issue of the Endangered Species Act and its application to interstate water allocation on the Platte River. This claim directly affects the interests of Colorado water users. In an argument before the Special Master, Colorado rejected Nebraska's claim that resolution of interstate endangered species issues ought to occur as part of this litigation. Rather, the State advocated that interstate efforts to negotiate a Platte River Basin endangered species recovery program is the appropriate mechanism to resolve interstate endangered species issues. As a general matter, the State will continue to vigorously protect Colorado's interests in this litigation.

II. DEMANDS ON COLORADO'S WATERS GENERATED IN DOWNSTREAM STATES

Colorado, as a headwater state, faces demands from its downstream neighbors. Complex needs generated by growing and shifting urban populations, development, and calls for environmental restoration put pressure on traditional patterns of interstate water

allocation and use. Four major river basin systems exit the state: the Colorado River system involves Wyoming, Utah, New Mexico, Nevada, Arizona, California and Mexico; the Arkansas River system involves Colorado's neighbor, Kansas; the Platte River system involves Colorado's neighbors, Wyoming and Nebraska; the Rio Grande River involves Colorado's neighbors, New Mexico, Texas and Mexico. Issues pertinent to each of these basins are summarized in this section, as are Colorado's responses to these issues.

A. Colorado River Basin

Downstream demands on Colorado's Colorado River entitlements result from a complex combination of increasing demand, recently enacted federal statutes, and changes in federal policy and regulations. Given their complexity, we only touch on some of these pressures in this subsection.

Historical and growing future demand is perhaps the most obvious pressure exerted on Colorado's waters by downstream states. In the Colorado River Basin, California for years has used Arizona's and Nevada's unused Colorado River Compact apportionments to meet agricultural and municipal demands that exceeded its own Compact apportionment. As Nevada's and Arizona's demands increase, California's use of water in excess of its Compact apportionment could extend to and threaten the Upper Basin's unused entitlement. To be sure, California has signalled a willingness to attempt to reduce its overuse. However, increasing development in Nevada will cause Nevada to exceed her entitlement to water soon after the turn of the century, which will only serve to compound existing problems associated with California's present overuse of Colorado River water in the Lower Basin. Nevada is moving aggressively to attempt to secure water to meet these future demands. The United States Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources held hearings on ways to address water issues in the Lower Basin, including securing additional water supplies to meet growing demands in Las Vegas. Colorado is concerned that these demands could disrupt the allocations and balance of water use achieved under the body of rules, regulations, laws, Supreme Court decisions, and international treaty known as the "Law of the River."

In addition to the historical and future demands of downstream states, many other downstream influences are conspiring to produce dramatic changes in the management of the Colorado River. For example, changes over the last four years in the operation of federal reservoirs, pursuant to the Endangered Species Act, and proposed changes in operations at Glen Canyon Dam, pursuant to the Grand Canyon Protection Act, are combining to establish entirely new operational patterns for water projects in the Basin. These new operational patterns could have important

implications for the way water is moved through the Colorado River system, and may erode the Upper Basin's "bank account" -- the stored water that permits the Upper Basin States to meet its delivery obligations to the Lower Basin States as required by the Colorado River Compact.

B. Arkansas River Basin

Downstream demands of water users in Kansas in the Arkansas River Basin relate to the lawsuit in Kansas v. Colorado and the state's goal to enhance water levels for recreational and wildlife uses, discussed above in section I.

C. South Platte River Basin

Downstream issues on the South Platte River are becoming increasingly complex. As mentioned above, Colorado continues to closely monitor the litigation in Nebraska v. Wyoming. In addition, efforts to protect the habitat of endangered species on the Platte River in Nebraska are affecting water use, development, and administration on the South and North Platte Rivers in Colorado and throughout the Platte River Basin.

Several reservoirs and water-related facilities located on the South and North Platte Rivers and on the mainstem of the Platte are undergoing re-permitting or relicensing pursuant to various federal laws. For example, the Federal Energy Regulatory Commission is engaged in relicensing the Kingsley Dam, which impounds the 1.8 million acre-foot Lake McConaughy on the North Platte River in Nebraska. Along Colorado's Front Range, several reservoirs located within the Arapaho National Forest have been engaged with the United States Forest Service for several years in a controversial process to renew the permits which allow them to occupy federal land.

In each of these permit renewal or relicensing procedures, water users must consult with the Fish and Wildlife Service to ensure that the renewed permit or license is in compliance with the Endangered Species Act. The Fish and Wildlife Service has determined that renewal of permits or licenses in the Platte River Basin may adversely affect endangered species habitat in Nebraska, and are therefore requiring mitigation as a condition of permit renewal. While not yet clear -- much less agreed upon -- this required mitigation may involve foregoing some water formerly diverted to beneficial use and may limit future water development opportunities for Colorado water users in the South Platte Basin. What is certain is that potential environmental demands downstream in Nebraska are casting a pall of uncertainty on developed and prospective water supplies in the South and North Platte Basins.

D. Rio Grande River Basin

Residents of the Rio Grande River Basin have recently endured considerable in-state controversy with the rejection in the Colorado Supreme Court of American Water Development, Inc.'s proposed water export scheme. While this proposal was successfully rejected by local interests, increasing demands in the El Paso and Albuquerque areas will continue to put pressures on water deliveries and operational changes in Colorado. In addition, recreational interests in Northern New Mexico have made increasing demands for river regulation flows for recreational purposes in the Rio Grande River in Colorado and New Mexico. Finally, the Rio Grande Basin also faces challenges associated with declining aquatic species, which may affect water use and development. It appears at this point in time, however, that the recent listing of the silvery minnow under the Endangered Species Act will not affect water use within Colorado.

E. Colorado's Responses To Pressures Exerted by Downstream States

In general, Colorado's policy has been, and will continue to be, that of continued vigilance and vigorous defense of the compact entitlements which protect Colorado water users from ever-increasing demands of downstream states. These entitlements are closely tied to the economic and environmental future of Colorado and are therefore vitally important to the future of the state. Policies outlined below are complemented by the litigation efforts described above in Section I.

1. Colorado River

In the Colorado River Basin, Colorado, through discussions with the other Basin States and the U.S. Bureau of Reclamation, has encouraged the development of Lower Basin solutions to water allocation problems in the Lower Basin in order to alleviate future pressure that may be placed on Upper Basin entitlements. It is the State's policy that the development of a private water market in the Colorado River, from the Upper Basin to the Lower Basin, is not in the best interest of Colorado's future. Such a market threatens to dry-up irrigated agriculture in Colorado, remove water from the state for future use, and adversely affect existing water users in the state. Partly as a result of Colorado's efforts, California, Arizona and Nevada are currently engaged in discussions to develop Lower Basin solutions to Lower Basin allocation issues. Colorado will continue to be involved in those discussions, and will continue to monitor congressional proceedings and be involved in any proposed legislation with the goal of protecting Colorado's entitlement.

Colorado is also in the process of developing a Colorado River Decision Support System. This effort involves both extensive

data collection and the development of modelling and administrative techniques. The development of good consumptive use data is imperative for Colorado to develop an understanding of, and be prepared for, the protection of its compact entitlement. Good data on water use will allow the State to understand the extent of its water assets available for future uses thereby allowing the State to clearly articulate and protect its long-term interests. The computer modelling and administrative tools available through CRDSS will allow policy makers to formulate judgments and positions on river operations, to meet the challenges of downstream states.

Colorado continues to be involved in the detailed issues relating to overall river basin operations, as they relate to management of the water resources of the Colorado River. Again, these issues are important to the amount of water that eventually will be available for use and development in the state.

Finally, Colorado is deeply involved in the Upper Colorado River Endangered Fish Recovery Program. This effort is designed to ensure that recovery of endangered fish species occurs in a manner that does not compromise Colorado's ability to develop its compact apportionment.

2. Arkansas River

Efforts to address the downstream demands of Kansas are reviewed above under the discussion on Kansas v. Colorado.

3. Platte River

On the Platte River, Colorado has entered into a Memorandum of Agreement (MOA) with the states of Nebraska and Wyoming, and the Department of Interior, to develop a recovery plan for endangered species which occur in the central Platte River Basin. As part of the development of this MOA, Governor Romer wrote a letter to Secretary Babbitt expressing Colorado's position that the development of this recovery program in no way implies Colorado's willingness to renegotiate the South Platte Compact between Colorado and Nebraska. Nonetheless, Colorado's position is that the development of a recovery plan is of utmost importance to the State. The MOA will allow the state to develop a framework of certainty for its water users who are faced with difficult and complex federal permitting processes.

4. Rio Grande River

State water officials continue to be vigilant with respect to growing demands of downstream states in the Rio Grande Basin. The State of Colorado opposed efforts by American Water Development, Inc. to divert groundwater out the Basin, in part because of the effects of such a scheme on the compact. State

officials are monitoring the potential effect on Colorado water use and development of endangered aquatic species in the Basin.

III. DEVELOPMENT OF NEW SUPPLIES

The development of new surface water supplies in recent years has been difficult by almost any measure. Successful efforts have rested upon complex joint ventures between water supply entities. These efforts therefore represent something of a departure from traditional water development practices characterized by individual water entities developing supplies for narrowly defined interests. This section reviews some of the issues surrounding the development of new supplies in Colorado.

Some individuals involved in water development in Colorado have expressed complaint in recent years about the apparent inability of Colorado water users to undertake development of new supplies. Additionally, some individuals perceive that since development of new water supplies will aid in protecting Colorado's interstate entitlements, the State collectively has not been sufficiently diligent in building new storage to protect its compact interests. These views have been shaped in part by the fact that a number of major new water development projects have been proposed but have gone undeveloped in recent years. There are a number of reasons why this is so.

First, large federal subsidies for water project development are no longer available as they once were. Budgetary and environmental concerns have led the federal government away from major assistance in water project development.

Second, large project development has not been economic, except for major water providers. Simply stated, the present need or present ability to pay have not matched the cost of new water project development.

Third, among the forces driving up cost of new water projects are the cost of obtaining federal permits, and mitigating environmental damage. In addition, the majority of the best reservoir sites have already been developed. New project sites will be more costly to develop.

Fourth, there is a great deal of competition among water users for limited supplies. Existing supplies are largely over-appropriated, by both absolute and conditional water rights. Large water project development has been burdened with litigation among water user organizations. Transbasin diversion projects face litigation and regulatory control by local governments.

The state of Colorado and its water users are moving in new and innovative directions to overcome these challenges. A few water

projects in fact are being developed. The success of these efforts is due in very large part to a new cooperative approach among water users. For example, the Wolford Mountain Reservoir project, a reservoir of 60,000 acre foot capacity, is under construction as a result of a cooperative joint venture between East and West Slope interests. It is being developed without environmental objection. The Clinton Gulch development, another example of a cooperative venture between Denver and West Slope entities, is based on the principle of maximizing the use of existing facilities. In addition to the water users getting together to develop these joint ventures, the State also has played key roles in the negotiation and financing of these new development opportunities.

Consistent with the manner and spirit with which new storage is being developed on the Western Slope, the State is also promoting cooperation among metropolitan Denver water users, through the Front Range Water Forum. The Forum is sponsoring a technical investigation of options for cooperative and integrated operation of existing Front Range water supply systems, with the goal of furthering the maximum utilization of existing supplies. This process may lead to new opportunities for water wheeling, water sharing, and sales, exchanges, and leases among Front Range water users. In addition, the Colorado Water Conservation Board also undertook a study of water transfers from the Fort Lyon Canal in the Arkansas River, with the objective of analyzing the potential for a water banking program between agriculture and municipal users. Such a program could allow for continued sustained use of water for agriculture, while providing dry year supplies for municipal users.

The Colorado Water Conservation Board also encourages water users to make better use of its Construction Fund as a source of financing to repair dams and to enlarge existing structures. Simply by repairing existing structures that are now under restriction, significant amounts of new water storage capacity can be made available to existing users. Enlargement of existing structures often is less environmentally damaging and more cost-effective than building new structures. To help water users make better use of the Construction Fund, the Water Conservation Board is developing policies which promote flexibility in the application of interest rates to loans from the Fund. Such flexibility will encourage use of the fund by water users who otherwise would be unable to pay for project development.

The State Engineer's Office, utilizing funds from the Colorado Water Conservation Board Construction Fund, is analyzing its probable maximum flood (PMF) regulations for dams over 7,500 feet in elevation. The State Engineer believes that such a study may justify lower PMF standards for such structures. This would greatly reduce the cost of spillway design and rehabilitation by

Colorado water users, thus making more water available for use, at less cost.

Many entities in Colorado are looking at alternative water development techniques, such as conservation and the recharge of existing aquifers. Conservation and aquifer recharge programs allow existing supplies to be stretched, and can be more cost-effective than traditional water development as well.

The State continues to be involved in, and supportive of, federal assistance to new water project development. The state is continuing to work toward the construction of the Animas-La Plata Project.

Finally, in recognition of the modern reality that resolving environmental issues is a pre-requisite to any new water project development, the State has been active in the implementation of the Salinity Control Act, the development of the Upper Basin Recovery Plan for Colorado Fish Species, the San Juan Basin Fish Recovery Program, a recovery program for Platte River Endangered Species, and a recovery program for the as yet unlisted boreal toad. These programs will both put water to use, resolve controversies, and create new opportunities for water use and development.

IV. EMERGING AND EXPANDING FEDERAL INVOLVEMENT IN THE WATER RESOURCE ARENA

At the same time the federal government has withdrawn financial support for new water project development in the West, it increasingly wears the mantle of regulator. The emerging prominence of the Endangered Species Act, the increased role of the Environmental Protection Agency, and the expanding regulatory presence of the Forest Service all serve to increase federal regulatory burdens on water project development and operation. Additionally, the Bureau of Reclamation has transformed its role from one emphasizing water project development and operation for consumptive use and hydroelectric power generation, to one emphasizing management of developed water supplies to achieve, principally, environmental restoration and recreation goals. Finally, budgetary and environmental concerns are causing an increased federal emphasis on charging fair market values for use of federal natural resources or facilities.

An overarching goal of these federal agencies appears oriented toward applying a number of different regulatory and market-based tools to restore and manage ecosystems and ecological health within western watershed boundaries. While the goal of healthy ecosystems and watersheds is one which Colorado executive branch agencies support the concerted activity of federal agencies in

this arena threatens to undermine traditional state and local primacy with respect to water, land, and wildlife management.

These changes in the federal role vis a vis water resource management in Colorado are being reinforced though the reauthorization of various federal environmental laws and through a recent Supreme Court interpretation of existing law. These developments are reviewed in the remainder of this section, as are the initiatives which agencies of the State are undertaking to reduce negative aspects of this increased federal presence.

A. Clean Water Act

Although the Clean Water Act will not be reauthorized this year, the debate concerning new amendments to the Act has been ongoing for over two years. In late 1993, the Departments of Health, Natural Resources, Agriculture and Local Affairs worked together to develop a Colorado Executive Branch position statement regarding Clean Water Act reauthorization. A copy of this statement is attached as Appendix C to this report. The development of that statement, with extensive input from the public, helped to assure a unified presentation of Colorado's interests on this important topic.

The most recent Senate version of the reauthorization is nearly 600 pages in length. While there are concerns about many new federal mandates within both the House and Senate versions of the Clean Water Act Reauthorization, there are several areas of significant concern from the standpoint of quality and quantity integration within the State of Colorado.

1. Four General Concerns

The first concern is with respect to future funding levels. Major increases in funding levels for state revolving loan fund programs, state water quality management grants and nonpoint source program funding are proposed in both the House and Senate versions. These funding increases are necessary to help meet needs resulting from mandates included in the last reauthorization of the Clean water Act, in 1987. Without a reauthorization bill, the funding in these important programmatic areas may be threatened or at best maintained at the levels of continuing appropriations.

The second area of concern is new provisions regarding watershed planning and management. While both versions of reauthorization provide for a voluntary watershed protection approach, there are very prescriptive requirements for states that choose to pursue a watershed-based water quality protection framework. EPA would be required to approve watershed plans for each individual watershed. Prescribed levels of water quality monitoring addressing physical, chemical and biological integrity within the

nation's watersheds are contemplated in the Senate version under the auspices of a national water quality monitoring task force. Establishment of new watershed planning and management entities is also envisioned within the proposed legislation.

A third area of concern is proposed revisions to the nonpoint source program. There is no longer significant debate about whether nonpoint source discharges should comply with applicable water quality standards. There is still considerable discussion as to when such discharges should comply with standards, and how we can best move toward that goal--e.g., what mix of voluntary or regulatory approaches is appropriate.

A fourth area of concern involves the debate about whether to require across-the-board implementation of nationally established best management practices within watersheds where standards are currently not being attained or whether to allow a more targeted approach aimed at remediating the more significant sources. Nonpoint source discharges and activities of concern in Colorado include agricultural sources, abandoned and inactive mine sources, water resource development (hydrological modification) related water quality problems and other construction activities. It will be a formidable challenge for Colorado to attain compliance with underlying water quality standards in areas significantly impacted by nonpoint sources.

2. Important Specific Issues Associated with Clean Water Act Reauthorization

Reauthorization of the Clean Water Act also raises issues with respect to wetland protection, biological criteria as a basis for standard setting, and water quality standards appropriate for and specific to arid western states.

a. Wetlands

Wetlands protection is likely to receive increased emphasis in the reauthorized version of the Clean Water Act. Protection of the functions and values associated with wetlands involves issues associated with water quality, fish and wildlife protection, flood control and local land use. The State has not established any specific policy direction for addressing wetlands protection, although a number of local governments are moving forward with substantial wetland protection programs.

b. Biological criteria

In both the current House and Senate versions of Clean Water Act reauthorization there is considerable emphasis on ensuring the attainment of biological integrity in the nation's waters through the use of biological monitoring,

instream bio-assays and the development of biological criteria (or biocriteria). Heretofore, regulatory agencies have used chemical measures to assure the protection of aquatic life. This focus has been due in part to the complications associated with defining an ecological approach to assessing biotic integrity. The use of biological communities offers a systems approach to surface water quality assessment and management. Aquatic organisms not only integrate a variety of environmental influences (chemical, physical and biological), but complete their life cycles in the water body and, as such, are continuous monitors of environmental quality.

Many states have conducted extensive monitoring of the biological communities existing within their water bodies. A few states have developed an operational definition of biotic integrity, developed standard biological assessment techniques and provided a framework from which biocriteria have been institutionalized in their surface water quality management programs.

However, the Colorado Water Quality Control Commission has determined that no biological criteria should be adopted as enforceable water quality standards in Colorado at this time. The Commission has stated that it believes that while "biological assessments are a useful evaluative tool and that available public and private resources should be directed toward developing a consistent biological data base to help guide future water quality management decisions, the adoption of enforceable biological criteria would be premature at this time". The Water Quality Control Division and other entities involved in aquatic biological assessment have not yet developed standardized protocols, specific to Colorado, for interpreting the results of biological assessments, although such efforts are currently underway. Also, there is a paucity of data for streams in Colorado that can be used for specifying appropriate "reference reaches" for assessing the comparative biological integrity of impacted segments. In addition, there is a serious concern among many biologists in this state about the applicability of currently available aquatic community indices to water bodies in Colorado. Many of the indices that have been used by states, such as Ohio, which have adopted biocriteria, are perhaps better adapted to warm water streams in areas which have a more diverse fish fauna and which enjoy a higher annual precipitation and fewer topographic and climatic extremes than Colorado.

We currently have little segment-specific information regarding water quality factors which may be limiting biological integrity in Colorado's waters. The goal of biological integrity in all water bodies, if measured

against the species diversity, productivity or ecological structure found in unimpaired waters, may not be achievable in many water bodies where there has been intensive water resource development to serve municipal, industrial and agricultural needs. In fact, it is extremely difficult to find unimpaired reference waters for the water bodies and habitat types which are commonly affected by water resource development and point source discharges in Colorado. However, with more experience, it may be possible to identify "least impacted" reference reaches which provide a useful assessment tool in evaluating the biotic condition of ambient waters in this state.

Under EPA's current policy, any biological criteria adopted as water quality standards would have independent applicability along with chemical standards and the results of any whole effluent toxicity testing. The Commission has stated that "while each of these tools provides useful information for water quality management, a blanket policy of independent applicability and strict liability in the face of potentially inconsistent results from the three different types of testing is not appropriate". Rather, professional judgement is needed to determine the appropriate response in the face of such conflicts. Finally, the Commission has taken the position that there is no binding federal requirement at this time for states to adopt biological criteria as enforceable water quality standards. EPA has stated in water quality standards program guidance that states should adopt narrative biocriteria during the triennium beginning in FY91 and ending in FY93. However, EPA guidance does not appear to be founded on a clear regulatory basis at this time. It remains to be seen whether the reauthorization of the Clean Water Act will provide clear statutory authority for enforceable biocriteria.

c. Arid West Water Quality Standards

During the Senate committee hearings on Clean Water Reauthorization, last Spring, an amendment proposed by Senator Harry Reid from Nevada concerning arid west water quality standards was adopted. The major thrust of the amendment is to take the unique circumstances of ephemeral streams in the arid west into account in establishing water quality standards. The amendment probably originated from a proposal made by the Western Coalition of the Arid States (WESTCAS). However, prior to adoption by the committee there had been significant input from the environmental community, as well. A number of western states and EPA were concerned about the legislative proposal, but for different reasons. During a joint meeting between the states and EPA in Albuquerque during the month of January, 1994, it was

agreed that a workgroup would be formed involving high level administrators from EPA and state water quality program directors from the states of California, New Mexico and Colorado to discuss suggested modifications to the Reid amendment. A number of teleconferences were held. The workgroup effort was useful in clarifying and, to some degree, narrowing potential issues regarding water quality standards in the arid west. However, the workgroup was ultimately unable to achieve consensus on several fundamental aspects of the proposed language that was discussed. Several of the differences between EPA and the states go to the heart of arid west water quality issues.

General consensus was reached by the overall workgroup with respect to a proposed beneficial reuse goal which recognized the ecological values associated with effluent dependent streams. There was also agreement with respect to the arid west water quality research provisions which had been proposed by Senator Reid. However, the states were unable to agree with EPA about statutory criteria which would govern the establishment of water quality standards appropriate for intermittent, ephemeral and effluent dependent streams in the arid west. The states felt that the arid west water quality standards provisions should apply to the set of streams which are normally dry for at least half the year. EPA wanted a much more restrictive definition which would have essentially made the provisions irrelevant within the state of Colorado. Furthermore, states did not agree among each other or with EPA about statutory requirements governing the adoption of water quality standards for constructed water conveyances. EPA region VIII, in which Colorado is located, has not required states to adopt such standards while EPA region IX has, for the states of California and Arizona.

Whenever serious discussions concerning reauthorization of the Clean Water Act resume, the states and EPA will resume discussions concerning water quality standards for water bodies in the arid west. It is likely at that time the discussions will involve a broader set of interests including municipalities and the environmental community.

B. Safe Drinking Water Act

As was the case for Clean Water Act reauthorization, the two year long effort to reauthorize the Safe Drinking Water Act failed in this session of Congress. The Senate passed its version of the Safe Drinking Water Act reauthorization in April, 1994. The Senate enacted a revised version of S.1547, the Safe Drinking Water Act Amendments of 1994, introduced by Max Baucus. However, the bill stalled in the House until the waning days of this Congressional session, prior to the break for the interim

elections. However it is instructive to examine some of the key provisions included in the bills which were developed.

Both the Senate and House bills include a state revolving loan fund to help build and upgrade drinking water infrastructure, a source water (public water system watershed) protection program, public water system viability requirements, operator certification programs, reform of the process for selecting contaminants for regulation (i.e., a risk-based approach), extension of the time period for systems to come into compliance with new drinking water regulations, and new enforcement and information-gathering authorities. The bills include many provisions that reflect key concerns of the state and local coalition that had endorsed the Slattery Bill (HR3392, in the House) and the Domenici Bill (S2019, in the Senate). Key provisions include:

i) up to 30% of the SRF capitalization grant can be used as loan subsidies to disadvantaged communities as defined by states;

ii) the proposed federal backstop fee for funding state drinking water programs was deleted and replaced by an authorization to use the SRF to fund the state drinking water programs;

iii) 50% of federal SRF capitalization monies can be transferred, at the discretion of governors, between the Safe Drinking Water Act and Clean Water Act SRF;

iv) maximum contaminant levels (MCLs) for carcinogens cannot be set at levels more stringent than a 10 -6 risk level (considering sensitive sub-populations) and can be set at a less stringent risk level provided essentially equivalent risk reduction is achieved;

v) the administrator of EPA can consider overall reduction in drinking water risks in setting specific maximum contaminant levels for almost all contaminants, thus allowing risk-risk trading;

vi) systems up to a population of 10,000 persons would be eligible for small system variances and relief from expensive quarterly monitoring for carcinogens after a single non-detect sample; and

vii) all public water systems would be eligible for a compliance level for radon based on the national average level of radon in outdoor air.

C. Endangered Species Act

The Endangered Species Act (ESA) is also overdue for reauthorization by Congress. It is presently unclear when this reauthorization will occur. There appears to be a widespread consensus that an ecosystem protection approach should supersede the species-by-species protection approach that is currently provided in the Endangered Species Act. Such an approach offers both opportunities and great challenges in the state of Colorado. Major issues with respect to the continued viability of water project operations and development have arisen in various Endangered Species Act consultative processes, as described above. In addition, it now appears that ESA Section 7 consultation requirements will be triggered by actions taken under the State's Clean Water Act programs, such as establishing water quality standards. This is because state water quality standards must be approved by EPA and such approval constitutes a federal decision subject to the ESA consultation requirements. Consultations with the USFWS often extend administrative time frames and open additional legal and procedural opportunities for opponents of pending administrative decisions.

D. United States Supreme Court Interpretation of State Authority under Section 401 of the Clean Water Act

Reauthorization of existing statutes creates opportunities for expanded federal involvement in the water resources arena in Colorado. Interpretation of the existing statute also provides such opportunities.

The United States Supreme Court recently decided a case that broadly interprets section 401 of the Clean Water Act. Briefly, section 401 requires applicants seeking federal licenses or permits for activities which may result in a discharge into waters of the State, to receive a certification from the State that the Activity will be in compliance with water quality standards. The case in question is PUD #1 Jefferson County and City of Tacoma v. Washington Department of Ecology, 1994, WL 223821 (U.S. Wash.). The principal question before the United States Supreme Court in the case was whether the Clean Water Act authorizes a state to impose minimum streamflows a condition to a section 401 certification. The court held that states may impose minimum streamflow conditions to section 401 certifications if such conditions are necessary to protect the designated sues of the stream in questions. A number of important and controversial statements are included in the Court's opinion:

i) A State's authority to impose section 401 certification conditions is not tied to "discharges" but to "activities". Once a discharge requiring federal authorization triggers the section 401 process, the States may impose conditions on any activity associated with the project, whether or not the activity itself involves a discharge.

ii) States may require compliance with water quality standards (including narrative standards) as a condition to section 401 certification. Compliance with numeric criteria may not be sufficient to ensure the protection of designated uses. States should not carry the burden of imposing numeric criteria for all the parameters that are relevant in the stream. Therefore, additional conditions may be imposed to ensure protection of the designated uses.

iii) A minimum stream flow is an appropriate limitation, under section 401, to ensure protection of designated uses (if allowed under state law) and to implement the states' antidegradation policies. The distinction between water quality and water quantity is "artificial". Definition of "pollution" as involving alterations of the physical and biological integrity of water as well as its chemical integrity evidences Congress' intent to allow regulation of water quantity if necessary under the CWA.

iv) Section 101(g), also known as the Wallop Amendment, and 510(2), a section entitled "State Authority", preserve the states' ability to allocate water quantity as among users; they do not limit the scope of water pollution controls that may be imposed on users after allocation.

Section 25-8-104(1) of the Colorado Water Quality Control Act specifically prohibits the Water Quality Control Division or the Commission from imposing minimum streamflows. The Supreme Court case provides that states "may" rather than "shall" impose minimum stream flows. Therefore, the direct holding of the case does not have an immediate effect in Colorado. However, the Court's decision relies upon section 401 (d) of the Clean Water Act which requires the states to impose certification conditions necessary to assure the federal permittees' compliance with water quality standards and classifications. The Court has relied heavily on a provision in section 303 of the Clean Water Act which provides that a water quality standard includes the designated use for the water body.

The Court's interpretation in this case, combined with EPA's ability to conditionally certify projects where the state lacks authority to require conditions sufficient to protect water quality standards (including the classified uses), has raised a great deal of concern within Colorado's water development community. The implications stemming from this case underscore the need for very proactive efforts to coordinate and integrate water quality and water quantity and wildlife protection programs within the state. The ongoing quarterly water quality and water quantity management coordination meetings between DNR and CDPHE representatives provide a real opportunity for the key boards, commissions and agency directors to keep each other well informed about the potential implications of pending decisions and for

developing strategic approaches to simultaneously address the complex, interwoven issues which might constrain water development and allocation patterns in Colorado.

E. The State's Response to the Emerging and Expanding Federal Role in the Water Resource Arena

In response to the emerging and expanding federal presence in the water resource arena, the state of Colorado has actively moved forward with a number of proactive initiatives to anticipate and reduce the negative affect of increased federal involvement. These are listed below:

1) The Recovery Programs for Endangered Fish in the Upper Colorado and San Juan River Basins are designed to recover endangered fish species in the Colorado River Basin so as to avoid future federal restrictions under the Endangered Species Act and allow for development of Colorado's compact entitlement .

2) Recently, Governor Romer and the Governors of Nebraska and Wyoming signed an agreement with Secretary of Interior Bruce Babbitt to develop a recovery effort with similar overall goals on the Platte River.

3) Also within the South Platte River Basin, the Governor and Department of Natural Resources officials worked intensely with water users to develop operating plans and other responses to the proposed imposition of by-pass flows by the Forest Service on municipal, irrigation and hydroelectric facilities located on National Forest lands.

4) The Division of Wildlife is actively involved in programs to identify and preserve habitat for, and review, populations of "species of concern." These species, such as the boreal toad, could greatly affect water use and development if listed under the Endangered Species Act.

5) Agencies of the State are working to integrate water quality, water quantity, and wildlife management and protection efforts along watershed lines. The goal of this efforts is to address the needs of declining aquatic species and communities through active state protection efforts, in order to avoid listing under the federal Endangered Species Act.

6) Related to #4 above, agencies of the State are actively involved in development of a watershed approach to general water quality and water quantity management. The watershed approach to water quality management has attracted a great deal of interest in Colorado and across the country over the last several years. The Colorado Water Quality Forum, a

collection of water users, state and federal agencies, and other interested members of the public,has in particular devoted considerable attention to this issue.

Several considerations influenced this interest. First, in recent years there has been increasing interest nationally in a more holistic, integrated approach to environmental and natural resources management, such as that embodied in watershed management. Second, there was also a recognition that a number of local and regional watershed protection efforts had been initiated in Colorado. Third, Colorado's water quantity management system has always been organized around watersheds, and in recent years, the Water Quality Control Division and Commission had begun to shift toward more of a watershed focus in the organization of the state water quality management system. Fourth, federal water quality program initiatives also have been moving toward an increased watershed protection focus, and watershed management is expected to be addressed in Clean Water Act reauthorization. In addition, several federal resource management agencies are shifting their efforts toward an ecosystem management approach organized on a watershed basis. Finally, there was a recognition of the potential for watersheds as a appropriate and practical scale on which to address the integration of water quality and water quantity concerns.

The Water Quality Forum has developed a working paper to advance communication regarding what was learned from its analysis and to begin work toward a consensus regarding an appropriate Colorado approach to watershed protection efforts.

The Water Quality Forum is currently disseminating copies of the working paper as broadly as possible. More recently, the Forum has established two subcommittees or workgroups to address a number of critical issues related to the watershed protection approach. One subcommittee is addressing a number of issues having to do with integrating water quality and quantity in a watershed context. This subcommittee plans to assist the Colorado Water Conservation Board in its review of the instream flow program during the next year. In addition, the quality/quantity subcommittee plans to focus on available examples of successful efforts to resolve site-specific water quality/quantity conflicts.

A second workgroup has been established by the Water Quality Forum to address watershed monitoring needs, data management and sharing needs, and watershed planning procedures and products. This workgroup will devote its efforts to a number of specific areas including: i) establishing several task forces comprised of technically-oriented individuals in

the areas of field sampling protocols, laboratory analytic protocols and statistical/data analysis protocols (each task force will address quality assurance and quality control considerations applicable to the specific topic); ii) encouraging the development of coordinated data bases and data sharing; iii) developing a whitepaper concerning water quality monitoring in the context of the watershed approach; and, iv) outlining recommended state and local planning activities within the Colorado watershed protection approach.

6) The state continues to be active in the development of both state and federal legislation as it affects water use and development. State representatives are involved in interstate organizations, such as the Western State Water Council, Interstate Compact Commissions, and interstate/federal working groups, such as the Colorado River Basin Salinity Control Forum. State representatives were actively involved in a National Governors Association effort to develop a states' alternative to Clean Water Act reauthorization proposals.

All of these activities make Colorado a leader in anticipating and developing innovative responses to federal initiatives which threaten to undermine traditional state primacy in the water resource arena.

V. PROTECTION OF EXISTING SUPPLIES

One of the major challenges facing Colorado is not merely the development of new water projects and new supplies, but the protection of existing yields. The lack of funds for project maintenance, the deterioration of existing facilities, and increasing costs associated with water delivery from both federal and non-federal facilities, make the payment for existing supplies a challenge. New federal regulations, and increased regulation under old laws, likewise threaten the yield of existing water projects.

Colorado's response to the increasing uncertainty of existing supplies is geared toward the protection of existing supplies. For example, Department of Natural Resources officials have worked closely with Front Range water users to develop alternative solutions to the imposition of bypass flows at water facilities on National Forest lands. Facility owners in the Poudre Basin, including Greeley, Fort Collins and the Water Supply & Storage Company, believe that proposed by-pass flows would significantly compromise their water rights yields. Accordingly, they devised a joint operations plan which would improve aquatic habitat conditions in the mainstem of the Poudre River without diminishing yield or materially increasing cost of

supply. With assistance from the Governor and the Department of Natural Resources, this plan was reviewed by state, federal and private sector biologists who concluded that the proposal would yield as much or more aquatic habitat for the Poudre River Basin upstream from Poudre Park than would the proposed Forest Service bypass flow requirement. The Joint Operations Plan was largely approved by the Forest Service in recently issued land use decisions.

Innovative and cooperative working relationships between water users and the state and federal government can identify similar opportunities which can maintain important aquatic habitat while preserving project yield. The State will continue work with the Forest Service to explore how similar concepts such as represented in the Poudre River Joint Operations Plan might function in other watersheds facing similar and or even different issues.

VI. PROTECTION OF THE ENVIRONMENT

Water development and use throughout Colorado has important environmental implications. Colorado has worked on several fronts to promote environmental restoration and protection initiatives related to both surface and groundwater use and development. Examples of these initiatives are described below.

A. Watershed-based Project Operations Plans

Watershed-specific project operations plans have been and are being developed by facility owners with State assistance in response to federal permitting requirements under the Federal Land Management and Planning Act, as discussed above. These plans provide alternatives to proposed Forest Service by-pass flows. These plans not only protect system yields, they also help to restore environmental conditions and promote long-term environmental protection at a watershed level. Once adopted, these plans will immediately improve winter flow conditions that currently limit fisheries within important mainstem reaches of the Poudre River and Big Thompson watersheds. A similar effort to develop a watershed operations plan, again with State assistance, is underway in the Boulder Creek watershed. This effort will be designed to complement the City of Boulder's 1993 innovative water rights donation to the State Instream Program that has helped to improve flow conditions on North Boulder and Main Boulder Creeks.

More generally, the Department of Natural Resources will soon begin negotiations with the Forest Service to develop a framework that efficiently allows water users to receive land use authorizations for the water facilities while also meeting legitimate resource protection goals on the National Forests.

Efforts will be made to build water quality considerations into this planning framework.

B. Management of Water Quality Impacts from Non-point Sources

1. Agricultural sources

A number of different kinds of nonpoint source pollutants are associated with agricultural activities. Pesticides, nutrients and various salts are commonly found in agricultural runoff. Farming activities also can result in significant sedimentation of receiving streams.

In Colorado there are agricultural problem areas with elevated nutrients in surface and groundwater. The only nutrients for which water quality standards exist on a widespread basis are ammonia and nitrate. Ammonia concentrations are of concern where water bodies are classified for aquatic life use. Nitrate concentrations are of concern where there are public drinking water supplies in place. There are approximately 2500 stream miles which have been impacted by streambank erosion and sedimentation associated with agricultural runoff and farming and grazing activities near riparian ares. Presently there are no standards which apply to sediment quality or quantity. However, water quality standards for sediment are a major priority for development within both the House and Senate versions of the reauthorization of the Clean Water Act. Elevated pesticide levels have not been observed to a significant extent either in surface or groundwater within the state.

The state has established a framework for addressing groundwater quality issues associated with chemical fertilizers and pesticides. Senate Bill 90-126 set forth clear roles for the Water Quality Control Division, the Colorado Department of Agriculture and the Colorado Cooperative Extension Service in addressing groundwater quality problems. This program has been successful in bringing about cooperative relationships among regulatory and technical assistance agencies and the agricultural community. The Senate Bill 126 model perhaps could be expanded to address future requirements for agricultural nonpoint sources to achieve and maintain compliance with water quality standards.

2. Abandoned and Inactive Mines

There are over 50,000 abandoned and inactive mines within the State of Colorado. Hundreds of such mining sites contribute significant levels of pollutants to state waters. There are conflicting policy directives within EPA concerning whether inactive and abandoned mines are point sources, nonpoint sources or a combination of the two, depending upon the circumstances.

Water quality problems at inactive and abandoned mines can be extremely difficult to remediate. Attainment of full protection water quality standards in waters impacted by past mining activities is not likely to be achieved in all cases. The aggressive timeframes currently being proposed in CWA reauthorization for nonpoint compliance with water quality standards are entirely unrealistic for mining related nonpoint sources. Given the internal policy conflict within EPA it is unclear whether nonpoint source funds will be allowed to be used to address mining related nonpoint source problems. A purely regulatory approach forcing owners of such sites into compliance with water quality standards is unlikely to be effective in improving water quality for a variety of reasons.

3. Hydromodification

Water quality impacts associated with dams, diversions and other water resource development-related modifications to water bodies are viewed as nonpoint sources under the Clean Water Act. Water resource development-related construction activities in streams and around lakes have been routinely regulated under sections 404 and 401 of the Clean Water Act. A recent Supreme Court decision (discussed above) also may have implications for water resource development and management practices for which a federal license or permit is required and, therefore, for which a section 401 certification is required. It will be a continuing challenge to find ways to alleviate potential water quality impacts of hydromodifications without causing material injury to vested water rights.

4. Local Land Use Control Issues

Nonpoint source control often involves the implementation of specific management practices in relation to various land uses. For example, protection of reservoirs against nonpoint source contamination from nutrients potentially involves sewering residential areas, construction of catchment basins to prevent infiltration and nutrient loading, paving of areas to prevent erosion and sedimentation, and extensive drainage improvements to protect water quality. Many of the necessary controls for such water quality improvements are most appropriately addressed by local land use decision-making authorities. Therefore, effective nonpoint source control programs will necessitate careful coordination with local governments.

C. Groundwater Quality Management

1. Comprehensive State Ground Water Quality Protection Program:

Colorado uses groundwater in a variety of ways. Fifty-nine of the sixty-three counties rely on groundwater to some extent as a public drinking water source; 19 of these are solely reliant upon

groundwater sources. Groundwater supplies water for agricultural and industrial needs as well. Protecting the integrity of Colorado's groundwater supplies is critical.

The state agencies involved in groundwater quality management are in the process of developing a comprehensive state groundwater protection program (CSGWPP) in order to achieve a more efficient, coherent and comprehensive approach to protecting the quality of the state's groundwater resources. The Water Quality Control Commission is providing leadership for this effort. A new partnership among federal, state and local entities is envisioned. The first essential step is to develop a goal for groundwater quality protection and to establish priorities. Defining authorities and roles among the various agencies and programs and implementing all necessary efforts to accomplish the state's groundwater quality protection goals are the next critical activities. Additional elements involve coordinating data collection and management and developing public education packages.

There are a number of threats to the quality of Colorado's groundwater supply. Activities both on and beneath the land surface affect groundwater quality. For example, increased use of fertilizers and pesticides may cause toxic compounds to infiltrate through the soil into the groundwater. Large feedlots seep from lagoons, contaminating both surface and groundwater with nitrates, phosphates, chloride and bacteria.

Mining wastes have traditionally been disposed of in unlined tailings ponds. These may generate acidic waters and serve as sources of metals, dissolved solids and radionuclides which can pollute both surface and groundwater. Similarly, unlined or poorly lined wastewater stabilization ponds can contaminate groundwater if infiltrations occurs.

Oilfield exploration and production activities may produce highly mineralizes salt solutions called brines. These are temporarily stored in holding tanks or injection wells because of the corrosive nature of the brine. Leakage from tanks and pipelines is common.

The proliferation of septic tanks is a serious problem in some localities. Septic tanks are so abundant in some areas not served by municipal sewer systems that biological and nutrient contamination of groundwater has become a public health and environmental concern.

Leaking underground and above-ground storage tanks are well-known groundwater contamination threats. Over 2500 underground tank remediation projects, addressing groundwater and soil contamination, have been undertaken since 1986. More than 20,000 underground tanks have been located at about 8,000 sites and

approximately 5,000 above ground tanks are known to exist, all of which may require remediation in the future. It is possibile that an additional 25,000 tanks exist on the property of so-called "innocent" landowners.

Finally, even artificial recharge projects aimed at augmenting aquifers by increasing the amount of water infiltrating the underground water storage can cause groundwater contamination if the waters used for recharge are comprised of sources with poorer quality than the receiving aquifer.

The basis for a comprehensive state groundwater quality protection effort was established with the passage of SB89-181 which delegates specific responsibility to various state agencies to protect groundwater quality in those programmatic areas for which they have a statutory responsibility . Advancing and coordinating efforts pursuant to SB89-181 will help to safeguard present and future uses.

The Water Quality Control Commission and Division have placed a high priority upon protecting shallow, unconfined aquifers used heavily as drinking water sources. The second priority is the protection of shallow, unconfined aquifers with lower demand from domestic users. The third priority is to protect deeper, confined aquifers and fractured bedrock aquifers. Significant priority is always assigned to the cleanup of major contaminated sites such as Rocky Flats, Rocky Mountain Arsenal and cleanup of point sources of discharges to groundwater. Some potential contaminant sources, such as agricultural activities receive lower priority, in part, due to the SB90-126 program which substantially addresses these problems.

L.A.C. Question 1(b): What are the special interests, related groups and constituencies involved in water management in Colorado?

Agencies' Response:

The historical development and management of Colorado's water resources, with a few exceptions, has been dominated by entrepreneurial activities at a local level. This pattern contrasts strongly with water development and management in other western states where centralized planning is often a dominant feature. The special interests, organizations, related groups and constituencies that influence water in Colorado for the most part reflect this decentralized tradition of water resource development and management.

1. Elected Officials: Members of the General Assembly enact water-related laws that establish the legal foundation for state policies concerning water management in Colorado.

2. Judicial Officials (Water Courts): Judges at all levels of the state's judicial system interpret water-related laws.

3. Cities: Like counties, municipalities may become subject to the stormwater discharge permit program if they have populations greater than 100,000 inhabitants. Also, cities have strong land use powers which are often exercised in order to achieve environmental protection goals generally, and water quality goals, in particular. Municipalities often are direct wastewater treatment and water supply service providers. Some municipalities operate pretreatment programs to protect their wastewater facilities from harmful industrial discharges. Cities are often involved in urban drainage and flood control operations. Municipalities often hold extensive water rights and are involved in a variety of water management activities.

4. Water User/Water Development Agencies:

   a. Water Conservation Districts: There are three Water Conservation Districts in the state. The largest among them is the Colorado River Water Conservation District followed by the Southwestern and Rio Grande Water Conservation Districts. The Water Conservation Districts were created by statute primarily as protective associations. The Colorado River District, in particular, was created in part to counter-balance the activities of the Northern Colorado Water Conservancy District in addition to ensuring the conservation of the Colorado River for storage, irrigation, mining and manufacturing purposes and the construction of reservoirs, ditches and irrigation works.

   b. Water Conservancy Districts: There are 45 Water Conservancy Districts in the state. The largest among them is the Northern Colorado Water Conservancy District and its municipal subdistrict. Water Conservancy Districts are created by petition for the purpose of developing water supplies for municipal, agricultural and industrial uses.

   c. Water User Associations: There are numerous water user associations throughout the state including: Cache la Poudre Water Users Association, Clear Creek Water Users Association, District 6 and District 10 Water Users Association, Grand Valley Water Users Association, Larimer County Underground Water Users Association and Leroux Creek Water Users Association. These associations are generally made up of members who share an interest in water supplied from a single watershed or basin. Water users associations created under the

provisions of the Colorado River Water Conservation District are considered subdistricts or subdivisions of that District. Associations provide a means for members to exchange information and to enter negotiations as a block with larger conservancy or conservation districts, the State Engineer and the Legislature.

   d. Irrigation Districts: There are ten irrigation districts currently organized within the state. Such districts are composed of water users which share a common interest in water supplies from a single water supply system.

   e. Ground Water Management Districts: The are ten ground water management districts in the State of Colorado. Most of the ground water management districts are organized within designated groundwater basins on the eastern plains of Colorado. However, one district is the groundwater appropriators of the South Platte River Basin which is an organization operating an extensive surface water/ground water conjunctive use system. Generally, members of each groundwater management district share an interest in water supplies from a defined groundwater basin.

   f. Water Authorities: There are two water authorities currently organized within the state of Colorado - Fountain Valley Water Authority and Project 7 Water Authority. Water authorities provide water supplies to user entities.

   g. Water and Sanitation Districts: There are 1467 special districts in Colorado. Many of these special districts are water and/or sanitation districts. Water sanitation districts are direct service providers which have the responsibility for planning, designing and operating drinking water and wastewater treatment facilities for specific service populations.

5. Section 208 Water Quality Planning Agencies: These agencies are primarily involved in encouraging and facilitating the development and implementation of areawide waste treatment management plans. Such plans are intended to identify any treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of an area over a 20-year period. A number of the 208 agencies within regional councils of governments are becoming involved in existing watershed/water quality planning initiatives.

6. Counties: Counties may be designated Water Quality Management Agencies for purposes of receiving funds to plan

and design wastewater treatment facilities. In addition, counties may establish water and sanitation districts to provide for ongoing management of water and wastewater treatment facilities. Rural counties increasingly are exercising this authority over disseminated individual sewage disposal systems. In the absence of an organized board of health, the county commissioners function as a board of health. Therefore, counties are involved in water management and water quality issues that may affect the health of their citizenry. Some large counties, for example, Arapahoe County and Jefferson County, have large populations in unincorporated areas. These counties are responsible for compliance with the stormwater discharge permit requirements. Counties have many land-use powers which are often exercised to control erosion, protect sensitive areas, such as wetlands, and to prevent pollution.

7. State Agencies (see H.B.1200 Report, pp. 8-47):

a. Colorado Department of Public Health and Environment:

i) Office of Environment: The Office of Environment provides overall administrative policy, budget and management direction to the environmental program within the Colorado Department of Public Health and Environment. OE is particularly involved in matters involving inter-departmental coordination and intra-departmental integration such as multi-media regulatory issues.

ii) Water Quality Control Commission: The Commission provides substantive policy direction pursuant to existing legislation for the state's overall water quality protection framework. The Commission establishes water quality standards, promulgates procedural, control, and permit regulations and holds quasi-judicial hearings when there are appeals of actions taken by the Water Quality Control Division.

iii) Water Quality Control Division: The WQCD serves as staff for the Commission in a broad array of rule-making hearings, most frequently concerning water quality standards. The Division implements the point source discharge permit program, the state's drinking water program, groundwater protection program, nonpoint source program, State Revolving Loan Fund (Facility Financial Assistance Program) and treatment plant operators' certification program.

iv) Hazardous Materials and Waste Management Division: The Hazardous Materials and Waste Management Division administers state programs pursuant to RCRA and CERCLA.

Each of the programs under the HMWMD addresses water quality protection and remediation.

v) Hazardous Waste Commission: The Hazardous Waste Commission provides substantive policy direction pursuant to existing legislation for the HMWMD. The Commission promulgates rules concerning transportation, storage and disposal of hazardous waste and holds hearings when there are appeals of actions related to hazardous waste management taken by the HMWMD.

vi) Board of Health: The Board of Health has program policy jurisdiction over a number of environmental programs within the Department of Public Health and Environment. The Board of Health has rulemaking authority for both the drinking water program and the individual sewage disposal system program (ISDS) administered by the Water Quality Control Division. The Board promulgates rules for both the solid waste program and underground storage tank program within the HMWMD. The Board has exclusive rulemaking authority for the Radiation Control Division, Consumer Protection Division and Environmental Integration Group.

b. Colorado Department of Agriculture: The CDA administers the agricultural chemical groundwater protection program pursuant to Senate Bill 90-126. The Department works in cooperation with the Colorado Cooperative Extension Service to develop and adopt best management practices to prevent pollution of surface and groundwater. The CDA is responsible for preparing a state agricultural chemical management plan consisting of best management practices for farmers to use to prevent contamination of ground and surface waters by agricultural chemicals. CDA also administers the Chemication Act which is designed to protect groundwater from contamination through facilities designed to apply agricultural chemicals through certain crop irrigation equipment.

c. Department of Local Affairs:

i) Division of Local Government: The Division of Local Government administers a number of financial assistance programs which many local communities rely upon to plan, design and construct wastewater and drinking water treatment facilities.

d. Department of Natural Resources

i) Executive Directors' Office: The EDO provides overall administrative and policy direction for the

Divisions within the Department of Natural Resources. The EDO is involved in numerous cross-cutting issues relating to natural resources management in the state (e.g., grazing reform, endangered species protection, fish recovery programs, natural resource damage assessments pursuant to CERCLA, etc.).

ii) Water Conservation Board: The CWCB has primary responsibility for the formulation of policies concerning the protection and utilization of water resources, water development, instream flow protection and protection of natural lake levels and for assistance in implementing the Colorado River Basin Salinity Control Act. Recently, the CWCB has become significantly involved in nonpoint source control, particularly in areas with highly saline runoff.

iii) Division of Water Resources: The State Engineer and the Division of Water Resources are responsible for water rights administration in Colorado. The DWR is an implementing agency pursuant to Senate Bill 89-181, responsible for groundwater protection in accordance with the specific regulatory authorities of the Division. The State Engineer reviews and administers non-decreed exchanges and substitute supply plans and carries out well permitting and licensing activities in accordance with the rules and regulations of the Board of Examiners of Water Well Construction and Pump Installation Contractors.

iv) Division of Wildlife: The Colorado Division of Wildlife (DOW) and the Wildlife Commission have the responsibility to protect and enhance the wildlife resources of the state. There is a high degree of interaction between the Water Quality Control Division and Division of Wildlife on many water quality issues including: establishing stream standards and use classifications for Colorado's waters; developing nonpoint source remediation projects; negotiating discharge permits for fish hatcheries and rearing units operated by DOW and for DOW fish reclamation projects; and negotiating section 401 certifications for wildlife management projects and habitat improvement projects.

v) The Division of Minerals and Geology: The DMG has exclusive authority for approving mining and reclamation plans and ensuring mining operations are in compliance with the Colorado Mined Land Reclamation Act and the Surface Mining Control and Reclamation Act. Both acts contain substantive provisions concerning the protection of surface and groundwater quality. In addition, the DMG is a Senate Bill 181 implementing

agency responsible for implementing through its specific regulatory programs groundwater standards promulgated by the Water Quality Control Commission.

vi) Oil and Gas Conservation Commission: OGCC is a Senate Bill 181 implementing agency responsible for protecting groundwater resources which could be impacted by drilling activities or disposal activities related to oil and gas exploration, development and production.

vii) Board of Land Commissioners: The Board of Land Commissioners is the steward for over approximately 9 million acres of land owned by the State of Colorado. The Board owns numerous water rights. The Board is responsible for preserving the natural values of state lands and waters while ensuring an appropriate economic return for the use of such lands.

viii) Colorado Groundwater Commission: The Colorado Groundwater Commission is the regulatory authority charged with ensuring groundwater use and development within designated basins of the State is conducted in accordance with state law. The Commission has groundwater quality as well as quantity protection responsibilities.

d. Colorado Water Resources and Power Development Authority: The CWRPDA is an independent agency capable of issuing bonds, which is charged with responsibility for financing a variety of infrastructure needs related to water supply, power development, drinking water treatment and wastewater treatment. The Water and Power Authority is integrally involved in the administration of the State Revolving Loan Fund (SRF) program.

e. Colorado Water Resources Research Institute: The CWRRI is an independent, academic entity responsible for providing technical and intellectual support to the legislature and state agencies in the broad areas of water resources management and water quality management.

8. Federal Agencies

a. United States Department of Agriculture:

i) Forest Service: Federal land management; issuance of Special Use Permits pursuant to FLPMA

ii) Soil Conservation Service: Agricultural water quality protection program under the Food Security Act of 1985 as amended.

b. United States Department of the Army:

i) Army Corps of Engineers: Clean Water Act section 404 permits for discharge of dredged or fill material.

ii) Management of Rocky Mountain Arsenal

c. United States Department of Energy:

i) Western Area Power Administration: Administers financial rate structure for federally operated hydropower facilities.

ii) Federal Energy Regulatory Commission: Licenses hydropower facilities.

iii) Management of Rocky Flats Plant.

d. United States Department of Interior:

i) United States Geological Survey: Water resource monitoring and reporting.

ii) Fish and Wildlife Service: Management of wildlife refuges, fish hatcheries and administration of Endangered Species Act.

iii) National Park Service: Federal land management.

iv) Bureau of Land Management: Federal land management; issuance of special use permits pursuant to FLPMA.

v) Bureau of Reclamation: Design, construction and operation of water management facilities.

e. Environmental Protection Agency: Administration of federal environmental statutes including Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act.

9. Basin Authorities:

a. Cherry Creek Basin Water Quality Authority: Currently, there is only one statutorily established basin authority, that being the Cherry Creek Basin Water Quality Authority. This Authority is a quasi-

governmental agency with a directive to assure that the waters of Cherry Creek Reservoir will be enjoyable for generations to come. The Authority is charged with the responsibility of developing and implementing plans to maintain acceptable levels of water quality in the reservoir and preserve the reservoir as an outdoor recreation amenity.

b. Chatfield Basin Authority: There is a very active basin group associated with Chatfield Reservoir. There is considerable interest within the Chatfield Basin to form a similar basin authority similar to that in Cherry Creek.

11. Colorado and National Organizations with water management concerns (please note that this list identifies many organizations but is not comprehensive):

a. Colorado Association of Commerce and Industry: CACI is an industry organization involved with many different kinds of water management issues. CACI frequently provides testimony at Water Quality Control Commission hearings and at the Legislature concerning water matters.

b. Colorado Counties Incorporated: This organization represents each of Colorado's 63 counties on broad-ranging matters of interest to counties. Specific water management functions and interests of counties are detailed above.

c. Colorado Farm Bureau: The Colorado Farm Bureau is an organization which represents a broad spectrum of agricultural interests in Colorado. Since water is the life-blood of agriculture, the Colorado Farm Bureau is actively involved in numerous water management issues and processes.

d. Colorado Groundwater Association: The Groundwater Association is a professional technical group that meets monthly, which is interested in promoting good groundwater stewardship and developing educational materials aimed at groundwater protection.

e. Colorado Municipal League: CML represents Colorado's 267 municipalities. As noted above, municipalities have a broad range of concerns and interests in water management. Therefore, CML maintains a strong presence in many processes aimed at addressing water quality or water quantity issues.

f. Colorado Ski Country USA: Colorado Ski County USA represents many of the large ski operations throughout the State. This organization has recently become highly involved in water quality matters which might affect skiing operations (e.g., water quality standards for wetlands, stormwater permitting issues).

g. Colorado Water Congress: Colorado Water Congress is a diverse assembly of water user, water development and discharger groups which maintains a very high profile in virtually all statutory, regulatory and policy initiatives which could affect water use in the State.

h. League of Women Voters of Colorado: The League of Women Voters of Colorado is a consumer organization with a long-standing interest in Colorado water issues, particularly drinking water matters. The League frequently testifies before the Water Quality Control Commission and actively participates in legislative proceedings which are addressing water issues.

i. Special Districts Association of Colorado: SDA is an organization that represents the 1467 special districts organized within the State of Colorado. Many of these districts are water and sanitation districts with direct responsibilities for supplying drinking water and for treating wastewater for discrete service populations.

j. American Water Resources Association: This group consists of interest groups concerned about water development throughout the nation. AWRA is frequently involved in congressional activities which may affect the development of the waters of the United States.

k. American Water Works Association: AWWA is a trade association to which many water utilities belong. AWWA conducts and sponsors a variety of research endeavors with specific applications to public water systems.

l. National Water Resources Association: NWRA is an organization with similar interests to AWRA as noted above.

m. Water Environment Federation: WEF is an organization which historically has been concerned about wastewater treatment issues. More recently, the mission of this group has broadened to encompass environmental remediation, water treatment and pollution prevention.

n. Western States Water Council

12. Colorado Environmental Organizations (please note that this list identifies many organizations but is not comprehensive):

a. League of Women Voters of Colorado: The league is a non-partisan political organization which encourages informed and active participation by citizens in government and influences public policy through education and advocacy. They follow a number of program areas. In Natural Resources they focus on water, air, land use, environmental planning and management.

b. Clean Water Action: Clean Water Action has focused on supporting sound environmental programs. This group has been particularly concerned about the potential adverse environmental effects that might ensue if any of the recent proposals for takings legislation are enacted. Clean Water Action has a door-to-door canvas which informs citizens of national and state environmental issues.

c. Colorado Environmental Coalition: C.E.C. is a loose coalition of environmental interests. It works primarily on wilderness, wildlife, and national forest issues, including ecosystem management. C.E.C. does not participate in state legislative issues.

d. CoPIRG: CoPIRG is the state chapter of the National Public Interest Group begun by Ralph Nader. Membership focuses on college campuses. CoPIRG follows a variety of public interest issues, including environmental issues at the State and Federal level.

e. Colorado Trout Unlimited: This is an active legislative player. The mission of Trout Unlimited is to preserve, protect, and enhance cold water aquatic life resources. T.U. is focused on mining, water quality, instream flow, bypass flows, fisheries management, takings legislation, and all aspects of water management.

f. Environmental Caucus: The Environmental Caucus is an association of environmental groups formed in response to the proposed Two Forks dam. It is staffed by EDF. The Environmental Caucus represented the environmental community on Governor Lamm's Water Round Table. The Environmental Caucus is still interested in water-related issues within the State.

g. Environmental Defense Fund: Colorado has a state office of this national environmental group. EDF is

respected among the environmental community for its scientific and legal expertise. EDF is focused on air, water, federal environmental legislation, state environmental programs, and compliance with federal environmental laws.

h. Sierra Club: Sierra Club is a national environmental organization. The State chapter (Rocky Mountain Chapter) is composed of local groups around the state. The Sierra Club is interested in all environmental issues, active both legislatively and in the field.

i. Sierra Club Legal Defense Fund: This group is the legal arm of the national Sierra Club. The Legal Defense Fund has been involved in several citizen lawsuits in Colorado recently.

j. The Nature Conservancy: T.N.C. is largely apolitical. It works to raise money to purchase and set aside land and water resources to preserve biodiversity. T.N.C. is active on in-stream flow issues.

L.A.C. Question 1(c): What is the most effective organizational structure within State government to provide long-range planning, conduct regulatory activities, and in general, to ensure that water issues are addressed in an appropriate and timely manner?

Agencies' Response:

The House Bill 1200 Report was specifically aimed at evaluating the organizational placement and efficient conduct of water programs, in general, and water quality programs, in particular, within the state. During that study the organizational relationships among drinking water programs, water quality programs, water quantity programs and all other environmental programs were evaluated for all 50 states. It was discovered that a considerable variation exists among the states in how they have organized water quality and quantity programs.

During the study, particular attention was paid to how western states have organized the delivery of water quality and water quantity programs and provided for the necessary integration between these critical management functions. The H.B. 1200 report, drawing from a previous survey of 19 western states, describes four general approaches for integrating and organizing water programs which are currently being implemented in western states.

The four approaches include: cooperative mechanisms through agreements between agencies; formal coordination of policy and planning; coordination of water management within a single department; and, integrated responsibility for water allocation and water quality within a single agency. Clearly, there are many variations possible within these four general approaches. Many such options were explored at length during the House Bill 1200 study process. The various possible approaches were examined in Chapter 4, pp. 49-58 of the House Bill 1200 report and an analysis of options for improved effectiveness and integration of water quality control and water quantity programs is presented in Chapter 5 (pp.59-65). The conclusions and recommendations of the House Bill 1200 study are presented in Chapter 6 (pp. 66-69).

The House Bill 1200 Report concluded that organizational changes such as transferring water quality or quantity programs from one department to another or creating a new department will not resolve underlying communication and coordination issues are therefore not warranted at this time. The agencies contributing to this report believe that addressing underlying coordination and communication issues can facilitate effective long-range planning, the development of efficient regulatory programs, and the timely and appropriate response to water issues.

The agencies are committed to enhancing communication and coordination where necessary to ensure these goals are achieved. The agencies recognize, however, that the pressing water resource management issues of the day demand tremendous attention but varying degrees of interagency coordination and communication, ranging from close collaboration to no inter-agency collaboration whatsoever. Therefore, the agencies contributing to this report do not believe that the benefits of structural re-organization are sufficient in and of themselves to address important long-range planning needs and regulatory activities related to water resource management. Rather, the agencies believe that careful attention within the existing organizational structure of water programs in State government to the issues of the day will yield necessary levels of coordination and communication.

To this end, the agencies have been working closely over the past year to implement a number of the recommendations of the House Bill 1200 Report aimed at enhancing communication and coordination but falling short of full structural integration. While some of the recommendations remain to be implemented, significant progress has been made. A summary of the current status of implementation of the relevant recommendations contained within the House Bill 1200 report is attached as Appendix B.

L.A.C. Question 2(a): What agency, board, or commission has overriding responsibility for ensuring

that the quantity and quality standards of the state's water programs function in the state's interest in water management?

Agencies' Response:

The General Assembly has not placed overriding responsibility for water quality and quantity management in any one agency, board or commission. An extensive (and still accurate) examination of the roles and responsibilities of each state entity with water management responsibilities was presented in the H.B. 1200 Report (pp.8-47). Overriding responsibility for specific water management functions has been given to particular state entities, however. For example, the WQCC has sole authority for establishing water quality standards for state waters, the WQCD has primary responsibility for regulating point source discharges, the CWCB has unique authority to establish instream flow water rights, and the State Engineer administers water rights in Colorado.

In lieu of establishing a single entity with controlling authority for all water matters, the General Assembly has enacted and amended several pieces of legislation in order to achieve a high degree of integration among the existing agencies, boards and commissions with water responsibilities. S.B. 89-181 was the first and most significant Act of this type. S.B. 181, in fact, amended several existing sections of the Colorado Water Quality Control Act (CWQCA, 25-8-101 et. seq.) A new subsection 25-8-104(2) was added which included a prohibition against requiring an instream flow for any purpose under the CWQCA. New requirements for consultation between the WQCC, WQCD and the State Engineer were added to subsection 25-8-104(2)(d). Another subsection, 25-8-202(7), was added which designated four state entities (MLRD {now DMG}, OGCC, the State Engineer, and HMWMD) as implementing agencies for purposes of ground water protection and nonpoint source control.

S.B. 90-126 was another piece of legislation intended to promote coordination between state agencies addressing water quality issues. This Act directs the Colorado Department of Agriculture, the WQCD and the Colorado Cooperative Extension Service to work jointly to prevent groundwater pollution by agricultural chemicals.

L.A.C. Question 2(b): What clarification or change would the department make in assigning such responsibility?

Agencies Response:

As discussed above, a number of the recommendations from the H.B. 1200 Report are only now coming to fruition. Please see Appendix B. In particular, the recommendation for scheduling meetings between the WQCD, SEO and the CWCB has resulted in regular quarterly meetings with vital agendas. Attendance has grown to include two Commission members, a Board member, the Directors of WQCD, CWCB, DOW, SEO and senior policy staff.

Also, several new initiatives have unfolded which are resulting in much closer working relationships among the primary agencies with water-related responsibilities. These include the Water Quality Forum, the Colorado River Headwaters Forum, the Metropolitan Water Supply Investigation, the Clear Creek Watershed Forum and the Arkansas Headwaters Watershed Initiative.

Each of these efforts should be allowed to progress prior to again reexamining the need for organizational modifications.

L.A.C. Question 3. What alternatives to the current organizational structure and relationship would enable members of the general public to obtain information and assistance from one organizational entity instead of addressing inquiries and requests to the 18 entities dispersed through state government?

Agencies Response:

A. Coordinated Program Information Clearinghouses

1. CDPHE Information Center

The Center exists to serve as the central point of contact for the public to obtain general information about health and environmental issues, as well as to provide information and services to CDPHE employees. The center further serves as an information clearinghouse and referral program for business interests and the regulated community. The center provides permit application materials and referrals to key contacts within the Department who represent each of the regulatory programs of interest or concern to an applicant. One of the Center's goals is to provide information that will assist in promoting a greater understanding of health and environmental issues, concerns and needs. In addition to serving as a referral for technical and programmatic questions, the Center functions as the department's citizens' advocate office responding to public complaint inquiries.

2. DNR Information Clearinghouse

The Executive Director's Office maintains a citizen's advocate to respond to inquiries and complaints from the public. The individual filling this role is well versed in the structure and procedures of state governmental activities, and so can address a wide range of public informational needs.

B. Environmental Business Assistance Team

Environmental requirements are often an important factor in a company's decision about whether or not to expand or relocate in Colorado. New or modified environmental permits are usually required for many types of facilities. Additionally, Colorado state policy establishes pollution prevention as the environmental management tool of first choice. Pollution prevention allows a company to save money, reduce liability and benefit the environment.

The Governor's Office of Business Development and the Health Department's Office of Environment have been working together for several years on prospective new business ventures. Staff in the air, waste and water programs of the Office of Environment frequently assist the Office of Business Development staff by identifying regulatory requirements and assisting corporations through the permitting process.

Formation of the Environmental Business Assistance Team is designed to enhance coordination and to increase visibility of the environmental support efforts for some of the major economic development initiatives of the state. The purpose of the team is to enhance the state's ability to attract new prospects, assure coordination among various environmental permitting and regulatory requirements, facilitate more expeditious handling of permit applications and provide a vehicle to promote pollution prevention techniques at an early stage in design.

The principal charge of the Environmental Business Assistance Team is to provide assistance to the Office of Business development and companies on significant economic development initiatives in Colorado. The team members consist of key administrative and regulatory personnel who have been assigned to: serve as the key point of contact within each environmental division for major new or expanding business projects and refer matters to relevant division staff or to the Health Department's Information Center as appropriate; assure that companies receive accurate and timely information regarding permitting and regulatory requirements of the programs in the Office of Environment; provide advice and technical assistance as appropriate to new or expanding businesses regarding the

permitting and regulatory requirements of the various programs; coordinate among environmental divisions to facilitate consistency of requirements; provide information about pollution prevention opportunities that may be relevant at an early stage of development; and to communicate successes and problems.

C. Small Community Compliance Assistance Initiative:

The Governor has announced and the Office of Environment within the Department of Public Health and Environment is developing a proposal for a legislative initiative to help small communities effectively deal with the myriad of regulatory responsibilities impinging upon them. In a nutshell, the initiative would involve a planning process wherein a community in cooperation with the department would examine its unmet public health and environmental protection needs and requirements. The outcome of the planning process would be a long-term environmental plan. The plan would identify local priorities, especially for infrastructure needs, and milestones and realistic timeframes for the community to achieve its environmental and health protection goals and requirements. The small community could be allowed to phase in multiple requirements with up to 10 years to meet all requirements. The priorities in the local environmental plan would be reflected. Informal discussions with representatives of small communities who might benefit from this program have indicated support for this approach.

APPENDIX A
HOUSE BILL 1200

WATER QUALITY TASK FORCE

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APPENDIX B

Agencies Status Report

HB 1200 Report Recommendations

1. Identify the provisions in the Administrative Procedures Act and the Water Quality Control Act governing the existing rulemaking process of the Water Quality Control Commission which present barriers to broad-based public participation. Analyze alternative rulemaking approaches such as informal rulemaking, formal negotiated rulemaking or means of more effective utilization of informal task force or focus group efforts to improve public participation.

   Agencies Response:

   Following finalization of the HB 1200 report, representatives of the Water Quality Control Commission, along with Commission and Division staff participated in extensive discussions with other members of the Water Quality Forum to examine the existing rulemaking process and identify potential alternatives. The Forum prepared descriptions of the existing rulemaking process, and identified proposed refinements and alternatives to be considered by the Commission. The Commission has adopted the recommendations of the Forum through revisions to its Procedural Rules. For example, a new written-comment-only rulemaking process has been developed to expedite non-controversial proceedings. In addition to revisions of the rulemaking process itself, a Water Quality Control Commission Handbook has been prepared, in an effort to make the process more understandable and accessible to the public.

2. The WQCC and WQCD should continue to pursue informal task force or focus group approaches involving all potentially affected interests preceding formal rulemaking or administrative policy development. Such informal proceedings should clearly identify the problem and potential regulatory and non-regulatory solutions and, if a rule or policy has been proposed, evaluate whether the benefits to public health and the environment under the proposed rule or policy are reasonable in relation to their impacts on the regulated community and other regulatory programs. Prior to formal rulemaking, task force groups should have an opportunity to share their detailed findings with the WQCC and WQCD.

Agencies Response:

The Commission and Division have continued their efforts to make use of informal proceedings to fully explore issues and alternatives prior to formal rulemaking. The new Water Quality Control Commission Handbook describes several alternative variations on an informal pre-rulemaking process, which may be used depending upon the nature of the issues being considered. The Commission has also developed an expanded stakeholders list, in an effort to assure that all interested groups are notified of the initiation of informal proceedings. The Water Quality Control Division has also established new procedures to provide for public input with respect to the development of significant new policies by the Division.

The Commission and Division have attempted to make use of the regular meetings of the Water Quality Forum as one helpful means of getting input at the informal stage of the process. For example, in response to a recent issue regarding the applicability of the Endangered Species Act section 7 consultation requirements to the adoption and EPA approval of Colorado water quality standards, the Commission has recommended that the Water Quality Forum establish a new committee to address this issue, and the Forum has agreed to establish such a committee. This approach has the benefit of providing a forum for informal exploration of this issue, without the need for establishing yet another new and separate task force. In this regard, the Commission and Division have also attempted to be sensitive to the amount of time and resources required for members of the public to participant in numerous informal processes.

3. Improve and enhance data acquisition, automated data-sharing and computer modeling capabilities.

Agencies Response:

The State Engineer's Office is developing a sophisticated data base to manage water rights and hydrologic information for the entire state. The Colorado River decision support system is being developed and is presently on schedule. Several management and technical meetings have occurred where discussions between technical consultants and staff within the State Engineer's Office and the Water Quality Control Division have addressed the necessity for sharing information between these two important water management agencies. Fortunately, the information management authorities within the Department of Natural Resources and Public Health and Environment have made complementary decisions with respect to selection and purchase of hardware and software which will greatly facilitate the ability of

the Water Quality Control Division and State Engineer's Office to exchange automated information. While the Colorado River decision support system does not currently contemplate a water quality component, it should be possible to link the state's water quality information to that system. In addition, there has been cooperation between the State Engineer's Office and the Water Quality Control Division on data acquisition which is discussed below.

4. Structural modifications to the Water Quality Control Commission and Water Conservation Board are recommended. Specifically, the Executive Directors of CDH and DNR should designate an appropriate senior official to sit in a non-voting advisory capacity on the Water Conservation Board and the Water Quality Control Commission respectively. The Commissioner of Agriculture, or an appropriate senior designee, should sit on the WQCC in a non-voting, ex-officio capacity. Such structural modifications in the WQCC and CWCB would require statutory authorization.

Agencies Response:

No legislation has been advanced which would result in cross-memberships among executive directors or senior staff officials from the Department of Natural Resources, Department of Agriculture and Department of Public Health and Environment on the Water Quality Control Commission and Water Conservation Board. As noted in the recommendation, legislation is required to accomplish this recommendation. However, there have been a number of efforts to increase the communication both at a staff and a board and commission level between the three departments which are described below.

A very significant time commitment would be required on the part of senior staff to accomplish the cross-membership recommendation. Participation in Water Quality Control Commission meetings would require a minimum of a 10% time commitment. The present Commissioners commit approximately 25% of their time to the Commission's business. Participation on the Water Conservation Board would requirement a minimum of a 5% time commitment, since the Board meets every other month. It is because of the significant time commitments and the other on-going initiatives to improve communications that the agencies have not proposed any legislative follow-up to this recommendation.

5. Training programs to increase the understanding of water quality staff about water resource management considerations and to improve the understanding of CWCB and Water Resources

Division staff about water quality matters, should be developed.

Agencies Response:

Since the completion of the House Bill 1200 report, there have been extensive briefings provided by the State Engineer and the Director of the Water Conservation Board to the Water Quality Control Commission concerning the treaty, interstate compacts and Supreme Court decisions which govern the apportionment of water which flows from Colorado to other states. These briefings have been well-attended by staff and the public. The Water Quality Control Division Director has briefed Colorado Water Conservation Board about Clean Water Act reauthorization with specific emphasis on nonpoint source control and watershed protection. Other more specific training exercises are described below.

6. Schedule regular meetings among WQCD, SEO and CWCB to discuss emerging patterns in the SB 89-181 "consultation process" and other long range concerns relative to water quality regulation, administration of water rights and water development opportunities.

Agencies Response:

Quarterly meetings at a staff level between the directors of WQCD, SEO and CWCB were established soon after the completion of the House Bill 1200 report. The consultation process was a major topic of discussion during the early meetings. The Clean Water Act reauthorization has been a major topic at every meeting. These state officials have jointly participated in several tours of important water management and research facilities.

7. Schedule quarterly meetings among CDH, DNR and DOA division directors and their senior staff to discuss common issues, and allocate fiscal and human resources to insure proper inter-departmental integration and maximum data sharing occurs.

Agencies Response:

The quarterly meetings among the directors of water management agencies have been expanded to include Board and Commission members, senior staff and more recently the Director of the Division of Wildlife and senior wildlife officials. All participants have found these meetings to be of great value. The quarterly meetings have been conducted with planned agendas and strong participation. Each meeting has resulted in two to three hours of active discussion and follow-up assignments. The most recent meeting occurred on

August 8, 1994. The major focus of that three hour discussion was how integrated watershed planning could result in avoidance of future listings of endangered species and proactive solutions to the kinds of problems which have occurred recently in connection with renewal of special use permits for water storage facilities on federal land.

These quarterly quality, quantity (and fish and wildlife) coordination meetings have been worthwhile in terms of increasing the understanding of management staff, board and commission members about key water management issues. Many new informal communication channels have been opened. Coordinated strategic planning has begun which may significantly improve this state's ability to better link legislative and executive branch initiatives concerning water management.

8. Establish a cabinet level coordinating council comprised of executive directors from Natural Resources, Health and Agriculture and other cabinet members involved with significant water-related issues to provide interdepartmental policy direction and to allow water quality, water allocation, and water development issues to be formally coordinated. Develop a linkage between this Council and the legislature.

Agencies Response:

While this recommendation has not been explicitly implemented, present discussions among cabinet officials and senior management staff are underway which are aimed at optimizing the value of such a sub-cabinet coordinating council. The present focus is upon developing strong communication channels among key cabinet officers, water management officials and other key stakeholders in each basin within the state. It is expected that these discussions will result in a reformulation of this recommendation for consideration by the Governor.

9. The commission should develop a long range plan as to how to address matters of state interest, current federal guidelines, EPA policies and regulation-based mandates. This planning process should allow for broad-based public input.

Agencies Response:

This year, the Water Quality Control Commission has initiated efforts toward long-range strategic planning. In May, the Commission conducted a half-day brainstorming session for discussion among the members and input from the public regarding issues and topics that should be addressed

in a strategic planning effort. The Commission has also specifically solicited input from the Water Quality Forum regarding the issues and topics identified. The Commission continued further discussions of this topic at its annual retreat in September, 1994. The Commission has identified three priority issue areas to address further in the coming months: (1) water quality monitoring, (2) ground water quality/individual sewage disposal systems, and (3) water quality and quantity coordination in the context of watershed management. The Commission intends to provide further opportunities for public input as it pursues further discussion of these issues.

10. The General Assembly should invite the Commission to meet with it at least annually to discuss legislative priorities, the long-range regulatory agenda and policy issues of statewide import.

Agencies Response:

The Water Quality Control Commission welcomes any opportunity to meet with appropriate committees or members of the General Assembly to discuss any current or pending water quality policy issues of interest to the Legislature. The Commission has previously offered to provide such briefings to the principal House and Senate committees with jurisdiction regarding water quality matters, and remains willing to provide any discussions that may be accommodated in the Legislature's busy schedule. On a quarterly basis, the Commission does provide members of the principal committees copies of an updated schedule of upcoming Commission rulemaking and other hearings.

11. Opportunities for increasing staff efficiencies through the sharing of expertise or office space, coordinating sampling schedules or other needs should be identified during the regular meetings described above and implemented where possible.

Agencies Response:

Several opportunities for increasing staff efficiencies have been pursued during the last year, involving the State Engineer's Office, Oil and Gas Conservation Commission and the Division of Minerals and Geology. Staff from the State Engineer's Office conducted an extensive ground water sampling program on behalf of the Water Quality Control Division on the western slope. The State Engineer's Office was committed to measure ground water levels within the wells which were sampled. Very little additional field time was required to collect the water quality samples and ship them to the laboratory for analyses. Tremendous efficiency

gains were realized in the cooperative effort. The Division of Minerals and Geology conducted an extensive monitoring program at discharging metal mines over the past year. The results of these analyses were made available to the Water Quality Control Division, yielding a large savings in staff time and laboratory costs. The Oil and Gas Conservation Commission has undertaken a significant sampling program in the Fruitland-Mesa formation within the San Juan Basin. That sampling program was carefully coordinated with the Water Quality Control Division and it has been responsive to the significant local concerns about ground water quality in the basin.

12. Develop cross-training programs, particularly in the area of water quality sampling for surface and groundwater and groundwater level and stream flow monitoring.

Agencies Response:

The Water Quality Control Division has provided water sampling and field analyses training for the DNR Division mentioned above. As a result, the sampling efforts conducted by the State Engineer's Office, DMG and Oil and Gas Conservation Commission have met the quality control and quality assurance requirements of the Water Quality Control Division and Commission.

13. In two to three years, there should be a formal evaluation of the implementation of these recommendations. Participants should include, at a minimum, the Executive Directors of the Department of Health, Natural Resources, and Agriculture, the WQCC and the CWCB. In addition, there should be ample opportunities for input from the public.

Agencies Response:

During the preparation of this follow-up report to the Legislative Audit Committee, a thorough evaluation of the agencies' progress in addressing the recommendations of the House Bill 1200 report was conducted. The results of that evaluation have been presented in this Appendix to the report.

COLORADO EXECUTIVE BRANCH STATEMENT REGARDING

CLEAN WATER ACT REAUTHORIZATION

November 17, 1993

The current session of Congress will likely take action on reauthorization of the federal Clean Water Act. Because of the importance of any amendments to this Act to the protection and management of Colorado's water resources, the Colorado Department of Health, Department of Natural Resources, Department of Agriculture, and Department of Local Affairs have jointly prepared this draft position statement regarding Clean Water Act reauthorization at the request of the Governor's Office.

Protecting the quality of Colorado's water resources is a matter of foremost importance to the future of our State. An appropriately framed federal Clean Water Act can support Colorado's efforts in this area by providing the State adequate flexibility, guidance and support to protect and manage our unique natural environment.

First, we believe that it is important that Clean Water Act reauthorization be guided by the following four basic principles:

* **Congress' priority should be improving the implementation of existing Clean Water Act programs and mandates, rather than establishing new requirements.** The water quality management philosophy and strategy established in the existing Clean Water Act is fundamentally sound. Additional progress in water quality protection is desirable and achievable. However, at this time more progress will result from strengthened follow-through on existing programs and mandates than from the establishment of major new requirements. A greater reliance on risk-based analyses, with flexibility regarding the means of achieving desired goals, would better focus limited resources in making further progress toward water quality protection. Such an approach would encourage innovative and lower cost solutions from the local level, thereby encouraging local governments to work in partnership with the State in solving water quality problems.

* **State primacy in the implementation of water quality control programs should be strengthened substantially.** It has long been the policy of Congress that states should have the primary responsibility for water quality management. Commitment to this principle needs to be strengthened by

providing meaningful flexibility to states in tailoring the specifics of their water quality management programs, and by reaffirming the primacy of states in water resources management. Additionally, there should be specific direction to EPA to focus its attention on enhancing overall state capacity to carryout the water quality programs.

* **All Clean Water Act programs and mandates must be based on realistic deadlines and be designed as part of a coordinated, consistent overall water quality management strategy.** All programs and mandates that are established by Congress must be implementable by EPA and states in a manner that enhances, rather than detracts from, existing efforts. Overly ambitious deadlines for the implementation of new requirements inevitably divert limited resources away from ongoing efforts to implement earlier mandates. In addition, it is important that new requirements contribute to a unified overall approach to water quality management. For example, mandating an expedited, comprehensive statewide assessment of waters impaired by nonpoint sources would divert resources from a focussed watershed management approach.

* **All Clean Water Act programs and mandates should be based on an identified, adequate funding source.** Substantial water quality management infrastructure needs are currently unmet and should be addressed by reauthorization. In addition, state and local program resources are generally inadequate to thoroughly implement existing Clean Water Act programs and mandates. It is essential that no new unfunded mandates be established. Rather, specific and adequate funding mechanisms should be established for any requirements adopted by Congress.

Fundamentally, we believe that at this time greater progress in water quality protection can be achieved by empowering states to better implement existing programs and mandates, than by establishing new requirements that would shift attention from current priorities and further strain limited resources.

Attachment 1 to this statement sets forth a set of detailed, title by title recommendations with respect to S.1114, the Baucus/Chafee reauthorization bill. A rationale for each recommendation is also included in Attachment 1. From that more comprehensive list, we wish to emphasize the following most important recommendations which are discussed in greater detail in the attachment:

1. The Act should not mandate the designation of all waters within specified federal lands or which support threatened or endangered species as "outstanding national resource waters," because this would effectively preclude all human activities that may have any impact on the quality of these waters, even where such impact would not adversely affect the protected values associated with the water. Prohibiting any change in water quality is not always essential to maintaining the

values protected by the various federal land use designations. Moreover, an automatic outstanding national resource waters designation for all such federal lands may discourage further federal designations of lands that warrant protection.

2. Colorado supports efforts in the bill to assure the preservation of state authority to allocate quantities of water and the protection of established water rights. Language to provide this assurance should mirror the language of §101(g) and be moved to a more general section of the Act, such as §510. This is important to avoid an implication that these provisions apply to some portions of the Act (e.g. watershed management and nonpoint pollution control) but not others, and to reinforce this important principle of state sovereignty. Any effective long-range integration of water quality and water quantity management must be developed at the state and local levels, not imposed by the federal government.

3. No arbitrary deadlines for the development of nationally applicable sediment quality criteria by EPA should be established, and states should not be required to develop sediment quality standards until EPA develops the scientific basis for such standards. Specifically, standards should not be mandated until EPA (1) develops guidance regarding the designation of sediment uses, (2) develops a scientific basis for sediment quality criteria, (3) develops guidance regarding sampling and analysis procedures, and (4) field-tests proposed criteria in representative areas. Moreover, a specific, adequate funding source must be identified for any new requirements relating to sediment quality assessment and control.

4. Colorado supports a voluntary program to encourage implementation of the watershed management philosophy by providing flexibility with respect to otherwise applicable requirements. The Act should focus on such flexibility (e.g. by providing for 10-year discharge permits; water quality standards compliance flexibility for point sources, provided that overall standards are met; authorization of pollutant trading; five-year or six-year cycles for mandated reviews of water quality standards) if comprehensive watershed management plans are developed, rather than establishing new prescriptive requirements (e.g., overly restrictive and ambitious requirements regarding the development process and contents of watershed management plans). The program should build upon existing §319 and §208 efforts.

5. Colorado supports substantial additional resources for the current §319 nonpoint source control program to give a targeted voluntary, bottom-up approach a real chance to succeed before new top-down federal mandates for nonpoint source controls are imposed. Considering the complexity and variability of nonpoint source problems, significant progress has been made in establishing a framework under §319 to address nonpoint source impacts through a cooperative, bottom-up approach. Given the site-specific nature of nonpoint source problems, the possibilities of this approach should be fully explored by providing more adequate funding for these efforts. If more mandatory nonpoint source controls prove

necessary in the future, such requirements will be more efficiently and effectively focussed if a realistically funded voluntary program has been implemented first.

6. Colorado supports increased federal financial assistance for water quality protection efforts. Funding for water quality management infrastructure through the state revolving loan fund program should be authorized at a level of $5 billion annually. Funding for state water quality management programs should be authorized at a level of $150 million per year, but without new set-asides for innovative programs or planning efforts. Funding for nonpoint sources should be increased to a level of $500 million annually, with a specific percentage allowance for program administration. Moreover, congressional appropriations should match these authorized levels.

Finally, in addition to these comments on the specific current provisions of S.1114, Colorado recommends that a provision be added to the bill establishing a new policy statement in section 101 of the Act. Specifically, Colorado recommends that a new section 101(h) be added, as follows:

> **It is the policy of Congress that the development and implemention of water quality protection programs under this Act take into account the significance of the public health and environmental impacts and risks to be reduced, as well as the economic and any other costs of such reduction.**

The purpose of this provision would be to assure that consideration is given to the tradeoffs implicit in water quality management decisions that inevitably involve choices regarding how limited resources are allocated.

It would not be appropriate to require a formal cost-benefit analysis for particular water quality protection program development and implementation decisions. Such a requirement would create an unworkable administrative burden, and would likely tend to undervalue some of the hard-to-quantify benefits resulting from environmental protection efforts. However, it is important to recognize that precluding all water quality impacts from human activities or achieving zero risk to human health and the environment in all circumstances is unachievable. It then follows that the choices that are made regarding how much protection is appropriate and desirable involve explicit or implicit resource allocation tradeoffs, taking into account the nature and extent of the risks being addressed and the costs resulting from control efforts. To increase the credibility of and public support for water quality protection efforts over the long run, these tradeoffs should be acknowledged and consciously addressed, rather than ignored and hidden.

ATTACHMENT 1

COLORADO EXECUTIVE BRANCH RECOMMENDATIONS REGARDING S.1114

November 17, 1993

TITLE I – WATER PROGRAM FUNDING

1. Colorado supports the proposal to increase funding to meet water quality management infrastructure needs. We urge that these needs be addressed by authorizing $5 billion annually for capitalization of the State Revolving Loan Fund (SRF).

Rationale: The 1987 Act's goal was to create an SRF adequate to revolve in perpetuity. With more than $200 billion in remaining point source infrastructure needs to meet existing Clean Water Act mandates, including over $450 million of unmet needs in Colorado, significant additional capitalization is needed to meet this goal. Provision of new eligible programs and activities for SRF funding will only increase the pressure on that already over-committed fund.

2. Colorado supports the effort to recognize the special needs of disadvantaged communities with respect to water quality management infrastructure. States should be given broad authority to define disadvantaged communities and provide financial assistance in a manner that recognizes hardships but does not jeopardize the solvency of the SRF.

Rationale: The establishment of authority to provide extra financial assistance to small, economically disadvantaged communities is a positive change, so long as enough flexibility is provided to states in implementation that the viability of the revolving loan fund concept will not be threatened. A uniform, federal definition of "disadvantaged community" is inappropriate. The current definition in S.1114 would apply to many Colorado communities and would seriously threaten the solvency of the State SRF.

3. Colorado supports the proposal to increase the authorization level for §106 grants to $150 million annually. This level of authorization should be established without new set-asides for narrowly identified purposes.

Rationale: Colorado fully supports the proposal to increase the authorization for §106 grants to $150 million annually. This increase is needed to cover unfunded mandates from the 1987 Amendments (e.g., stormwater permitting, sludge management, expanded toxics controls). However, the current proposal for set-asides for certain narrowly identified purposes would limit state flexibility and divert resources away from states' efforts to implement the established Clean Water Act requirements.

4. All federal Clean Water Act mandates should be based upon specifically identified equitable and adequate funding sources.

Rationale: Colorado shares Congress' interest in making continued progress in our nation's water quality protection efforts. In the past, however, this interest has led to the creation of ambitious new federal mandates for state programs, without any federal funding source identified to meet these needs. In an era of increasingly limited resources for all levels of government, this problem is more acute now than ever. Congress must not adopt major new programs or initiatives unless additional funding for such efforts is also identified. For example, the ambitious new provisions for the adoption of sediment quality criteria and standards in the current version of S.1114 would necessitate substantial new resources or would divert existing resources away from previously established programs. Congress should assure that such specifically identified funding sources are equitable and appropriate for the particular water quality objective. There is a critical need for Congress to be fiscally responsible and realistic in determining the scope and level of effort expected in our nation's water quality protection programs.

TITLE II – TOXIC POLLUTION PREVENTION AND CONTROL

5. Colorado supports provisions establishing a proactive initiative to update technology-based effluent limitations for new and existing, direct and indirect dischargers, taking into account pollution prevention goals, with the establishment of an identified funding mechanism for this effort.

Rationale: Current technology-based effluent limitations guidelines (for best available technology (BAT) limits, new source performance standards, and pretreatment standards) are seriously out of date for many industrial categories. Colorado supports a focussed, proactive effort to update these limitations as an efficient, effective, and equitable means of making further progress with respect to point source discharge controls. As discussed above, it is important that this effort be consciously funded.

6. Colorado supports the proposal to require EPA to prepare a criteria development plan, to help prioritize the backlog of needs in this area. States should be directly included in this prioritization process.

Rationale: Given the broad and expanding array of water quality criteria required to be developed under the Clean Water Act, it is important that there be a conscious, prioritized plan for such criteria development. Moreover, in

view of the lead responsibility of states in adopting water quality standards, it is appropriate and important that states be directly involved in this priority-setting process.

7. No arbitrary deadlines for the development of nationally applicable sediment quality criteria by EPA should be established, and states should not be required to develop sediment quality standards until EPA develops the scientific basis for such standards. Specifically, standards should not be mandated until EPA (1) develops guidance regarding the designation of sediment uses, (2) develops a scientific basis for sediment quality criteria, (3) develops guidance regarding sampling and analysis procedures, and (4) field-tests proposed criteria in representative areas.

Rationale: The recognition that sediment quality impairment can limit the uses of aquatic resources intended to be protected by the Clean Water Act is appropriate. However, the ambitious schedule currently included in S.1114 for EPA to develop an arbitrary number of sediment quality criteria is totally unrealistic. Moreover, the requirement for states to develop sediment quality standards would divert limited resources away from efforts that should have a higher priority in many portions of the country. In short, the state of the science with respect to sediment quality has not yet advanced to the point that a full-blown standard-setting, monitoring and implementation program for sediments would be cost-effective. Congress should provide resources and flexibility for areas with substantial sediment problems, e.g. coastal bays and estuaries, to address this concern, without mandating overly ambitious, uniform national efforts to address sediment quality.

8. Colorado believes that any efforts to expand the focus of water quality criteria and standards to address "biological, physical, and habitat criteria" must take into account both (1) the current limitations on the scientific basis for such efforts and (2) the inevitability of some level of impact on aquatic resources from human activities.

Rationale: The State believes that the current language in S.1114 may lead to imposition on the states of uniform "biocriteria" standards which not only fail to acknowledge the inevitability of some impact on the ecosystem from human activities, but create goals which are difficult to measure and potentially unachievable. Efforts to develop criteria of this type would currently suffer from the same scientific limitations as discussed above for sediment quality criteria. Moreover, it is currently unclear whether biocriteria can appropriately account for the substantial biological variability which appears to be particularly pronounced in western stream systems, as reflected by data generated to date in Colorado. At this time, biological assessment should be recognized as a

potentially useful informational tool, but should not become the basis for a new layer of enforceable standards.

9. States should continue to have the lead in the important efforts to address toxic water pollutants. Specifically, a new provision should not be adopted making new toxic pollutant criteria adopted by EPA presumptively applicable in all states that do not object within 120 days.

Rationale: S.1114 currently includes a proposed provision that would make new toxic pollutant criteria adopted by EPA presumptively applicable in all states, unless a state objects within 120 days. The Clean Water Act to date has recognized the appropriateness of states taking the lead in developing water quality standards. The current S.1114 proposal moves in the wrong direction. This provision would inappropriately limit states' flexibility and responsibility for determining appropriate levels of protection that take into account the diversity of natural environments. This concern is particularly great with respect to naturally occurring constituents. Moreover, the limited timeframe provided would in most instances force states to routinely object to the application of proposed criteria in order to preserve their options until a full review could be completed. Finally, the proposal is inappropriate due to the lack of public input into the federal criteria development process.

10. Protection of sediment quality should not be incorporated into the antidegradation program until sediment quality standards have been developed, taking into account the scientific and technical considerations identified above.

Rationale: Our general concerns with prematurely mandating a major new emphasis on sediment quality are enumerated above. In particular, adding sediment quality issues into the antidegradation review process at this time -- before a workable sediment standards system has been developed -- would generate substantial new opportunities for controversy, without an adequate factual or scientific basis for resolving such issues efficiently.

11. The imposition of enforceable best management practices on all nonpoint sources should not be a prerequisite to allowing any degradation of "Tier 2" waters (i.e., waters with quality better than necessary to support fishable, swimmable uses), unless and until such requirements apply everywhere.

Rationale: Antidegradation review requirements apply to waters whose quality is better than necessary to support the "fishable" and "swimmable" uses established as goals in the Clean Water Act. Although in general it is true that nonpoint source water pollution is the largest remaining water quality problem, the streams subject to antidegradation review requirements are those that are least impacted by such pollution. Therefore, it is illogical and an inefficient allocation of resources to mandate enforceable best management practices for all nonpoint sources on such a stream prior to the time that such requirements are comprehensively implemented in areas more seriously impacted by nonpoint sources.

12. The Act should not mandate the designation of all waters within specified federal lands or which support threatened or endangered species as "outstanding national resource waters," because this would effectively preclude all human activities that may have any impact on the quality of these waters, even where such impact would not adversely affect the protected values associated with the water.

Rationale: It is important to recognize that this designation effectively prohibits <u>any</u> new adverse water quality impact, and therefore can essentially preclude any additional development in areas where it is applied. The broad presumptive extension of this concept to many categories of federal lands (including national forests) and to all waters which support threatened or endangered species would severely and inappropriately limit states' ability to develop their lawful allocation of interstate water supplies and determine the best overall approach to economic development and management and protection of their natural resources. Prohibiting <u>any</u> change in water quality is not always essential to maintaining the values protected by the various federal land use designations. Moreover, an automatic outstanding national resource waters (ONRW) designation for all such federal lands may discourage further federal designations of lands that warrant protection.

The congressional policies set forth in §101(b) and §101 (g) of the Clean Water Act recognize the "primary responsibilities and rights of states ... to plan the development and use (including restoration, preservation, and enhancement) of land and water resources" and direct federal agencies to work cooperatively with the states to develop comprehensive solutions for the protection of water quality within the framework of state laws for water resource management.

While we recognize that the designation of outstanding national resource waters can be a useful water quality management tool in circumstances where very stringent controls are appropriate, the presumptive application of this requirement in Colorado could result in the designation of well over half of the stream miles in Colorado as ONRW -- a totally unrealistic and unworkable result. At a minimum, substantial state resources would have to be devoted to proposing that specific waters not be designated ONRW.

13. Mandated routine reviews of state-adopted water quality standards should be on a five-year or six-year cycle, rather than a three-year cycle, to conserve scarce administrative resources.

Rationale: The current triennial review requirement for water quality standards results in an inefficient allocation of state monitoring and administrative resources in states like Colorado, which have developed an extensive system of site-specific standards. Adoption of a five-year or six-year cycle would allow both the fact-gathering and policy-setting aspects of such reviews to be done in a more thorough manner. This longer cycle would also facilitate the development of a watershed management approach, by allowing a greater proportion of monitoring and assessment resources to be focussed on individual basins on a rotating basis. Moreover, the need for more frequent reviews is substantially less now that the water quality standards system mandated by the 1972 Amendments has been in place for over 20 years.

14. Colorado supports the establishment of incentives for voluntary pollution prevention efforts, with EPA serving as a public education and technology transfer resource.

Rationale: Colorado supports pollution prevention as the environmental management tool of first choice. The current draft of S.1114 would establish mandatory pollution prevention planning obligations for a potentially large number of discharge permit holders, generating a substantial new administrative burden for permittees and permitting agencies, but without establishing substantive requirements regarding the goals to be achieved, or assuring that pollution prevention efforts will have a multi-media focus. Colorado is concerned that this approach may not be the most constructive means to further pollution prevention initiatives at this time. Rather, the Clean Water Act should establish incentives for voluntary pollution prevention efforts, for example by creating the flexibility to issue longer term discharge permits or to provide a reduction in permit fees to facilities with approved pollution prevention plans. To be approved, plans should demonstrate a multi-media approach that achieves a significant reduction in the discharge of toxic pollutants to water, as part of an overall reduction in toxic pollutant releases. The most constructive

role in this area for EPA would be to consolidate and disseminate information regarding potential and demonstrated pollution prevention accomplishments.

TITLE III -- WATERSHED PLANNING AND NONPOINT POLLUTION CONTROL

15. Additional water quality monitoring efforts should be supported by adequate funding sources. Mandating national sediment quality monitoring requirements is premature.

Rationale: States such as Colorado are currently implementing water quality monitoring programs to the extent feasible with existing resources. If more extensive monitoring efforts are to be required, then an adequate funding mechanism needs to identified. With adequate funding, Colorado agrees that more extensive water quality monitoring is highly desirable. However, nationally uniform minimum requirements for water quality monitoring programs are unlikely to result in the most efficient allocation of resources in individual states. Therefore, states need to have the flexibility to design their own monitoring programs. Finally, new national minimum requirements are particularly inappropriate for sediment quality monitoring, given the lack of an established technical basis for such efforts, as discussed above.

16. Colorado supports a voluntary program to encourage implementation of the watershed management philosophy by providing flexibility with respect to otherwise applicable requirements. The Act should focus on such flexibility if comprehensive watershed management plans are developed, rather than establishing new prescriptive requirements.

Rationale: Mandating too narrow a vision of what constitutes an acceptable watershed management approach is likely to stifle, rather than encourage, the many grassroots efforts of this type that are currently evolving across the country. The funding sources identified for watershed plan development are totally inadequate to support widespread local efforts, especially given the requirements for plan contents and EPA approval. The watershed management approach should be encouraged even where it may not be possible to identify a specific list of projects and activities that will achieve compliance with water and sediment quality standards within a 10 year period. Examples of flexibility that could be provided where watershed management plans have been developed include providing for 10-year discharge permits; water quality standards compliance flexibility for point sources, provided that overall standards are met; authorization of pollutant trading; and five-year or six-year cycles for mandated reviews of water quality standards.

17. Watershed management provisions should not establish a new regulatory layer by mandating or encouraging the designation of local or regional management entities with authority for implementation of watershed management plans.

Rationale: The requirement for the designation of management entities responsible for the development and implementation of watershed management plans would encourage the proliferation of additional regulatory layers in the water quality management system. This provision is unnecessary. The watershed management approach is likely to be most effective, particularly in its formative stages, if states are provided maximum flexibility in pursuing such approaches, without the imposition of a formal administrative overlay subject to federal approval.

18. The amendments should not mandate a new, comprehensive nonpoint source assessment of impaired waters within two years of enactment; rather, Congress should accommodate a cyclical focus on individual watersheds over a six year period.

Rationale: Four major river basins, with important subbasins, originate in Colorado. Mandating an expedited, statewide assessment of these waters assures that the State will not be able to take a focussed, basin-specific approach to such assessment. The longer time period suggested above would facilitate Colorado's efforts to shift to a conscious, coordinated watershed orientation, by allowing more thorough basin-by-basin monitoring and assessment efforts.

19. Colorado supports substantial additional resources for the current §319 nonpoint source control program to give a targeted voluntary, bottom-up approach a real chance to succeed before new top-down federal mandates for nonpoint source controls are imposed. Funding levels should be increased to at least $500 million annually and funding for program administration should be explicitly authorized.

Rationale: It is now widely accepted that the majority of the nation's remaining water quality problems result from nonpoint sources of pollution. To date, Congress has appropriated tens of billions of dollars for construction of point source control facilities. Funding for nonpoint source control was late in coming and at relatively low levels given the huge magnitude of the problem. Moreover, for the §319 program to be successful, it is important that program administration be explicitly funded, in a manner similar to administration of the SRF program.

Considering the complexity and variability of nonpoint source problems, significant progress has been made in establishing a framework under §319 to address nonpoint source impacts through a cooperative, bottom-up approach. Given the site-specific nature of nonpoint source problems, the possibilities of this approach should be fully explored by providing more adequate funding for these efforts. If more mandatory nonpoint source controls prove necessary in the future, such requirements will be more efficiently and effectively focussed if a realistically funded voluntary program has been implemented first.

20. Colorado supports efforts in the bill to assure the preservation of state authority to allocate quantities of water and the protection of established water rights. Language to provide this assurance should mirror the language of §101(g) and be moved to a more general section of the Act, such as §510. This is important to avoid an implication that these provisions apply to some portions of the Act (e.g. watershed management and nonpoint pollution control) but not others, and to reinforce this important principle of state sovereignty.

Rationale: The Clean Water Act already recognizes the primacy of states in allocating water resources, and the importance of recognizing established water rights, in §101(g). Similar language is proposed in the sections of S.1114 addressing watershed management and nonpoint source programs, although it should be broadened to mirror §101(g). Furthermore, such language should be included in a section of the Act, such as §510, that does not relate solely to specific programs. Any effective long-range integration of water quality and water quantity management must be developed at the state and local levels, not imposed by the federal government.

TITLE IV – MUNICIPAL POLLUTION CONTROL

21. The amendments to the Act should not mandate that municipal stormwater dischargers be subject to requirements beyond management measures that control pollution to the maximum extent practical until there has been a full opportunity to implement and determine the effectiveness of such measures.

Rationale: It is important that further progress in controlling pollution in stormwater discharges be made by a concerted effort toward the identification and implementation of appropriate management measures. However, until further experience is gained regarding the feasibility and success of such efforts, it is unrealistic to mandate that permits include "management measures that ensure the attainment and maintenance of water quality standards". States should be left with adequate flexibility to determine appropriate levels of control.

For now, more progress will generally be made by a focus on what is technologically achievable, without complicating such efforts with a debate regarding the appropriate application of existing water quality standards to infrequent, wet weather discharges.

22. Colorado supports a definition of "maximum extent practicable" in the stormwater program that preserves the flexibility to take regional differences into account.

Rationale: The current version of S.1114 defines the term "maximum extent practicable" to mean applying management measures as prescribed in guidance pursuant to section 6217(g)(5) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The term would also include additional management measures identified in guidance developed by EPA within two years after reauthorization. However, the current version does not appear to create flexibility for EPA to revise the management measures developed under CZARA to take varying regional conditions into account. This flexibility should be established, to assure that the stormwater program can be tailored to address local conditions, such as the arid or semi-arid nature of much of the western United States. Moreover, state and local governments should be involved in the consideration of revisions to the CZARA guidance.

23. Water conservation efforts should be left principally to state and local governments, with financial and technical support from federal agencies. Prescriptive federal policy should not be established in this area.

Rationale: Water conservation is an important resource management goal, and it is appropriate for the federal government to assure that its efforts support this goal. Substantial progress regarding water conservation has occurred in recent years at the state and, more importantly, local levels. S.1114 currently proposes that EPA be "the primary coordinator for all policies of the Federal Government" regarding water conservation. We are uncertain what role is envisioned by this provision. Congress should address this area cautiously, to assure that EPA does not, in the name of consistency, impose policies that will stifle local initiative, which can better take varying hydrologic conditions into account.

TITLE V -- PERMIT PROGRAM AND ENFORCEMENT

24. EPA should not be authorized to issue a federal discharge permit merely because a state fails to reissue a permit within 180 days following expiration.

Rationale: The arbitrary 180-day deadline for reissuance of state discharge permits that is currently proposed in S.1114 is inappropriate. While it is appropriate to encourage timely issuance of permits, such arbitrary deadlines will encourage duplicative EPA involvement with permits and generate unnecessary and unproductive conflict between states, dischargers and EPA.

25. The Act should be modified to clarify that a citizen suit is barred if a state or EPA has commenced and is diligently prosecuting an administrative enforcement action with respect to the alleged violation.

Rationale: The Clean Water Act should strike an appropriate balance between supporting the viability and predictability of federal and state agency enforcement efforts, and encouraging citizen oversight of the enforcement process. Where a state or EPA has commenced and is diligently prosecuting an enforcement action, agencies should not be required to devote additional resources to judicial second-guessing regarding the results of these efforts. This should be true whether the government's enforcement occurs through a court action or an administrative process. This is particularly important now that the Act has been revised to encourage administrative enforcement actions.

26. Colorado supports the provisions authorizing compliance orders and civil penalties for violations by federal facilities.

Rationale: In Colorado and elsewhere over the last several years, increasing information regarding environmental problems created by various federal facilities has understandably led to great citizen concern. In order to assure that these problems can be addressed effectively by states, and to help restore public confidence in the even-handed application of environmental requirements, S.1114's proposed provisions regarding compliance orders and civil penalties for violations by federal facilities should be adopted.

TITLE VI -- PROGRAM MANAGEMENT

No recommendations.

STATE OF COLORADO

WATER QUALITY CONTROL COMMISSION
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Roy Romer
Governor
Patricia A. Nolan, MD, MPH
Executive Director

RULEMAKING HEARING
DELIBERATIONS
AND
BUSINESS MEETING

MONDAY, NOVEMBER 2, 1992, Florence Sabin Conference Room, 4300 Cherry Creek Drive South, Building A, Denver, Colorado.

A G E N D A

Monday, November 2, 1992:

9:00 a.m.

I. Call to Order - Determination of Quorum:

II. Approval of Agenda:

III. Administrator's Items:
- A. Approval of October 5 and 6 Summary of Proceedings/Motions.
- B. WQCC retreat follow-up.
- C. Mt. Princeton Hot Springs final action.
- D. Draft Notice for March, 1993 rulemaking hearing on Minor Housekeeping Revisions for all basins statewide.
- E. Final approval of the 305(b) Report.
- F. Status report of the proposed wetland standards.
- G. Discussion of draft OGCC rules.
- H. For information - no action required:
  1. Draft December, 1992 Agenda.
  2. Revised long-range schedule.

IV. Division Director's Report:
- A. Status of H.B. 92-1200 study.

V. Attorney General's Report:

9:30 a.m.	VI.	Rulemaking Hearing: to consider revisions proposed by Climax Molybdenum Company for segments 5 & 7 of Clear Creek, South Platte River Basin, 3.8.0 (5 CCR 1002-8); segment 1(b) of the Upper Arkansas River, Arkansas River Basin, 3.2.0 (5 CCR 1002-8); and segments 12 and 13 of the Upper Gunnison River, Gunnison and Lower Dolores River Basin, 3.5.0 (5 CCR 1002-8).
Noon	VII.	Informational Briefing: by Howard Roitman and Dan Scheppers; HMWMD, regarding the Superfund program.
1:00 p.m.	VIII.	Continuation of Item # 6:

Note: Any portion of the business meeting may be taken up any time after the call to order; hearings may be reconvened at such times and places as the Commission may determine.

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SUMMARY OF PROCEEDINGS/MOTIONS
SEPTEMBER 8 AND 9, 1992

The Colorado Water Quality Control Commission regular meeting was called to order by Commissioner Harrison as Chair at 9:00 a.m., Tuesday, September 8, 1992 at the Colorado Department of Health Building, Room 150, 4210 East 11th Avenue, Denver, Colorado.

MEMBERS PRESENT:

Laura Davis, Shirley Phillips Ela, Mary Gearhart, Sue Ellen Harrison, Connie King, Flo Raitano, and Roger Mitchell.

MT. PRINCETON HOT SPRINGS SITE APPROVAL ADJUDICATORY HEARING:

Commissioner King as Hearing Chair opened this Adjudicatory Hearing to consider appeals to a site approval granted to the Mt. Princeton Hot Springs Resort. Commissioner Ela moved for approval of all party status requests received. Commissioner Raitano seconded the motion. The motion carried unanimously. Commissioner Gearhart was not present for this vote. Testimony was received from the parties and comments were received from interested members of the public. Following the close of the hearing, the Commission conducted its deliberations. Following discussion, Commissioner Raitano moved to deny all three site application appeals received. Commissioner Davis seconded the motion. The motion carried on a vote of six to one. Commissioners Davis, Ela, Gearhart, Harrison, King, and Raitano voted in favor of the motion. Commissioner Mitchell voted against the motion. The Commission requested that the Division prepare proposed findings of fact and conclusions of law, to be circulated to the parties for comment by October 7, 1992. Any written comments from any other parties must be received in the Commission office by October 22, 1992. The Commission will schedule final action regarding this matter for its November, 1992 regular meeting.

BIOMONITORING DISCUSSION:

The Commission conducted a further discussion of its options regarding the existing biomontoring regulation and the ongoing controversy with EPA. Comments were received from several interested members of the public. Following discussion, Commissioner Raitano moved that the Commission schedule a February, 1993 Rulemaking Hearing to consider the adoption of a short version of a state regulation, following the general outline of the federal regulation, with more specific guidance regarding program implementation to be developed by the Division. Commissioner Ela seconded the motion. The motion carried unanimously. The Commission agreed that a notice should be prepared and filed in September, to allow a prehearing schedule that does not require documents to be due near the Christmas holiday.

COMMISSION GUIDELINE INFORMATIONAL HEARING:

The Commission conducted an informational hearing to consider extending, revising, or repealing the existing Commission Guidelines. No comment was received from the public. Following discussion, Commissioner Gearhart moved that the Commission repeal all five existing sets of guidelines, as proposed in the notice. Commissioner Davis seconded the motion. The motion carried unanimously. The Commission also agreed that a letter should be prepared for the signature of the Commission Chair, advising the office of Regulatory Reform of the Commission's efforts to repeal outdated policies and guidelines.

WEDNESDAY, SEPTEMBER 9, 1992

MEMBERS PRESENT:

Laura Davis, Shirley Phillips Ela, Sue Ellen Harrison, Connie King, Flo Raitano, and Roger Mitchell.

401 CERTIFICATION REGULATION INFORMATIONAL HEARING:

Jon Scherschligt, WQCD, briefed the Commission on those areas of the Regulation for 401 Certification that the Division feels need revision. Jon explained that none of the deficiencies were serious enough to warrant a high priority hearing. Mark Pifher, attorney for Colorado Springs, also expressed concern over the scope of authority exercised by the Division in 401 certifications. The Commission set June, 1994, as a hearing date for proposed revisions to the rule with the understanding that a Task Force would be organized by the Division to help write the proposal.

WQCD DATA UTILIZATION GUIDANCE DOCUMENT:

Bob Owen, WQCD, summarized the input received on the draft document at a meeting held last month. Dave Holm and others expressed concern that the document has not been widely circulated and that others will want to comment on the draft. Gail McGaha-Miller asked for more clarity on the detection limit issue and for more flexibility when utilizing most recent data. John Van Royen recommended the document receive more public input and asked that the Commission decide if it wants this document to become its policy. A revised draft will be more widely distributed for comment.

DIVISION DIRECTORS REPORT:

Dave Holm briefed the Commission on the progress of the HB1200 Task Force efforts. An internal draft is available with public comment solicited between Oct 1 and 15, and a final draft by November 1. The Commission concurred in the need to provide input on the draft and asked Jon Scherschligt to draft a letter for Sue Ellen's signature expressing receptivity to addressing problems of extensive and legislative hearing procedures.

ATTORNEY GENERAL'S REPORT:

Martha Rudolph noted that the District Court upheld the Commissions standards setting action (temporary modifications of underlying standards, segment 2a and 2b, Upper Arkansas Basin) denying Res-ASARCO's appeal of zinc and cadmium standards.

JOINT LUNCHEON AND MEETING WITH THE BOARD OF HEALTH:

The Colorado Board of Health joined the Commission for an informal luncheon and afternoon of discussion of topics of mutual concern to both bodies. Discussions were led by the following persons:

1. Sue Ellen Hanson briefed the Board of Health on the activities of the Commission.

2. Marie Miller, President of the Board of Health, briefed the Commission on the activities of the Board.

3. Phil Hegeman (WQCD) and John Pickle (Weld County Health Department) explained the sludge disposal business from both the state and local health department perspectives.

4. Tom Bennett (WQCD) and Ken Nordstrom (Delta County Health Department) briefed the Commission and Board on mutual issues with individual sewage disposal systems.

5. Kathleen Reilly and Mike Liuzzi (WQCD) discussed the Wellhead Protection Strategy and the associated plan to propose ground water classifications for public water supply aquifers.

PLEASE NOTE:

This is an abbreviated Summary of Proceedings and Motions; the full text of these motions can be obtained in the Water Quality Control Commission Office, 4300 South Cherry Creek Drive, Building 2, Denver, Colorado 80222-1530.

WATER QUALITY CONTROL COMMISSION
LONG-RANGE SCHEDULE 1992-1994

DATE, TIME AND SUBJECT OF HEARING	NOTICE APPROVED	NOTICE FILED	PUBLISHED IN COLO. REG.	NEWSLETTER	PARTY STATUS REQUESTS DUE	EVIDENCE DUE	PREHEARING CONFERENCE	WRITTEN REBUTTALS DUE
December 7, 1992; 9:00 a.m. continuation of Big Dry Creek, segs 4 & 5 3.8.0 RMH (FR) [NC,AG] December 8, 1992;								
January 4, 1993; 9:00 a.m. Chatfield Control Reg. 4.7.0 RMH (SE)[MW,AG]	09-08-92	09-30-92	10-10-92	October	11-05-92	11-24-92	12-09-92 Florence Sabin 9:00 a.m.	12-22-92
January 4, 1993; 1:00 p.m. Basic Stds, water quality designations, 3.1.0 RMH (LO,MG)[MW,AG] January 5, 1993;	09-08-92	09-30-92	10-10-92	October	11-05-92	11-24-92	12-09-92 Florence Sabin 10:00 a.m.	12-22-92
February 1, 1993; 9:00 a.m. Ground Water Basic Stds, 3.11.0 TRIH				December				
February 1, 1993; 10:00 a.m. Procedural Rules, 2.1.0 IH				December				
February 2, 1993; 9:00 a.m. State Discharge Permit System 6.1.0 RMH ( )[MW,AG]	09-08-92	09-30-92	10-10-92	October	11-05-92	11-24-92	12-09-92 Florence Sabin 1:00 p.m.	12-22-92
March 1, 1993; 9:00 a.m. Upper Colorado classif. and stds., 3.3.0 TRIH				December				
March 1, 1993; 10:00 a.m. Minor Housekeeping Revisions for all Basins Statewide RMH 3.2.0 thru 3.8.0 March 2, 1993;	11-02-92	11-30-92	12-10-92	December	1-7-93	1-25-93	2-3-93	2-18-93
April 5, 1993; 9:00 a.m. Public water supplies ground water classif., 3.12.0 RMH (MG,LO) April 6, 1993;	12-07-92	12-30-92	01-10-93	January				

ABBREVIATIONS FOR HEARINGS: RMH-Rulemaking; AH-Adjudicatory Hearing; IH-Informational Hearing; TRIH-Triennial Review Informational Hearing

WATER QUALITY CONTROL COMMISSION
LONG-RANGE SCHEDULE 1992-1994

DATE, TIME AND SUBJECT OF HEARING	NOTICE APPROVED	NOTICE FILED	PUBLISHED IN COLO. REG.	NEWSLETTER	PARTY STATUS REQUESTS DUE	EVIDENCE DUE	PREHEARING CONFERENCE	WRITTEN REBUTTALS DUE
May 3, 1993; 9:00 a.m. DIMP Stds, 3.1.0 and 3.11.0 RMH (FR, SEH) May 4, 1993;	01-04-93	01-29-93	02-10-93	February				
June 7, 1993; 9:00 a.m. Standley Lake standards 3.8.0, RMH ( )	02-01-93	02-26-93	03-10-93	March				
June 8, 1993; 9:00 a.m. So. Platte classif. and Stds., 3.8.0 TRIH				April				
July 6, 1993; 9:00 a.m. Discharge Permit Reg. 6.1.0, RMH ( )	03-01-93	03-31-93	04-10-93	April				
July 7, 1993; 9:00 a.m. Surface Water Basic stds., 3.1.0 TRIH				May				
August 2, 1993; 9:00 a.m. Temporary Modifications (several basins) RMH ( ) August 3, 1993;	04-05-93	04-30-93	05-10-93	May				
September__, 1993; 9:00 a.m. Procedural Rules, 2.1.0 RMH ( )	05-03-03	05-28-93	06-10-93	June				
September __, 1993; 1:00 p.m. Dillon Control Reg., 4.1.0 TRIH				July				
October 4, 1993; 9:00 a.m. FY94 Intended Use Plan, 5.17.5 RMH ( )	07-06-93	07-31-93	08-10-93	August				
October 4, 1993; 6:30 p.m. Public IH for comment on water pollution problems October 5, 1993;				August				

ABBREVIATIONS FOR HEARINGS: RMH-Rulemaking; AH-Adjudicatory Hearing; IH-Informational Hearing; TRIH-Triennial Review Informational Hearing

WATER QUALITY CONTROL COMMISSION
LONG-RANGE SCHEDULE 1992-1994

DATE, TIME AND SUBJECT OF HEARING	NOTICE APPROVED	NOTICE FILED	PUBLISHED IN COLO. REG.	NEWSLETTER	PARTY STATUS REQUESTS DUE	EVIDENCE DUE	PREHEARING CONFERENCE	WRITTEN REBUTTALS DUE
ALAMOSA November 1, 1993: 9:00 a.m. Rio Grande classifs. and stds. 3.6.0 RMH (RM,SE)	07-06-93	07-31-93	08-10-93	August				
November 2, 1993; 9:00 a.m. Colo. River Salinity Stds. & Implementation Regs., 3.9.0 & 3.10.0 TRIH				September				
December 6, 1993;								
December 7, 1993;								
January 3, 1994; 9:00 a.m. Radionuclides Stds. 3.1.0, 3.11.0 RMH (FR,MG)	09-__-93	09-30-93	10-10-93	October				
January 4, 1994; 9:00 a.m. Pretreatment Regs., 4.3.0 TRIH				November				
February 7, 1994;								
February 8, 1994;								
March 7, 1994; 9:00 a.m. San Juan/Dolores classifs. and stds. 3.4.0 RMH ( )	11-01-93	11-30-93	12-10-93	December				
March 8, 1994;								

ABBREVIATIONS FOR HEARINGS: RMH-Rulemaking; AH-Adjudicatory Hearing; IH-Informational Hearing; TRIH-Triennial Review Informational Hearing

WATER QUALITY CONTROL COMMISSION
LONG-RANGE SCHEDULE 1992-1994

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April 4, 1994; 9:00 a.m. Effluent Lim. Regs., 10.1.0 RMH ( )	12-06-93	12-30-93	01-10-94	January				
April 4, 1994; 1:00 p.m. Ground Water Classifs & Stds., 3.12.0 TRIH April 5, 1994;				February				
May 2, 1994; 9:00 a.m. Passive Mine Drainage Regs. 4.5.0 TRIH May 3, 1994;				March				
June 6, 1994; 9:00 a.m. 401 Certifications RMH 2.4.0 [LP,AG] June 7, 1994;								
July __, 1994;								
July __, 1994;								
August 1, 1994; 9:00 a.m. Upper Animas classifs. and stds., 3.4.0 RMH ( ) August 2, 1994;	04-04-94	04-29-94	05-10-94	May				
September __, 1994; 9:00 a.m. Rocky Flats surface & ground water radionuclides stds., 3.8.0 & 3.12.0 RMH ( )	05-02-94	05-31-94	06-10-94	June				
September __, 1994; 1:00 p.m. Cherry Creek Control Reg., 4.2.0 TRIH				July				

ABBREVIATIONS FOR HEARINGS: RMH-Rulemaking; AH-Adjudicatory Hearing; IH-Informational Hearing; TRIH-Triennial Review Informational Hearing

WATER QUALITY CONTROL COMMISSION
LONG-RANGE SCHEDULE 1992-1994

DATE, TIME AND SUBJECT OF HEARING	NOTICE APPROVED	NOTICE FILED	PUBLISHED IN COLO. REG.	NEWSLETTER	PARTY STATUS REQUESTS DUE	EVIDENCE DUE	PREHEARING CONFERENCE	WRITTEN REBUTTALS DUE
October 3, 1994; 9:00 a.m. So. Platte seg 15 stds., 3.8.0 RMH ( )	06-06-94	06-30-94	07-10-94	July				
October 3, 1994; 6:30 p.m. Public IH for comment on water pollution problems				August				
October 4, 1994; 9:00 a.m. Rio Grande classif. and stds., 3.6.0 TRIH				August				
Ocotober 4, 1994; 10:00 a.m. FY95 Intended Use Plan, 5.17.6 RMH ( )	07-__-94	07-29-94	08-10-94	August				
December 5, 1994; 9:00 a.m. Arkansas Basin designations, classifs. & stds., 3.2.0 ( )	08-01-94	08-31-94	09-10-94	September				

ABBREVIATIONS FOR HEARINGS: RMH-Rulemaking; AH-Adjudicatory Hearing; IH-Informational Hearing; TRIH-Triennial Review Informational Hearing

EXPLANATORY NOTES
REGARDING WATER QUALITY CONTROL COMMISSION LONG-RANGE SCHEDULE

The dates for scheduled rulemaking and non-rulemaking hearings are listed on the left side of the schedule. Initials in parentheses identify which Commissioners will serve as hearing chair (listed first) and assistant hearing chair for each rulemaking hearing. Dates listed on each line identify critical pre-hearing dates for each rulemaking hearing.

PLEASE NOTE THAT ALL INFORMATION LISTED ON THE LONG-RANGE SCHEDULE IS TENTATIVE AND SUBJECT TO CHANGE. The following synopsis provides additional information regarding each scheduled hearing. For further information, contact the Commission Office at 331-4525.

December 7, 1992; 9:00 a.m.

Continuation of rulemaking hearing from October, 1992, to consider revisions to water quality standards for segments 4 and 5 of Big Dry Creek in the classifications and numeric standards for South Platte River Basin, 3.8.0 (5 CCR 1002-8).

January 4, 1993; 9:00 a.m.

Rulemaking hearing to consider revisions to the Regulations for Control of Water Quality in Chatfield Reservoir, 4.7.0 (5 CCR 1002-17).

January 4, 1993; 1:00 p.m.

Rulemaking hearing to consider revisions to the water quality designation provisions in the Basic Standards and Methodologies for Surface Water, 3.1.0, (5 CCR 1002-2).

February 1, 1993; 9:00 a.m.

Triennial review informational hearing to consider revisions to the Basic Standards for Ground Water, 3.11.0 (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

February 1, 1993; 10:00 a.m.

Informational hearing to receive public comment on the possible need to revise the Procedural Rules, 2.1.0 (5 CCR 1002-1).

February 2, 1993; 9:00 a.m.

Rulemaking hearing to consider amendments to the aquatic life biomonitoring provisions in section 6.9.7 of the Regulations for the State Discharge Permit System 6.1.0 (5 CCR 1002-8).

March 1, 1993; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the classifications, standards, and water quality designations for the Upper Colorado River Basin, 3.3.0 (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

March 1, 1993; 10:00 a.m.

Rulemaking hearing for all River Basins Statewide. This hearing is only for minor housekeeping revisions to the basins, 3.2.0 thru 3.8.0 (5 CCR 1002-8).

April 5, 1993; 9:00 a.m.

Rulemaking hearing to consider the adoption of ground water quality classifications and standards in the vicinity of public water supplies that rely on ground water, 3.12.0 (5 CCR 1002-8).

May 3, 1993; 9:00 a.m.

Rulemaking hearing to consider the adoption of statewide ground and surface water quality standards for DIMP, 3.1.0 (5 CCR 1002-8) and 3.11.0 (5 CCR 1002-8).

June 7, 1993; 9:00 a.m.

Rulemaking hearing requested by the City of Westminster to consider revisions to water quality standards for Standley Lake in the South Platte River Basin, 3.8.0 (5 CCR 1002-2).

June 8, 1993; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the classifications, standards, and water quality designations for the South Platte River Basin, 3.8.0 (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

July 6, 1993; 9:00 a.m.

Rulemaking hearing to consider revisions to the Regulations for the State Discharge Permit System, 6.1.0 (5 CCR 1002-2).

July 7, 1993; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Basic Standards and Methodologies for Surface Water, 3.1.0, (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

August 2, 1993; 9:00 a.m.

Rulemaking hearing to consider possible revisions to or deletion of temporary modifications in several river basins.

September , 1993; 9:00 a.m.

Rulemaking hearing to consider revisions to the Procedural Rules, 2.1.0, (5 CCR 1002-1).

September , 1993; 1:00 p.m.

Triennial review informational hearing to consider possible need for revisions to the Dillon Reservoir Control Regulation, 4.1.0 (5 CCR 1002-17). Any actual revisions would be considered in a subsequent rulemaking hearing.

October 4, 1993; 9:00 a.m.

Rulemaking hearing to consider adoption of the FY94 Intended Use Plan, 5.17.5, (5 CCR 1002-24).

October 4, 1993; 6:30 p.m.

Annual informational hearing to receive public comment on water pollution problems within the state.

ALAMOSA November 1, 1993; 9:00 a.m.

Rulemaking hearing to consider revisions to the water quality designations, classifications and standards for the Rio Grande River Basin, 3.6.0 (5 CCR 1002-8).

November 2, 1993; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Colorado River Salinity Standards, 3.9.0 (5 CCR 1002-10), and Implementation of the Colorado River Salinity Standards through the NPDES Permit Program Regulations, 3.10.0 (5 CCR 1002-11). Any actual revisions would be considered in a subsequent rulemaking hearing.

January 3, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to statewide radionuclides standards for surface and ground water, 3.1.0 and 3.11.0 (5 CCR 1002-8).

Division to reconvene a Wetlands Task Force to address some issues that have surfaced since the hearing was held. The Commission came up with a list of questions they would like the Task Force to address. Written comments on the questions are due November 23; this will be placed on the Commission's December agenda for further action.

January 4, 1994; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Pretreatment Regulations, 4.3.0 (5 CCR 1002-20). Any actual revisions would be considered in a subsequent rulemaking hearing.

March 7, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the water quality classifications, standards and designations for the San Juan/Dolores River Basin, 3.4.0 (5 CCR 1002-8).

April 4, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the Regulations for Effluent Limitations, 10.1.0 (5 CCR 1002-3).

April 4, 1994; 1:00 p.m.

Triennial review informational hearing to consider possible need for revisions to the Classifications and Water Quality Standards for Ground Water, 3.12.0 (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

May 2, 1994; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Passive Treatment of Mine Drainage Control Regulation, 4.5.0 (5 CCR 1002-22). Any actual revisions would be considered in a subsequent rulemaking hearing.

June 6, 1994; 9:00 a.m.
Rulemaking hearing to consider revisions to the Regulations for the Certification of Federal Licenses and Permits (401 Certification RMH) 2.4.0 (5 CCR 1002-18).

August 1, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the water quality classifications, standards and designations for the Upper Animas River in the San Juan/Dolores River Basins, 3.4.0 (5 CCR 1002-8).

September , 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the radionuclide standards in the Rocky Flats Plant area for surface water, 3.8.0 (5 CCR 1002-8) and ground water, 3.12.0, (5 CCR 1002-8).

COLORADO
DEPARTMENT
OF HEALTH

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OCTOBER 1, 1992

The Water Quality Task Force (WQTF) appointed by Governor Romer to assist in preparing the report and recommendations required by House Bill 92-1200 is very interested in having you review and comment upon the enclosed draft of its report. A copy of the pertinent section from HB 92-1200 and the draft report are enclosed. The deadline for comments is **October 15, 1992.** Editing of the document will be done at the Department of Health after comments are received. Comments should be directed to:

J. David Holm
Department of Health
4300 Cherry Creek Drive South
Mail Box # WQCD-DO-B2
Denver, Colorado 80222
PHONE: 303-692-3500

OR

Peter Evans
Department of Natural Resources
1313 Sherman Street
7th Floor
Denver, Colorado 80203
PHONE: 303-866-3311

We appreciate your interest in helping to improve the relationship between water quality and water rights protection decisions. We also recognize that the two week time frame for public comments is very limited. However, it is important that the WQTF report and recommendations be delivered to the legislature no later than November 1, 1992. If you have questions or need further information, please call Peter Evans (303-866-3311) or Dave Holm (303-692-3500).

January 4, 1994; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Pretreatment Regulations, 4.3.0 (5 CCR 1002-20). Any actual revisions would be considered in a subsequent rulemaking hearing.

March 7, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the water quality classifications, standards and designations for the San Juan/Dolores River Basin, 3.4.0 (5 CCR 1002-8).

April 4, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the Regulations for Effluent Limitations, 10.1.0 (5 CCR 1002-3).

April 4, 1994; 1:00 p.m.

Triennial review informational hearing to consider possible need for revisions to the Classifications and Water Quality Standards for Ground Water, 3.12.0 (5 CCR 1002-8). Any actual revisions would be considered in a subsequent rulemaking hearing.

May 2, 1994; 9:00 a.m.

Triennial review informational hearing to consider possible need for revisions to the Passive Treatment of Mine Drainage Control Regulation, 4.5.0 (5 CCR 1002-22). Any actual revisions would be considered in a subsequent rulemaking hearing.

June 6, 1994; 9:00 a.m.
Rulemaking hearing to consider revisions to the Regulations for the Certification of Federal Licenses and Permits (401 Certification RMH) 2.4.0 (5 CCR 1002-18).

August 1, 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the water quality classifications, standards and designations for the Upper Animas River in the San Juan/Dolores River Basins, 3.4.0 (5 CCR 1002-8).

September , 1994; 9:00 a.m.

Rulemaking hearing to consider revisions to the radionuclide standards in the Rocky Flats Plant area for surface water, 3.8.0 (5 CCR 1002-8) and ground water, 3.12.0, (5 CCR 1002-8).

REPORT TO THE GENERAL ASSEMBLY

CONCERNING THE ORGANIZATIONAL PLACEMENT OF WATER QUALITY PROGRAMS

presented by
the
Water Quality Task Force

appointed by

Governor Romer

pursuant to HB-92-1200

November 1, 1992

DRAFT

HB 1200 STUDY
ORGANIZATIONAL PLACEMENT OF WATER QUALITY PROGRAMS

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CHAPTER I

INTRODUCTION

Background

House Bill 92-1200 was enacted by the General Assembly and signed by the Governor on June 1, 1992. One section of the bill provides for the Office of the Governor, the Department of Health (CDH), and the Department of Natural Resources (DNR) to undertake a study concerning the organizational placement and efficient conduct of the water quality programs of the state. The study is to include an evaluation of the following parameters: a) maintaining the most effective water quality control programs for the state of Colorado; b) integration of water quality control programs with public health, environmental protection, and natural resources programs; c) integration of water quality control and water quantity considerations in a manner that will create the best public policy for the state of Colorado; and d) the most efficient utilization of human and fiscal resources within CDH and DNR to promote the protection of the state's water quality and water rights. No later than November 1, 1992, the Governor's Office, DNR, and CDH, are to present a report to the General Assembly concerning the study conclusions.

The program integration issue to be addressed by the study has been discussed and debated in Colorado for many years. The possibility of moving the water quality programs of the state into the DNR was discussed in 1979 and 1980 before and during the legislative debate on SB 81-10. Section 25-8-104 of the Colorado Water Quality Act, which provides for the protection of existing water rights and compact entitlements during the administration of water quality programs, was added to SB 81-10, in part, to bring the discussion about transferring water quality programs to DNR to closure.

House Joint Resolution 1001, passed by the 1988 legislature, requested the Water Conservation Board legislative committee to examine whether there would be benefits associated with transferring the Water Quality Commission and Division to the Colorado DNR. The legislative committee recommended (LLS No. 890396/1) the transfer of water quality programs from CDH to DNR. Governor Romer responded to the legislative committee stating that he could not support the transfer of the Water Quality Control Commission (WQCC) and Division (WQCD) to the DNR.

In lieu of supporting the organizational transfer the Governor took the following actions: (a) as of January 1, 1989, he asked the Executive Director of DNR and the State Engineer to attend WQCC meetings and offer advice and council as appropriate; (b) he suggested that the legislature amend the Colorado Water Quality Control Act (CWQCA) to add the Executive Director of DNR as a voting member; (c) the Governor formed a task force of interested legislators, water quality and quantity experts and others to examine the water quality - quantity nexus in order to make recommendations for legislative or administrative actions to increase the coordination and consideration of water quality or quantity decisions; (d) Dr. Thomas Vernon, who was then Executive Director of CDH, was asked to reexamine the existing memoranda of

understanding between CDH and DNR, to determine whether additional material should be added or whether a new comprehensive agreement should be negotiated between these departments.

SB 89-181 was introduced into the 1989 legislative session as a bill to transfer the WQCD to DNR. During the course of the legislative session, amendments to that bill resulted in further modifications to section 25-8-104 and section 25-8-202(7) of CWQCA. The modifications to section 104 resulted in a requirement for WQCD and WQCC to "consult with the State Engineer and the Water Conservation Board or their designees before making any decision or adopting any rule or policy which has the potential to cause material injury to water rights." The modification to section 202 resulted in the establishment of "implementing agencies" to implement standards and classifications adopted by WQCC through their own programs. Implementing agencies include the Division of Minerals and Geology, the State Engineer, the Oil and Gas Conservation Commission, and the state agency responsible for activities and programs related to the Federal Resource Conservation and Recovery Act of 1976, as amended.

After the enactment of Senate Bill 89-181, the State Engineer's Office hired a water quality engineer who is responsible for addressing the consultation requirements under SB 89-181 and for attending WQCC meetings to offer advice and council as needed. This was done in lieu of having the State Engineer attend each WQCC Meeting. The legislature did not amend the water quality act as suggested by the Governor in order to add the Executive Director of DNR as a voting member. The task force called for by the Governor to study the water quality - water quantity nexus became a focus group for addressing the issues as they arose in connection with SB 89-181. The existing memoranda of understanding between CDH and DNR were reviewed in 1989 No changes were made to the agreements at that time. However, four new memoranda of agreement were developed, specifically in response to the implementing agency provisions of SB 89-181.

HB 92-1200 was introduced into the 1992 legislative session as a bill to transfer WQCD to DNR. The bill initially contained provisions which would have resulted in the elimination of the state's primacy with respect to implementation of the drinking water regulations, promulgated pursuant to the Safe Drinking Water Act. The introduction of HB 92-1200 led to a number of discussions between the executive directors of DNR and CDH and the Governor and his staff concerning how best to address the water quality and water quantity integration issues raised in the bill. The Governor and his cabinet officers agreed that the issue should be carefully and objectively evaluated in a special study. Late in the legislative session HB 92-1200 was amended in a manner that eliminated the transfer provisions and called for the study which is the subject of this report. The bill also established specific criteria for designating water bodies as outstanding waters, and authorized a fee for storm water discharge permits.

HB 92-1200 Study Process

HB 92-1200 calls for the study concerning the organizational placement of water quality programs to be conducted by CDH, DNR and the Governor's office. However, a decision was made to

seek broader input during the study process so that the results would be credible in the eyes of concerned interest groups, the legislature, and the Governor. Governor Romer appointed a water quality task force to conduct this study. Executive order B-012-92 was issued which ordered the creation of the Water Quality Task Force and set forth the general parameters of the study to be conducted under HB 92-1200. The executive order called for the task force to be staffed by CDH, DNR and the Department of Agriculture.

In order for the task force to receive the maximum public input in evaluating the program integration and organizational placement issues posed by HB 92-1200, a series of focus group meetings were conducted. The first focus group meeting was held on August 17, 1992, and was jointly sponsored by the Colorado Water Congress and the Colorado Association of Commerce and Industry. The second focus group occurred on August 24, 1992 and was jointly sponsored by the Colorado Bar Association's Environmental Law Section and the Natural Resources Law Center of the University of Colorado. The third focus group was held on August 27, 1992, and was sponsored by Colorado Environmental Caucus. A fourth focus group was held on September 1, 1992, and was sponsored by the agricultural community. Detailed accounts of the focus group meetings are attached to this report in Appendix A. The focus groups were very useful in providing a forum for specific interest groups involved in water quality and water resource issues to air their concerns relative to the provisions of HB 92-1200.

Based on the input received by the task force at the focus group meetings and upon the requirements imposed by HB 92-1200 the staff to the task force prepared a report outline for review by task force members on September 2, 1992. A preliminary draft report was prepared by staff after receiving proposed modifications to the outline by the task force. The preliminary draft report was reviewed in depth and edited by the task force in a meeting held on September 18, 1992. Based on the suggestions received from the task force, staff prepared a revised report which was reviewed by each of the task force members. The draft report was circulated for public comment from October 1, 1992 to October 15, 1992. The comments received from the public were reviewed and addressed by staff in a final draft report which was submitted to the task force on October 21, 1992. The task force provided directions to the staff for preparation of the final report which were incorporated prior to its submission to the Governor and the Legislature on November 1, 1992, as required by HB 92-1200. Interestingly, participants in all four focus group discussions felt the other interests have greater influence and success with the WQCC than their own interest group did.

Problems and Concerns Identified During the HB 92-1200 Study Process

An informal content analysis of the detailed accounts of the four focus groups reveals that several themes reverberated throughout the discussions. The dominant topic during three of the focus group discussions was frustration about the WQCC's rulemaking process. Every group discussed the need for close coordination and integration between the water quality and water quantity oriented programs. The need for close integration among the environmental and health protection programs at CDH was also stressed at every focus group meeting. There was also discussion in each group about whether it would be beneficial to transfer water quality programs

to DNR in order to achieve more formal integration of water quality and water quantity. Other variations of institutional reorganization were discussed such as creating a Department of Natural Resources and Environment or Department of Environmental Quality.

The Water Quality Decision Making Process: A number of concerns were discussed which seemed to fit under this broad heading. For example, there was discussion about alternatives to a WQCC, such as a single administrator or a full time and paid Board or Commission responsible for environmental rulemaking and administrative adjudicatory proceedings. Considerable discussion was also directed to statutory changes which would require the Executive Director of DNR or the State Engineer to be a part of the WQCC and whether this appointment should be voting or non-voting.
In the Agricultural Focus Group, there was detailed discussion about the process for developing new regulations. There was an examination into the question of what is the impetus for new regulations. It was thought by some that EPA often lacks the authority to require states to undertake new rulemaking efforts. There was a call for a thorough and objective problem analysis to be done prior to initiating any new rulemaking effort. It was felt that there should be allowance for discussion of alternative approaches to rulemaking.

The task force approach to developing new regulations was felt to be useful. The recently promulgated Confined Animal Feeding Operation (CAFO) Control Regulation was referred to frequently during the discussion as a good pattern for future rulemaking but also to highlight areas needing improvement or refinement. There was concern that, after the provisions of a rule are negotiated in a task force, there needs to be enough time to consider the relationship of the proposed regulation to other existing regulations and to do a careful cost analysis. A sentiment expressed strongly by members of the agricultural community was that there needs to be an opportunity for WQCC to learn in depth about the results of the task force process in an informal session prior to the formal rulemaking. There was frustration among the parties to the CAFO rulemaking hearing that WQCC did not give enough deference to the results of the task force process and there was poor understanding by the WQCC of the task force recommendation.

The Colorado Water Congress/ Colorado Association of Commerce and Industry Focus Group provided input to the task force that the WQCD needs to employ methods to encourage greater public participation in the development of policies which affect the implementation of the NPDES permit program. It was felt that unilateral policy development by the Division can lead to costly efforts, on the part of the regulated community, to address their concerns to the Commission in the form of rulemaking proposals.

Much of the discussion in each focus group concerned the Commission's formal rulemaking process. It was stated frequently that the process favors powerful interests and inhibits individuals who may be representing their own interests. This is because obtaining party status requires timely submissions of technical and legal information and rebuttal statements, attendance at pre-hearing meetings and the possibility of being cross examined by attorneys. As a result, many people feel that representation by an attorney is essential for effective participation in the process. The high cost of such representation and the formality of the WQCC

proceedings was cited by many individuals who attended the focus groups as a major hurdle inhibiting their participation in the rulemaking process.

Integration and Coordination Between Water Quality and Water Quantity Programs: The underlaying concern about the need for improved communication and coordination between water quality programs and water quantity programs was stressed particularly by the water developer participants on the water quality task force and focus groups, although a number of other participants in the focus group discussions also expressed this view. It was stated that the WQCC and WQCD are creating regulatory programs without understanding their ramifications on water users, water rights, and Colorado's compact entitlements. However, it was also stated in several of the Focus Groups that water quantity decisions are being made in Colorado without adequate consideration of legitimate water quality interests and that the WQCC is overly sensitive to concerns about water rights and water resource development.

There were questions as to why the memoranda of understandings between agencies under SB 89-181 had not addressed this problem. One shortcoming in the SB 89-181 consultation process was in regard to the Water Conservation Board's inability to evaluate the potential impact of water quality control proposals upon the development of water resources. Such discussions led to expressions of frustration about the difficulties involved in coordinating the activities of agencies whether they be in the same or in different departments given existing limitations in their human and fiscal resources.

The differences between type I and type II agencies in general, and particularly between the WQCC, State Engineer's Office and the Water Conservation Board were brought up repeatedly, in relation to the need to achieve improved coordination among water programs. The WQCC is a type I agency. It has policy, rulemaking and adjudicatory authorities independent from the Executive Director of the Department of Health. The members of the Commission are appointed by the Governor and subject to confirmation by the Senate. The Executive Director of the Department of Health is responsible for all budgetary and personnel matters related to the Division and Commission staff. The WQCD serves as the technical staff to the Commission. However, the Division has primacy with respect to the implementation of the NPDES program. This is because the conflict of interest provision in the Federal Clean Water Act precludes individuals who represent the interests of dischargers from making decisions on individual NPDES permits.

The Water Conservation Board (WCB) is a Type I agency comparable to the WQCC. Members of the Board are appointed by the Governor and confirmed by the Senate. The Board, independently, establishes policy and conducts planning activities. The Executive Director of the Department of Natural Resources maintains control of budgetary and personnel matters affecting the Board's staff.

The Office of the State Engineer is established in the Colorado Constitution. It is also a type I agency, although the responsibilities of the State Engineer and the Division of Water Resources are mainly regulatory and administrative versus policy and planning. However, when the need

arises for regulations to codify administrative practices, the State Engineer, individually, is empowered to conduct rulemaking in accordance with the Administrative Procedures Act.

Many of the participants in the focus groups felt that refinements in the consultation process could address the problems that some see in the coordination between WQCC, WQCD, and the DNR agencies administering Colorado's water resources. The focus group which was jointly sponsored by the environmental law section of the Colorado Bar Association and the Natural Resources Law Center at the University of Colorado stressed the need for more formal coordination between water quality and water quantity programs. That concept is more thoroughly presented in Chapter 4 of this report.

Organizational Changes In The Placement of Water Quality Programs: Individuals in each of the focus groups spoke in favor of retaining the present organizational structure.
Several of the participants in the focus group jointly sponsored by the Colorado Water Congress and Colorado Association of Commerce and Industry spoke in favor of transferring the State's water quality programs to DNR. Another individual in the Environmental Caucus focus group spoke in favor of a transfer.

Generally the discussion in the focus groups and on the task force revolved around the need to insure that water quality regulation proceeds only after full consideration of the possible impacts on water resource development is made (i.e. closer coordination between water quality and water quantity programs).

There was not a great deal of consideration given to creating a new Department of Natural Resources and Environment or a Department of Environmental Quality, but the possibility of doing so was discussed in each focus group.

Summary: The HB 92-1200 study process was designed specifically to identify concerns (perceived by individuals and groups who represent the major interests in this state with respect to water use, water development, and water quality protection) about the effectiveness, integration, efficiency and appropriate organizational placement of water quality programs. The concerns listed below provided the basis for the Water Quality Task Force to evaluate the options and recommendations presented in Chapters V and VI.

1. The present composition of the WQCC should be examined and perhaps modified to provide a better opportunity for all interests to be fairly represented.

2. The process for developing new water quality requirements needs to be reformed or refined to insure the following: (a) there is a real problem which requires a solution; (b) a regulatory solution versus a voluntary approach is, in fact, needed; (c) a multiple interest task force approach is utilized to refine the proposed regulation or Division policy and then to evaluate its relationship to other existing regulations and the likely costs associated with the new regulatory burden; and, (d)

that the WQCC is fully briefed by the task force about its conclusions and recommendations prior to the formal rulemaking process.

3. The WQCC formal rulemaking process and the Division's administrative policy making process should be reformed to decrease existing barriers which inhibit broader public participation.

4. The existing consultation process between the WQCC, WQCD, and the State Engineer's Office and the Water Conservation Board needs to be improved to insure that: (a) water quality programs are conducted in a manner that recognizes and protects existing water rights and future water development plans; and (b) water use and development activities are conducted in a manner cognizant that protects water quality.

5. More formal coordination or integration between water quality and water quantity is needed. The desirability of integrating these water related programs within a single agency or department should be further explored.

CHAPTER II

EXISTING WATER QUALITY PROGRAMS

WATER QUALITY CONTROL COMMISSION

The Water Quality Control Commission (WQCC) is a part-time, nine person commission approved by the Governor and confirmed by the Senate. Under provisions of the Colorado Revised Statutes, C.R.S. 25-8-202 the WQCC has the primary responsibility for the implementation and refinement of water quality regulatory policies in Colorado. Specifically, the WQCC classifies state waters, promulgates standards, control and permit regulations and rules for 401 certifications. The Commission also adopts the Construction Grants/Loans/Nonpoint Source Priority List, and approves all 208 Areawide Water Quality Management Plans and hears appeals on civil penalties, 401 Certifications, site application decisions, etc. The WQCC office provides analytical, administrative, and clerical staff support to the WQCC. The Division serves as staff to the WQCC proceedings other than adjudicatory or appellate proceedings in which the Division is a party.

The first Colorado Water Pollution Control Act was adopted in 1966, creating authority to establish water quality standards consistent with the Federal Act. The 1966 Act created an eleven-member State Water Pollution Control Commission. Four ex officio members were to be representatives of the Board of Health, the Game, Fish and Parks Commission, the Water Conservation Board, and the Natural Resources Coordinator. Seven citizens, appointed by the Governor, were to include one representative of industry, one from municipal or county government, one from agriculture and four from the public at large. Commission members were appointed for terms of six years.

In 1972, Congress adopted a major overhaul of the Federal Water Pollution Control Act. Colorado's implementation of the federal program requirements depends upon the existence of Colorado law which meets or exceeds the federal requirements. In 1973, the Colorado Water Quality Control Act (CWQCA) was completely rewritten (and renamed), to bring it back into compliance with the new federal law. The composition of the Commission remained largely unchanged, except that the seven appointed members were no longer required to represent any specific interests, and members' terms were changed from six years to three years. The name was changed to WQCC.

SB 81-10, which was adopted by the Legislature in 1981, established the Commission's present composition of nine members, each appointed by the Governor. Appointments are to "achieve geographical representation" and "reflect the various interest in water in the state." At least two members are to be from west of the continental divide.

Commission Rulemaking Procedures: The conduct of WQCC hearings and meetings is governed by the "Procedural Rules" 2.1.0 (5 CCR 1002-1). This regulation contains both general rules applicable to all rulemaking and adjudicatory hearings and special rules applicable to

particular types of hearings (e.g. site application appeals, classification and standards reviews under section 25-8-207, and civil penalty appeals). These regulations are adopted pursuant to the authority conferred upon the WQCC in C.R.S. 1973, 25-8-401(2) and are intended to be consistent with the requirements of the State Administrative Procedure Act, C.R.S. 1973, 24-4-101 et seq. (the "APA") and the Colorado Water Quality Control Act, C.R.S. 1973, 25-8-101. et seq. (CWQCA).

A. Initiation of Rulemaking

Many rulemaking proceedings are initiated by the WQCC. For example, rulemaking may be undertaken to fill a perceived gap in existing regulations, to revise existing regulations as a result of information submitted in a triennial review hearing, or to effect changes necessitated by new federal or state legislation. The impetus for rulemaking is generally action taken by Congress or EPA in regard to federal legislation, or new EPA regulations or policies. Many rulemaking proceedings initiated by the WQCC are the result of proposals or recommendations advanced by the Division staff after the WQCC determines a need for rulemaking.

The WQCC's Procedural Rules provide that any interested person may petition the WQCC for the issuance, amendment or repeal of a rule. In most instances it is within the WQCC's discretion whether to proceed with rulemaking in response to a petition, however, the WQCC has seldom proceeded with such rulemakings.

B. Informal Development of Regulatory Proposals

The period prior to formal notice of a public rulemaking hearing often is critical in the regulatory development process. After the Commission has identified a topic on which it intends to address through rulemaking, it may proceed in a variety of fashions prior to issuance of formal notice.

In some instances rulemaking proposals are simply formulated by Division staff, discussed preliminarily with the Commission, and revised into a form to include with the notice of a hearing. In other instances, generally for more major regulatory proposals, the Commission has established ad hoc committees or technical task forces to develop proposals prior to formal rulemaking. On some issues the Commission also has scheduled workshops or informational hearings to explore issues of concern prior to formulating a rulemaking proposal.

In selecting among these informal, pre-rulemaking options, there generally is a trade-off between the time and effort required for these activities and the time that may be saved by better defining and narrowing issues prior to a rulemaking hearing. A case-by-case selection of the appropriate approach is an important Commission decision.

C. Notice

Official notice of rulemaking hearings is accomplished by publication in the Colorado Register. In addition, notices or notice summaries are included in the Water Quality Information newsletter compiled monthly by the Water Quality Control Division and mailed to a list of approximately 200 subscribers.

Hearing notices are prepared by the WQCC Administrator, with input from the Attorney General's Office, and generally submitted to the Commission for review prior to publication, although no formal Commission approval is required. The Colorado Administrative Procedures Act requires at least twenty days notice prior to rulemaking hearings. Pursuant to the Water Quality Control Act, hearings to classify state waters, set water quality standards or adopt control regulations require sixty days notice.

Because of the timing of Commission meetings and Colorado Register publication, this generally results in a four-month period from the date the Commission reviews a notice to the date of a hearing.

D. Prehearing Procedures

Prehearing procedures are intended to focus and resolve issues to the maximum extent feasible prior to the hearing, so that the hearing can be conducted more quickly and efficiently. A deadline for requesting party status is usually set approximately two months prior to the hearing date. Immediately after the party status deadline, a list of those requesting party status is sent to all such persons. In addition, a Rulemaking Hearing Information Sheet is sent to all persons on the party status list, to provide additional practical information to help parties prepare for the hearing.

A prehearing conference generally is scheduled approximately one month prior to the hearing. Current practice is to require that a prehearing statement, including any exhibits, written testimony or alternative proposals, be submitted to the Commission Office and exchanged among the party status applicants approximately one week prior to the prehearing conference. Based upon these documents, an effort is made at the prehearing conference to narrow and resolve the issues. The results of this effort are reflected in a Prehearing Order prepared after the conference. Generally, one week following the prehearing conference is allowed to submit written rebuttal statements.

E. Hearing

The hearing is run by one of the Commission members, acting as the Hearing Chairman. Generally, either the Division or the party proposing a rule will present

their case first, followed by other parties and interested members of the public who wish to comment. Those with party status are allowed to cross-examine other witnesses. In recent years the Commission has attempted to limit direct oral testimony, focusing on questions and cross-examination regarding written material submitted prior to the hearing. In some cases, time is allowed following the close of the hearing for parties to submit written summations of their positions. However, recently the Commission has allowed only brief oral summations, so that it can begin deliberations immediately.

F. Deliberations

After the hearing is closed and all written material has been received (including any written summations if allowed, and sometimes a written transcript of the hearing) the Commission begins its deliberations to determine what action to take. Depending on the degree of complexity and controversy regarding the issues, deliberations may take only a few minutes or may continue over several successive monthly Commission meetings. Recently, the Commission has attempted to begin deliberations immediately following the close of a hearing whenever possible, while the material is still fresh in Commissioner's minds.

G. Final Action

Final action is taken by formal motion and vote of the Commission. In addition to the language of the rule or regulation, final action requires preparation of and agreement on a Statement of Basis, Specific Statutory Authority, and Purpose.

H. Administrative Reconsideration

Although seldom invoked, the State Act allows affected parties to petition the Commission for reconsideration of any rulemaking determination. Such petition must be submitted during the period allowed for seeking judicial review. The Commission is required to act on such requests within ten days, unless this deadline is waived by the petitioner (which is often the case if the Commission does not have a regularly scheduled meeting within the ten-day period; otherwise, Commissioners must be polled by phone).

Concerns about Rulemaking Procedures: The provisions of the Administrative Procedures Act governing rulemaking by the Water Quality Control Commission (WQCC) are essentially the same as apply to other Boards and Commissions in the State. However, the Colorado Water Quality Control Act additionally provides that witnesses at hearings concerning water quality classifications, standards or control regulations are subject to cross examination. The Commission's procedures for rulemaking have become increasingly complicated over the years because of the large number of parties who participate in the process and the controversial nature of many proceedings. The formal process has increasingly emphasized early written

exchanges of positions among the parties prior to the hearing. This insures that the WQCC has a substantial written record upon which to deliberate and reach conclusions. Also, this allows the commission to limit oral testimony during the actual hearing without diminishing the depth or breadth of public review and information available for substantiating its findings.

Clearly, the emphasis on timely written submissions has favored parties who are able to develop cogent positions which are well founded upon technical and legal principles. The requirement to obtain party status in order to receive copies of the submissions of other parties, required attendance at prehearing conferences and the expectation that parties will provide written testimony and rebuttal statements within fairly tight deadlines, has been criticized as too burdensome on individual members of the public. Also, the potential that parties and members of the public alike may be subject to hostile cross examination by lawyers has been an intimidating factor which has inhibited broader public involvement.

WATER QUALITY CONTROL DIVISION

Most of the duties of the WQCD are set forth in section 25-8-302 of the CWQCA. Generally, the Division is the agency responsible for implementing and enforcing the regulations adopted by the Commission. Moreover, the Division provides the principal source of technical expertise available to the Commission in its rulemaking and other policy-setting activities. The mission of the Division is to "Maintain or improve the quality of the state's waters and to assure the provision of safe drinking water for the citizens of the state."

The Water Quality Control Division regulates the discharge of pollutants into the State's surface and ground waters, and enforces the Primary Drinking Water Regulations. Protection and maintenance of water quality is achieved through the issuance of permits which specify the types and amounts of pollutants that may be discharged without violating the water quality standards assigned to the receiving waters. The Drinking Water Program assures the quality of drinking water in the State through continuous monitoring of samples of drinking water and regular inspections of public drinking water treatment systems.

The Division currently is organized into the Office of the Division Director and four sections: (1) the Ground Water/Standards Section; (2) the Field Support Section; (3) the Permits and Enforcement Section; and (4) the Drinking Water Program. An organizational chart is presented in figure 1.

Office of the Director

The Division Director's Office has overall responsibility for the administration and management of the Division including a variety of budget, management and programmatic duties. Specific responsibilities include setting goals and objectives, establishing program and budget priorities, identifying and implementing policies and procedures, developing workplans and tracking progress. The Division Director directly supervises the Field Services Section to insure a high degree of coordination between that Section and each of the others which depend on it for water

quality sampling, facility compliance, enforcement, technical assistance, community relations, and emergency response services.

The Colorado Plant Operators Certification Board is a nine-member body responsible for certifying water and wastewater plant operators and for classifying treatment plants. The certification of operators is accomplished through written examinations which are developed, administered, and graded by the Board. Plant classification is assigned in accordance with regulations established by the Board. The Division Directors Office provides staff support to the Board to accomplish these tasks.

The Drinking Water Program

The Drinking water Program is responsible for ensuring safe drinking water to the general public. This is accomplished through development and enforcement of the "Primary Drinking Water Regulations." The Drinking Water Program also develops and updates design criteria for potable water systems, issues enforcement orders for violations and maintains an inventory of public water supplies. A major focus of this program is in assuring safe drinking water while minimizing the cost of compliance on the part of community and non-community systems. This is accomplished through frequent facility inspection, vulnerability analyses and the development of innovative monitoring and compliance methods. The program plays a key role in investigations of waterborne disease outbreaks and assists local governments by providing technical assistance and training regarding water treatment.

The activities authorized under the Primary Drinking Water Regulations and the Public Health Statue 25-1-107 et. seq. are also integrated within the Division. Monitoring technicians continuously review the self monitoring data submitted to the lab for analysis by public water systems. The information is entered into a national data base. Field and District Engineers also inspect drinking water treatment systems to insure disinfection and filtration requirements are being met and that the self reporting system has integrity. Vulnerability assessments for drinking water systems are done both by field services staff and engineers in the Denver office. these studies can affect the amount of monitoring public water systems are required to perform drastically.

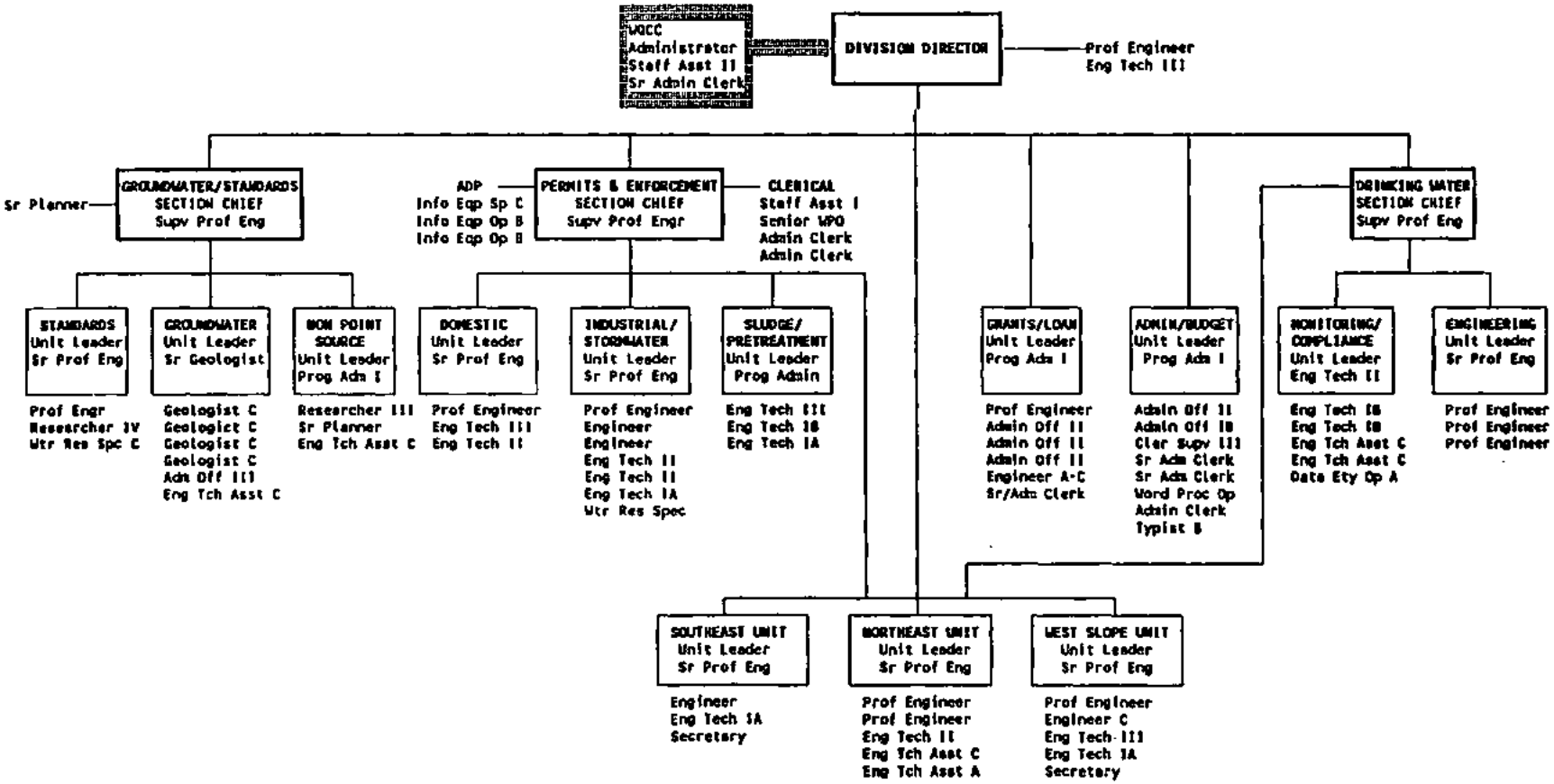
Permits and Enforcement Section

The Permits and Enforcement Section develops, writes and processes discharge permits for approximately 940 domestic and industrial waste producers who discharge treated effluent to State waters. The section's staff also enforces the terms of the permits using monitoring information provided by the field staff and data furnished by the permittee in the form of discharge monitoring reports (DMR's). A notice of Violation and/or a Cease and Desist Order is issued when violations are noted.

This section has responsibility for the pretreatment program. Pretreatment refers to the processing of industrial waste prior to treatment by a domestic wastewater treatment plant.

FIGURE 1

WATER QUALITY CONTROL DIVISION



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Pretreatment is necessary for certain types of mixtures of wastes to ensure that the treatment facility will be able to meet the terms of its discharge permit.

The section provides oversight of sludge disposal for beneficial use and reviews applications for sludge disposal sites.

The stormwater program is also administered by the Permits and Enforcement Section. This program is designed to reduce pollution from municipal and industrial stormwater runoff.

Field Services Section

The Field Services Section, as it's name implies, represents the Division in the field, serving as liaison between the central office and the regulated community. This is accomplished by the District Engineers, technicians, engineering aides, grant administrators and permit drafters who work out of the central and field offices (Grand Junction, Pueblo, Durango and Steamboat Springs).

The Northeast Unit, which is located in Denver, is comprised of a Senior Professional Engineer, two Professional Engineers, two Engineering Technicians and an Engineering Technician Assistant. The Southeast Unit is based in Pueblo and is made up of a Senior Professional Engineer, an Engineer B, an Engineer Technician 1A and a Secretary. The West Slope Unit is centered in Grand Junction and maintains satellite offices in Steamboat Springs and Durango due to the size of its assigned area. The three offices are comprised of a Senior Professional Engineer, a Professional Engineer, an Engineer C and two Engineering Technicians. In addition, the West Slope Unit houses a Grants and Loans Administrator and a permits engineer. These positions were transferred to Grand Junction to improve communications and program operations with grantees and permittees on the western slope.

The duties assigned to the field offices are varied and cut across all program lines. Typically, they are to conduct facility inspections, review plans and specifications and other technical documents for water and wastewater treatment facilities, investigate citizen complaints, collect monitoring and enforcement water samples, and provide emergency response for spills and other situations that threaten water quality. The District Engineers conduct numerous inspections of water and wastewater facilities each year to assure that operation and maintenance practices at these facilities are consistent with the goal of meeting the facility's discharge permit limits. They interpret and explain the Board of Health's and Commission's rules and regulations regarding all aspects of water and wastewater treatment programs to local entities. This is helpful in preventing possible noncompliance and can very frequently resolve problems without the need for formal enforcement action. They are also called upon to respond to numerous citizens complaints each year concerning water and wastewater problems as well as emergency events.

Technicians are responsible for collecting effluent and enforcement samples to help assure compliance with permit limits and ambient water quality samples that provide much of the background information necessary for the development of appropriate stream standards.

Finally, the Grants/Loans Unit assists communities through the provision of grants or loans for the construction of wastewater treatment facilities that are needed to accomplish compliance with standards and permit limits. The newly established Water Pollution Control Revolving Fund will replace the Construction Grants Program and will provide funds for loans in perpetuity for facilities in Colorado. The unit is responsible for all administrative and technical aspects of this program.

Ground Water and Standards Section

The roles of this section are in planning, regulation development, data gathering and analysis, and standards setting for both surface and ground water. Much of the staff assistance required by the Water Quality Control Commission is provided by the Ground Water and Standards Section. In addition the Standards Unit Provides recommendations to the Permits and Enforcement Section on appropriate limits for discharge permits and the Ground Water Unit makes similar recommendations on ground water provisions that need to be included in particular permits. The Section maintains both a surface water and a ground water database that are relied upon for standard setting.

The Standards Unit develops wasteload allocations for water quality based effluent limits based on special field studies and performs special field studies for standard setting and enforcement actions. It conducts bioassays, performs or assists in Clean Lakes studies, conducts antidegradation reviews, is responsible for 401 Certifications and oversees the Division's ambient monitoring program.

From a planning perspective the Section is responsible for development of the annual Nonpoint Source Project Priority List, assists in the development of 208 Areawide Water Quality Management Plans, administers 208 planning grants to various councils of governments, administers nonpoint source grants to local governments and provides final reviews of all Site Applications.

Integration of the Division's Activities

The activities undertaken in each section of the Division are highly interdependent. The activities authorized under the CWQCA are sequenced in each river basin in order to achieve a comprehensive water quality management program.

The first program element is ambient water quality monitoring and point and nonpoint source monitoring. Field technician's acquire biological data and water quality samples, lab technicians analyze the samples, and water quality specialists in the Ground Water

and Standards Section evaluate, interpret and report on the data. The Water Quality Control Commission relies on that data and additional information provided by other parties to establish use classifications and standards.

When standards are promulgated, total maximum daily loads (TMDL) and waste load allocations can be established for each stream in the basin. Then permits engineers and technicians can write appropriate water quality based permits (i.e. waste load allocations) for each point source discharger in the basin. Waste load allocations are done for both point sources and non-point sources.

The effluent limitations imposed on point source dischargers in accordance with a TMDL may result in the need for facility improvements. If so, financing options are provided by the Grants and Loans Unit.

Once permits are issued, compliance sampling and operations and maintenance inspections are conducted by field technicians and district engineers (DE), this allows for early intervention and provision of technical assistance if compliance problems arise. If non-compliance is related to inadequate treatment facilities the D.E. may call for the Permits and Enforcement Section to initiate enforcement rapidly in order to establish a compliance schedule allowing the facility sufficient time for the needed construction. The enforcement compliance schedule can shield the operator from further enforcement for noncompliance and limit the liability for the noncompliance prior to issuance of the schedule. The compliance schedule is designed with the timing requirements of the various capital financing alternatives in mind.

CHAPTER III

INTEGRATION OF WATER QUALITY AND OTHER STATE AND LOCAL GOVERNMENT RESPONSIBILITIES

A. INTEGRATION BETWEEN THE WATER QUALITY CONTROL DIVISION AND OTHER DEPARTMENT OF HEALTH PROGRAMS

Interactions with other Divisions within the Department of Health occur on a daily basis, when the need arises to address environmental problems, or the setting of standards, where the expertise of multiple environmental or health related specialties (i.e., air, hazardous waste, radiation, consumer protection, and environmental epidemiology) is required.

Examples of such cases are the Lowry Landfill, the Rocky Mountain Arsenal, basic standards for radionuclides, Rocky Flats oversite, water quality standards for the San Miguel and Eagle Rivers in the vicinity of Superfund sites, and the Limon tornado emergency response. In addition, teams of experts are formed from the staff of the various divisions to address various other multi-media problems, permitting issues and rulemaking efforts as they arise.

The following is a discussion of the on-going interactions that occur between the Water Quality Control Division and other Department of Health divisions.

Hazardous Materials and Waste Management (HMWMD)

In November 1984, the U.S. Environmental Protection Agency authorized the State of Colorado to implement subtitle C of the Resource Conservation and Recovery Act of 1976. The implementing agency within the state is the Colorado Department of Health, Hazardous Materials and Waste Management Division (HMWMD). It is the responsibility of the HMWMD through the Hazardous Waste Control Act (C.R.S. 25-15-101) and its implementing regulations, to regulate and control generators of hazardous waste, as well as facilities that treat, store or dispose of hazardous waste. There are approximately 2500 such facilities.

The program is designed to prevent releases of hazardous wastes or constituents to the environment. Permits issued to TSDs require total management and containment of these wastes on-site until shipment for treatment or disposal. In the event that hazardous wastes or hazardous waste constituents are released into the environment (soil, surface water or ground water) through past or current activities, the Colorado Hazardous Waste Regulations (6 CCR 1007-3) specify what steps the generator or TSD facility will need to take in order to remediate the environmental contamination. It is during this corrective action process that the Water Quality Control Commission (WQCC) promulgated water quality standards

and classifications would be either enforced or evaluated when selecting appropriate, site-specific cleanup standards.

Corrective Action at Permitted Hazardous Waste Facilities

The regulations contained within 6 CCR 1007-3, Part 264 establish minimum state standards which define the acceptable management of hazardous waste at facilities seeking a permit to treat, store or dispose of hazardous waste, of which there are approximately nine in the state. Facilities seeking a permit to manage hazardous waste in surface impoundments, waste piles, land treatment units or landfills are required to implement a ground water protection program to either detect (264.98), monitor (264.99) or remediate (264.100) releases of hazardous waste or hazardous waste constituents into the environment. To date, there has been only one hazardous waste land disposal facility, the Highway 36 Land Development Company located near Last Chance, Colorado that has received a permit to operate within the State of Colorado. The HMWMD specifies the ground water protection requirements in the facility permit.

The point of compliance is as stringent or, in some cases, more stringent than is required in 5 CCR 1002-8, Section 3.11.6. According to 6 CCR 1007-3, Section 264.95(a), the point of compliance is "a vertical surface located at the hydraulically down gradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units".

The facility permit specifies what hazardous constituents must be monitored and what their respective allowable concentration limits are. According to 6 CCR 1007-3, Section 264.100(b) "the owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place".
The water quality standards in the permit for a limited number of constituents are identical to those listed in 5 CCR 1002-8, Section 3.11.5. All other water quality standards listed in 5 CCR 1002-8, Section 3.11.5, or equally stringent standards, shall be evaluated by the HMWMD for use as alternate concentration limits according to the procedure outlined in 6 CCR 1007-3, Section 264.94.

HMWM regulations at 6 CCR 1007-3, Section 264.101 requires the owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste to conduct investigations of and corrective action for "all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit". A solid waste management unit is any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. The necessary corrective action would

also be specified in the facility permit and would employ a procedure similar to the one outlined in the paragraphs above.

Corrective Action at Interim Status Hazardous Waste Facilities

Six CCR 1007-3, Part 265 establishes minimum standards that define acceptable management of hazardous waste at interim status facilities, facilities that were in existence on November 19, 1980 and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. There are approximately 43 interim status facilities in the State of Colorado. Interim status TSD facilities that manage hazardous waste in landfills, surface impoundments or land treatment units are required to monitor ground water quality immediately down gradient of the regulated waste management area (i.e., compliance monitoring point).

In the event that ground water contamination is detected, the facility is required to implement an assessment monitoring program (magnitude, rate and extent of contamination) for as long as the contamination is present and until the waste management unit is closed (to date virtually all interim status regulated units have either closed or are undergoing closure). Once the source (regulated unit) of the ground water contamination is closed, 6 CCR 1007-3, Section 265.117(a)(1) requires that the facility implement a post-closure care program that meets the requirements of specified portions of Part 264, i.e., the facility is required to obtain a post-closure permit. This Part 264 permit would once again specify what hazardous constituents are to be monitored (Section 264.93), their concentration limits (Section 264.94), the compliance point (Section 264.95), and the compliance monitoring period (Section 264.96). If the concentration limits are exceeded, the interim status facility would be required to implement a corrective action program (Section 264.100) to remediate ground water contamination until the cleanup standards are achieved.

The concentration limits (cleanup standards) selected will ensure that the hazardous constituent will not pose a substantial present or potential hazard to human health and the environment. During the process of selecting the compliance point concentration limits, the HMWMD shall evaluate all available water quality standards, including background concentrations, the basic ground water standards contained within 5 CCR 1002-8, Section 3.11.5 and alternate concentration limits as discussed in 6 CCR 1007-3, Section 264.94. A number of criteria shall be used by the HMWMD to evaluate which of the above mentioned water quality standards would apply, some of which include hydrogeology of the site, current and future uses of ground water in the area, the physical and chemical nature of the contamination and the potential for health risks/damage caused by exposure to the waste constituents to humans, wildlife, crops and vegetation. The 5 CCR 1002-8, Section 3.11.5 water quality standards or more stringent background concentrations shall be used as concentration limits in all cases where

ground water contaminants do pose a present of potential hazard to human health and the environment.

Following the selection of the appropriate ground water standard, the interim status facility would then be required to monitor water quality at the compliance point to ensure that the ground water treatment program has successfully remediated the impacted aquifer and/or to ensure that the approved concentration limits are not exceeded.

Six CCR 1007-3, Section 265.5 authorizes the HMWMD to issue corrective action orders to interim status TSD facilities that release hazardous waste into the environment which may be harmful to human health and the environment. Any order issued under this section would state the nature of the required corrective action or other response measure deemed necessary to protect human health or the environment. The HMWMD would once again follow Part 264 guidelines for the cleanup of contaminated soils and water. If the release has impacted surface or ground water resources, the same monitoring, concentration limits and corrective action requirements outlined in 6 CCR 1007-3, Sections 264.90 through 264.100 would be required. The HMWMD shall select site specific concentration limits using the same human health and environmental criteria listed in 6 CCR 1007-3, Section 264.94, as described in the previous paragraph.

SUPERFUND PROGRAM

The Hazardous Materials and Waste Management Division is responsible for implementing the Superfund Program (SF) for the state under C.R.S. 25-16-101 et seq. The federal Superfund program lists 16 sites in Colorado; there are two additional sites which the state filed lawsuits under the federal Superfund law (the Natural Resource Damage Suit (NRDS) sites) and for which the state is using a process similar to that under Superfund, as described below.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 requires that response actions be consistent with other environmental laws. The process for identifying which environmental laws will be applied during a response action is located in Section 121. This section states that cleanups must "assure the protection of human health and the environment". If the contaminant is not completely removed then:

(i) any standard, requirement, criteria or limitation under any federal environmental law, including, but not limited to, the Toxic Substances Control Act, the Safe Drinking Water Act, the Clean Air Act, the Clean Water Act, the Marine Protection Research and Sanctuaries Act, or the Solid Waste Disposal Act; or

(ii) any promulgated standard, requirement, criteria or limitation under a state environmental or facility siting law that is more stringent than any federal standard, requirement, criteria or limitation, including each such state standard, requirement, criteria or limitation contained in a program approved, authorized or delegated by the Administrator under a statute cited in subparagraph (A), and that has been identified to the President by the state in a timely manner, is legally applicable to the hazardous substance or pollutant or contaminant concerned or is relevant and appropriate under the circumstances of the release or threatened release of such hazardous substance or pollutant or contaminant, the remedial action selected under section 104 or secured under section 106 shall require, at the completion of the remedial action, a level or standard of control for such hazardous substance or pollutant or contaminant which at least attains such legally applicable or relevant and appropriate standard, requirement, criteria or limitation. Such remedial action shall require a level or standard of control which at least attains Maximum Contaminant Level Goals established under the Safe Drinking Water Act and water quality criteria established under section 304 or 303 of the Clean Water Act, where such goals or criteria are relevant and appropriate under the circumstances of the release or threatened release.

The HMWMD submits to the EPA, at various stages in the remedy selection process, state standards, regulations and criteria which we believe are either Applicable to the situation or are Relevant and Appropriate Requirements (ARAR). This process is termed an ARAR analysis. Prior to submitting the state ARAR analysis to the EPA, the HMWMD submits our draft analysis to other state agencies, including the WQCD for review. Thus, the WQCD has direct input into assuring that state water quality standards and classifications are followed at these sites. The EPA is required to incorporate state ARARs into its selected remedies, unless the Administrator of EPA decides to waive such standards.

When EPA makes a decision regarding a cleanup remedy, it is required to submit that decision to the state for its concurrence. Concurrence is made by the Director, Office Environment. This concurrence assures that the state has provided for compliance with water quality standards and other relevant environmental protection standards. As part of its management assistance to EPA, the Superfund staff conducts periodic site reviews and consults with WQCD staff on any compliance issues.

URANIUM MILL TAILINGS REMEDIAL ACTION PROGRAM

State participation in the UMTRA Program is authorized by 25-11-301, C.R.S. 1973. The program is responsible for stabilization of uranium mill tailings at seven sites in the state -- Durango, Grand Junction, Gunnison, Maybell, Naturita, Rifle, and Slick Rock.

Construction work in connection with remedial action complies with all state laws, including requirements to obtain CPDS permits. Surface water quality standards are enforced through this mechanism.

The program has been operating in accordance with proposed EPA ground water standards to be promulgated specifically for this program. These standards are in most cases, as stringent as state ground water standards. In addition, the proposed standards include uranium (30 pci/l), for which there is not a state standard, and have a more stringent standard for molybdenum than the state standard (0.05 mg/l).

Point of compliance at UMTRA sites is the down gradient edge of the disposal cell. This is consistent with WQCC regulations.

The HMWMD is not a regulatory agency with regard to water quality conditions at these sites. Water quality requirements are monitored and enforced by WQCD staff. However, information about conditions at UMTRA sites which may constitute a violation of water quality laws and regulations is forwarded to appropriate WQCD staff when discovered by HMWMD staff. The HMWMD generally works with the contractor and the WQCD staff to remedy any noncompliance since the projects are co-sponsored by the state.

SOLID WASTE PROGRAM

The Solid Waste Program is part of the Hazardous Materials and Waste Management Division of the Colorado Department of Health. The statute, 30-20-101, et seq., C.R.S., which empowers and drives the solid waste regulatory effort in Colorado mandates four roles or elements in the CDH program.

The first role is as a rule making body. The Board of Health is charged with establishing rules and regulations to implement the statute. The regulations cover all aspect of solid waste management including siting, design, operation, inspection, monitoring, enforcement, and closure.

The second element is the technical review of the proposed location, design, engineering and operation of new sites and facilities and review of proposed changes to existing solid waste sites and facilities; both are reviewed for compliance with a set of minimum standards and regulations (CCR 1007.2).

The third element of the program is regulatory inspection and monitoring at solid waste sites and facilities during their construction, operation and an average post closure care period of ten years.

The fourth element is assistance to local government concerning solid waste issues. This last element takes the form of compliance assistance, sampling and

monitoring assistance and advanced technical information and review depending on the situation and local need.

The solid waste statutes and regulations address water quality through a non-degradation standard.

In most cases, the point of compliance is the site boundary which is defined as the perimeter of the permitted area. In a few cases, an alternate point of compliance has been established in a more conservative location within the site boundaries; such as directly adjoining a waste impoundment.

During the year(s) before a solid waste disposal site is developed, ground water monitoring is begun to identify the uppermost aquifer below the site activity and to establish its characteristics and quality. During the operational and post-closure periods, a minimum of one background well (up gradient) and two down gradient ground water monitoring wells are required for each site. In complex geology or topography this number increases appropriately. In one case, a permit was denied on the basis that the site was so complex geologically that it could not be adequately monitored.

Quarterly or semi-annual ground water sampling events are required at each site throughout the operational life and the post closure period of the site. Any statistically significant deviation in the analytical results, either from background wells or from previously reported values for the site monitoring well identified during a sampling event must be reported and investigated. Remediation of such impacts may be required based on the results of the investigation.

Other events that are considered actionable include the detection of leachate on the base liner or in the leachate collection system and any unpermitted (CDPS permit) discharge from a surface retention pond or waste impoundment through failure of the liner or berms.

For new/proposed sites and facilities, the current regulatory effort requires that the applicant adequately characterize the hydrology of the site before construction alters it. This includes surface and ground water features, seasonal variations and maximum storm flows. The existing statute and regulations require the solid waste program to be biased in favor of sites with favorable geology and against those where extensive engineered features must be provided and maintained to assure ground water protection.

The design of the facility is evaluated against its ability to assure that the site does not impact the water quality. (See specific citations concerning applicable sections of the Solid Waste Regulations provided above.) Design features that are routinely required to assure water quality include run-on/run-off control structures, background and monitoring wells, piezometers, and liner and capping structures.

When an application is received for a proposed solid waste disposal site or facility, a complete copy of the technical documents is referred to the WQCD for input and comment. This mechanism was established to cross check the determinations of the Department internally to assure consistency. It also serves as notice to the WQCD that a site or facility is under consideration that may require a CDPS permit.

When guidance documents and regulations are under discussion, the solid waste program staff forms an ad hoc advisory committee to assist in drafting requirements and language. The WQCD staff has been a significant contributor to each set of regulations whether or not water quality issues are directly involved.

In several areas, the general authorities of the Solid Waste Act and those of the WQCD overlap or are interlocked in some way. When these areas of jurisdictional complexity have been identified, the staff from the respective programs in the HMWMD and the WQCD draft a coordinating document (MOUs) and/or complementary sets of regulations to assure comprehensive coverage and at the same time, minimize duplicative effort.

UNDERGROUND STORAGE TANK PROGRAM

In 1989, Colorado enacted legislation for the implementation of the federal underground storage tank requirements within this state. The program is divided into a prevention effort (8-20-501, C.R.S.) centered in the Department of Labor and Employment, Division of Labor, Office of the State Oil Inspector; and a remediation effort (25-18-101, C.R.S.) centered in the Hazardous Materials and Waste Management Division at CDH.

The program regulates approximately 8,000 facilities or sites including all facilities in operation after or not properly closed as of November 1984. The total number of tanks estimated to have existed in the state that may come under the oversight of this program is in excess of 22,000.

The regulations and guidance adopted for the Underground Storage Tank (UST) Program include requirements for investigations and remediations at sites where the environment is damaged by leaks and release of chemicals from tanks. Interaction with WQCD staff and the consideration of water quality are important factors that are routinely taken into account by the UST staff. The WQCC standards are used in the following areas.

1. Site Evaluation - The owner/operator of an UST must investigate, characterize and initiate appropriate remediation activities at any site where contamination from an UST has resulted from a leak or release. Ground water remediation requirements may be triggered whenever contaminant(s) is (are) detected in the ground water above background and above the WQCC drinking water standards.

At UST leak/spill sites where contaminants are detected migrating toward ground or surface water, the owner/operator must take action to prevent contact, or to show that no action is necessary because the contaminants will not impact the waters of the state.

2. UST Guidance Documents - WQCC standards and requirements were a central consideration in the development of the program's guidance documents which define the minimum acceptable format and content for the investigation and remediation of UST leak/release sites.

3. Inter-Agency Referrals and Assistance - Leak, spill and release reports from tanks not regulated by the UST program (heating oil, above ground and farm/residential fuel tanks) are referred to the WQCD for regulatory followup. Wherever UST program developed information and expertise exist, especially in areas such as bioremediation of petroleum contaminants, the staff has agreed to work with WQCD staff as requested.

4. Standards for State-Lead UST Remediations - At UST sites that are considered "orphaned" or where the owner/operator is unwilling or unable to begin cleanup, the UST program can initiate such actions by accessing either the federal Leaking Underground Storage Tank Trust Fund or the state's UST fund. These monies may be utilized for all activities taken at a given location and can be "cost recovered" in the event that the Owner/Operator when identified is determined to be financially sound. These funding sources provide CDH with the capability to conduct remedial activities and assure environmental protection (including water quality) even at abandoned sites.

Radiation Control Division (RCD)

The Radiation Control Division and its programs were established under the provisions of Title 25-11, and Title 24-60, Part 22, CRS, 1973 as amended.

The interactions between the Radiation Control Division and the WQCD are significant in four areas. The first relates to the Drinking Water Program, and the second to the rulemaking activities of the WQCC, and the third relates to the sludge program. The fourth, relates to coordination of radioactive materials licensing and water quality control programs.

A large percentage of the required monitoring of radionuclides in drinking water supplies is conducted by the RCD. This monitoring is important for the protection of human health and helps to identify the need for advanced drinking water treatment in certain communities.

The RCD provides the expertise on radiation issues that are considered by the WQCC in its rulemaking hearings on water quality standards. In addition, the RCD consults with the Standards Unit during development of proposed stream standards. The most recent illustration of this is the essential role the RCD played in hearings regarding the streams emanating from the Rocky Flats plant. The RCD and WQCD team up to conduct extensive lake monitoring of Standley Lake and Great Western Reservoir below the Rocky Flats plant. These lakes serve as drinking water sources for several hundred thousand people.

THE RCD develops guidelines for acceptable concentrations of naturally-occurring radium and uranium concentrated in wastewater treatment plant sludges that are slated for disposal for beneficial uses.

Consumer Protection Division (CPD)

Eight of the fourteen programs in the Consumer Protection Division are directly affected by the Colorado Drinking Water Regulations and the Water Quality Control Division. The affected programs are Food Services, Milk, Wholesale Food and Drug, Schools, Child Care Centers, Retail Food Markets, Accommodations, and Corrections and Institutions. In each case the emphasis is on the protection of public health. Three of the programs are concerned with swimming pool regulations in addition to the supply of potable water and proper sewage disposal.

Specifically, the Drinking Water Program works with the Consumer Protection Division which conducts routine inspection and testing of drinking water facilities for correctional facilities and institutions, schools, restaurants and other types of non-community water supplies. Similar inspections are conducted at dairy farms which are required to meet drinking water standards for their water supplies. In addition, the Consumer Protection Division implements the Feedlot Regulations and is concerned with drainage and run-off issues at these facilities. In addition, the Division's field staff provide technical assistance on both water and wastewater to all of the facilities they inspect.

Air Pollution Control Division (APCD)

There is an increasingly level of interaction between the WQCD and APCD which is focused in three areas. First, coordination occurs between the Divisions on acid rain research projects. Second, volatile organic compounds (VOCs) emissions from industrial wastewater facilities are being recognized as a contributor to metro area air quality problems. Third, odor problems from municipal sewage treatment plants require mitigation efforts by both divisions.

Interaction with the APCD also requires the exchange of information related to sites that require permits from both divisions or gathered during facility inspections. This is especially important where it appears that a new or an uncontrolled source

may exist. Multi media concerns are increasing the focus of discussions between the WQCD and APCD in the OE Regulatory Coordinating Committee meetings.

Laboratory Division

The Laboratory Division provides essential analytical services for many programs within the Division. Specifically, the Laboratory analyzes samples for the following programs - Drinking Water, Standards (ambient water quality samples), Clean Lakes, Groundwater, Nonpoint Source Control and the Permits and Enforcement Program (compliance and enforcement samples).

They are also vital to the proper handling of emergency response situations, particularly when the exact nature of the contaminant in question is unknown. The WQCD field offices make use of the services of the Durango Branch laboratory to process many of the samples collected by their staff.

The Laboratory also consults with division staff and the WQCC on issues concerning detection limits, analytical results and analytical techniques. The Microbiology Section conducts analysis of sludge for the Sludge Program to detect the presence of pathogens.

Disease Control & Environmental Epidemiology (DCEED)

The DCEED plays a vital role in the investigation of possible waterborne disease outbreaks, principally giardiasis, which results in a high level of involvement with the WQCD. Identification of potential outbreaks is based upon reported cases of possible waterborne disease and are investigated by DCEED field staff. Immediate response by the Drinking Water Program to prevent or control an outbreak in order to protect public health depends upon timely identification of a problem by the DCEED.

The DCEED assists the Permits and Enforcement staff in the identification of pollutants of concern and the development of appropriate limits for inclusion in discharge permits. As resources permit the DCEED also consults on special issues related to the beneficial use of domestic sewage sludge.

In addition, the WQCD consults, as necessary, with Epidemiology regarding the proper technical basis for health protective surface and ground water standards.

Board of Health (BOH)

All Drinking Water regulations must by approved by the Board of Health, as required by state statutes. The BOH is also responsible for promulgating regulations for the disposal of sludge for beneficial uses. The WQCD field offices provide water quality information to the BOH on an as requested basis.

Senate Bill 92-116 requires the Chairman of the BOH to form a Multi-Media Environmental Integration Advisory Committee consisting of members of the BOH, the Water Quality Control Commission, the Air Quality Control Commission, the Hazardous Waste Commission and the Executive Director of the Department. The Advisory Committee is to identify multi-media environmental issues of concern and anticipate areas of potential overlap, duplication, and inconsistency among the various programs and develop recommendations to minimize regulatory inefficiencies.

Further the committee is to review and consider opportunities to streamline and improve regulatory systems and to make recommendations thereon to the Board, the commissions, and the Department and to review the progress of the Department in addressing multi-media integration issues. Lastly, the BOH is to facilitate resolution of conflicting provisions among the rules of the Board and the three Commissions.

Rocky Flats Program Unit

The WQCD participates in the multi-media efforts aimed at identifying and controlling possible pollution from Rocky Flats to protect public health. In this capacity the Division conducts inspections and monitoring of public water supplies served by both surface and ground water sources.

The Division has issued a Section 401 Certification for the federal NPDES permit for Rocky Flats. Division field staff conduct weekly water quality inspections both on and off the immediate site. In addition, the WQCD conducts a lake sampling program down stream from the site.

The WQCC has established site specific stream standards for the water supplies at Standley and Great Western Reservoirs.

Emergency Management Unit (EMU)

The WQCD participates with the EMU, and the other environmental divisions, on an as needed basis whenever emergencies involving the waters of the state occur. The Division's activities can include sampling, assessment of noncompliance, technical assistance, evaluation of the condition of potentially damaged water and wastewater treatment facilities, and notification of down stream water users to protect public health.

B. Integration Among the Water Quality Control Division and Local Health, Environmental, and Planning Programs

Individual Sewage Disposal Systems

Responsibilities relating to individual sewage disposal systems is split between the WQCD, the local health departments, and county sanitarians. Plans for facilities with a capacity below 2000 gallons per day are reviewed by the local health agencies. Above 2000 gallons they are reviewed by the Division. The Division also provides training and technical assistance to the local health agencies as requested on issues relating to ISDS systems.

Food Service Licensing at Facilities with Non-Community Water Systems

The County Sanitarians conduct inspections and reviews for the Division of existing or proposed non-community water systems in food service establishments, schools, swimming pools, etc. Division staff provide training and technical assistance as necessary.

HB 74-1041 Reviews of Areas and Activities of State Interest

HB 74-1041, "The Areas and Activities of State Interest Act", C.R.S. Section 24-65.1-101, et. seq. was enacted by the General Assembly in 1974. The bill empowered local municipal and county governments to approve, conditionally approve, or deny permits for areas and activities of state interest (e.g. airports, power lines, nuclear detonation sites, expansions of water and wastewater treatment facilities, etc.) within their jurisdiction. Many years ago the Division provided formal review and comments on "1041 permit applications" for wastewater facility project. However it was determined that such review conflicted with the WQCD responsibilities for site application review and approval. Recently, the only role the WQCD has had with respect to 041 permits has been to provide advice to local governments or testimony in hearings concerning state water quality requirements as they would apply to the project in question.

208 Regional Water Quality Planning

The Division is responsible for conducting areawide water quality planning in non designated areas of the state. This role consists of assessing point and nonpoint sources of pollution, recommending consolidation of wastewater treatment facilities where feasible and recommending approaches for the control of significant nonpoint sources of pollution. The Division has not been particularly active in this role in recent years as federal funding for such planning activities has waned. Instead, the Division has used the funds available for special projects related to watershed improvement. The WQCD passes through a limited amount of federal funds to designated areawide planning agencies (e.g. DRCOG, NWCOG, NFRWQPA) to accomplish the purposes of Section 208 of the federal act.

C. Integration Between the Water Quality Control Division and Department of Natural Resources Programs

Colorado Water Conservation Board

The Colorado Water Conservation Board (CWCB) is the agency within the Executive Branch of state government which has primary responsibility for the formulation and assertion of official policies concerning the protection and utilization of water resources to which the people of this state are entitled. In fulfilling this responsibility, the CWCB and its Director work closely with the Governor, the Colorado General Assembly, Colorado's congressional delegation, and other agencies of local, state, and federal government.

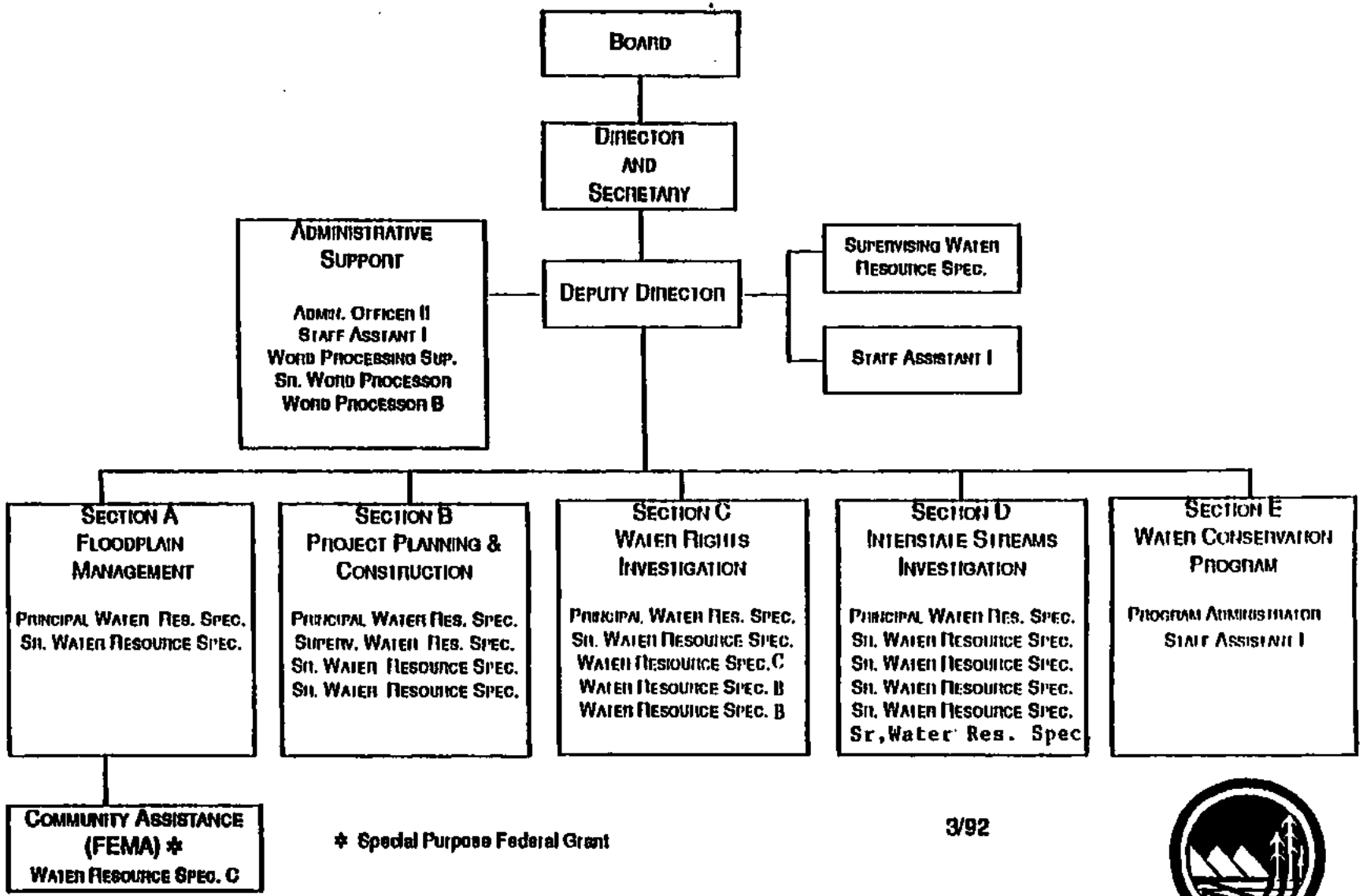
- Water Development: Pursuant to section 37-60-106, C.R.S., it is the duty of the Board to promote the conservation of waters of the State in order to secure the greatest utilization of such waters by encouraging the formation of special districts, formulating legislation, and many other means. The CWCB interprets this responsibility to include the evaluation of any local, state, or federal program (including water quality protection) which may conflict with or complicate the use of Colorado's water resources and rights for opportunities to avoid or minimize such conflicts or complications.

  In 1989, the Colorado General Assembly adopted legislation (SB 89-181) which directed that the CWCB and the State Engineer be consulted by the WQCC and WQCD before making any decision or rule which "has the potential to cause material injury to water rights." The CWCB executed a Memorandum of Agreement with the WQCC addressing the fulfillment of this consultation responsibility in 1990. However, up to this time no additional CWCB staff or funds have been authorized, and the CWCB involvement in the review of such decisions and rules has been very limited.

- Instream Flows: It is one of the Board's missions to appropriate and acquire water rights under C.R.S. 37-92-102(c) to preserve the natural environment to a reasonable degree. The water quality in these reaches must be sufficient to maintain the existing natural environment; otherwise, the appropriation and acquisition of instream flow water rights would not benefit the natural environment, or the citizens of the State. However, the CWCB has relied upon the water quality standards, classifications, and designations by the WQCC to protect water quality for this purpose.

- Salinity Issues: The federal Colorado River Basin Salinity Control Act (PL 93-320, 1974 and PL 98-569, 1984) established a basin-wide program for controlling salinity in the Colorado River Basin. The need for salinity control has been recognized in the international treaty obligations to Mexico, as well as in requirements of the federal Clean Water Act. In lieu of adopting state-

COLORADO WATER CONSERVATION BOARD



* Special Purpose Federal Grant

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line water quality standards for salinity, the basin wide program consists of a multi-project effort to maintain salinity level measured at three points in the lower basin at the concentration that existed in the early 1970's. As more water is consumed in the basin, additional salt load must be removed to maintain a constant concentration.

The Salinity Program requires close cooperation between the seven states within the Colorado River Basin and with several federal agencies. This is accomplished through a Forum and Advisory Council. The Governor appoints up to three representatives from Colorado to serve on each. The CWCB Director has traditionally taken the lead in representing Colorado in both these groups. The WQCD Director is also designated as a Colorado representative to the Forum.

One element of the effort to reduce salt load in the basin involves effluent limitations for salinity. These limitations are applied by the Department of Health through the NPDES permit program which it administers. The staffs of the CWCB and WQCD share information concerning potential permit issues. However, better coordination and more extensive communication between the CWCB and WQCC/D would strengthen Colorado's protection of its water resources and participation in this interstate salinity control program.

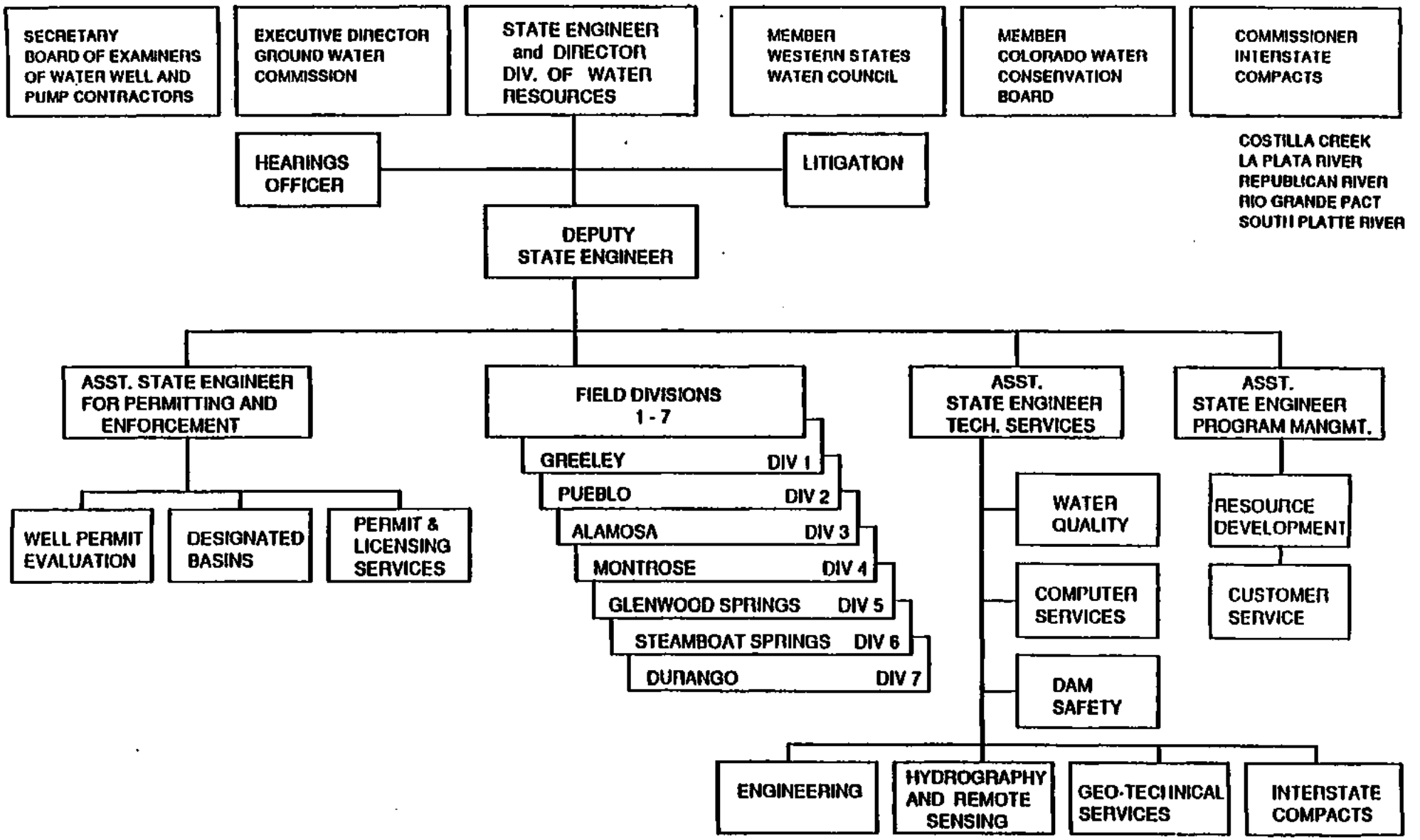
- Non-Point Source Program. The WQCD administers a program to control non-point sources of water pollution in Colorado. Components of this program, primarily planning and the provision of technical assistance to local communities, occasionally involve consideration of salinity issues. The CWCB has participated in these considerations with the Soil Conservation Board to evaluate areas of high saline run-off.

Division of Water Resources

By law the Office of the State Engineer (SEO) is responsible for water rights administration in Colorado. Senate Bill 89-181, concerning regulatory authority over water quality, recognized the water quality responsibilities of the SEO, as well as its responsibilities for the administration of Colorado's system of water rights. In accordance with SB 89-181, and pursuant to the rules and regulations adopted by the SEO in March 1992, the SEO implements water quality standards and classifications in those instances where the SEO has independent statutory authority. Three areas where the SEO currently implements water quality standards and classifications promulgated by the WQCC include:

- Reviewing nondecreed exchanges and substitute supply plans and requiring that the substituted supply is of a quality and quantity to meet the requirements of senior appropriators receiving the substituted supply.

OFFICE OF THE STATE ENGINEER
and DIVISION OF WATER RESOURCES



In those instances where the substituted supply is not of a quality to meet the requirements of the senior appropriators, the plan is denied. If the requirements of the senior appropriators have been met, but the quality of the substituted supply fails to meet water quality standards, the State Engineer approves the substitute supply plan and notifies the WQCC.

- Raising water quality issues, when appropriate, for applications before the Water Court (e.g., plans for augmentation including exchanges,.

The State Engineer, like any other water user, has equal standing to raise water quality issues by opposing an application to Water Court. Other means for the State Engineer to object or oppose an application include the "Protest to the Referee's Ruling" and the "Motion to Intervene in Water Court". If the State Engineer enters into a Water Court case raising water quality issues, the State Engineer reports the entry to and coordinates with the WQCC.

- Adopting applicable points of compliance for discharges to ground water.

Well permitting and licensing activities are administered in accordance with the rules and regulations of the Board of Examiners of Water Well Construction and Pump Installation Contractors. Activities that may result in a discharge to ground water include surface water recharged in the ground water to offset out-of-priority depletions associated with well pumping or surface diversions. For these activities, the point of compliance is located at the boundary of the area of the spreading basin or the area physically disturbed by the construction of the pit or excavation.

The SEO also consults with the WQCC and WQCD pursuant to SB 89-181 concerning any rulemaking proceedings, policies, or proposed discharge permits that may cause material injury to water rights. There are opportunities for further coordination in the review of discharge permits that may potentially cause material injury to water rights. Every month a substantial number of draft permits are submitted to the SEO, and the other "implementing agencies" identified in SB 89-181 for review. The agencies could work more closely to clarify their respective roles in resolving concerns that proposed permit provisions may cause material injury to water rights.

An additional relationship the SEO has with the WQCC/D involves data sharing. In particular, the SEO's diversion data, satellite monitoring stream flow data, and well permit data are provided to the WQCD on a regular basis. This data, in turn, is used to determine compliance with standards, determine low flow conditions, and facilitate issuance of discharge permits. The SEO and the administration of Colorado water rights would benefit from

better access to all water quality data bases the WQCD has available. Currently, the SEO has access to STORET, an EPA water quality data base.

Another area of coordination in data sharing is with the utilization of UNIX based workstations and Geographic Information Systems (GIS). The SEO and WQCD will both benefit by coordinating GIS hardware and software purchases so that their systems will be compatible and GIS map layers and water quantity/water quality models can be shared. As the water quantity and water quality data bases become more developed, the agencies should consider a central location and a cooperative management agreement for the operation of these data bases.

The SEO also coordinates with the WQCD concerning the non-point source programs, including the federal Section 319 grants. Last year the SEO, in coordination with the WQCD, obtained a federal grant to conduct a ground water quality monitoring project on the west slope of Colorado. Two samplings of 60 wells have been conducted by SEO personnel. Results of the ground water testing will be submitted to the Department of Health for their ground water quality data base and also be used for the State Engineer's well permit data base.

Finally, there are several additional opportunities for future coordination between our agencies. One opportunity is with the Hazardous Materials and Waste Management Division regarding issuance of well permits near ground water contamination plumes. Better coordination in this regard would allow the SEO to give ground water users better information, and hopefully eliminate the potential of a well owner constructing a well in or near contaminated ground water. Another opportunity involves the upcoming Geothermal rulemaking proceeding by the SEO, which will pertain to geothermal production and the protection of surface and ground water quality.

Division of Wildlife

The Colorado Division of Wildlife (DOW) and the Wildlife Commission have the responsibility to protect and enhance the wildlife resources of the State of Colorado for the use of visitors and residents. There are several water quality programs that are related to DOW responsibilities to protect the fish and wildlife populations of the State of Colorado.

- Stream Standards and Use Classifications of Colorado Waters: DOW participates in the WQCC hearings where significant impacts to fish populations may result from the proposed action. Laboratory research and field studies by DOW aquatic toxicologists have provided much of the information used by the WQCC to establish water quality standards. DOW

involvement was greater in the past, but has decreased as a result of the expansion of duties for existing DOW personnel without an increase in manpower assigned to water quality issues. However, WQCD and DOW personnel often coordinate in advance of those hearings so wildlife issues are addressed even when DOW staff are unable to attend. Nonetheless, there are many instances where much greater effort would be required to adequately address issues, and the DOW is not able to take part in the hearing process and wildlife issues may not be addressed.

- The 319 Non-Point Pollution Program: DOW has a voting membership on the 319 Committee organized by the WQCD, and representatives assigned to three of the subcommittees. The object of the task force is to develop and implement individual projects that reduce nonpoint pollution in the state. DOW monitoring activities often comprise a critical portion of the state match for individual restoration projects. The cooperation and effectiveness of the agencies in this program is limited by manpower on the part of DOW. Several of the projects that have been funded were either initially proposed by DOW or proposed by a group that included DOW.

- NPDES Discharge Permits: WQCD operates the point-source discharge permit system for the State of Colorado. Several DOW fish hatcheries and rearing units require discharge permits by WQCD. The WQCD conducts compliance inspections at the hatcheries and takes enforcement action if necessary. In most cases, difficulties related to permit requirements are addressed and corrected through interaction between staff of the two agencies in a mutually satisfactory process. However, better communication and clarification of the agencies' individual responsibilities and roles could be achieved.

- DOW Fish Reclamation Projects: DOW often uses rotenone or other fish toxicants to remove fish species from a water where the species sought by most anglers are reduced in number due to dominance of other fish species. The goal of WQCD is to prevent environmental damage to aquatic resources from contaminants released into waters of the state. WQCD has cooperated with DOW to develop an operating system whereby DOW ability to manage the fish populations of Colorado is not impaired. WQCD worked diligently with DOW to create the fish reclamation procedure currently used by DOW.

- 404 and 401 Certification: DOW must obtain 404 permits from the Corps of Engineers to perform wildlife management activities including habitat improvement projects. DOW also reviews the application of other agencies that apply for 404 permits. A detailed memorandum of understanding between the two agencies may be needed in this matter. The DOW would receive a 401 Certification from the WQCD.

- Fish Kill and Water Pollution Investigations: DOW investigates pollution events if there is a loss of wildlife. WQCD investigates pollution events to determine if permit conditions of a discharger were violated or to determine if the pollution event was caused by an unpermitted activity. Better coordination and communication with respect to enforcement actions would result in more productive use of agency resources for both agencies. WQCD often does not take enforcement action unless the sampling procedures of their agency are used to collect all data.

  Not all water quality concerns of the DOW involve WQCD, at times interaction is required with other agencies. The Hazardous Materials and Waste Management Division of the Colorado Department of Health is directly involved in both the Superfund sites and CERCLA cases along with the Colorado Mined Land Reclamation Division and the Colorado Attorney General. DOW has performed field studies, testified in court, reviewed documents, made public presentations, taken part in negotiations, and made recommendations regarding settlements and restoration activities. These activities continue for both active suits and those that have been settled.

  For the last few years, DOW and the Colorado Health Department have been establishing a consumer advisory for fish caught by sportsmen in waters where fish have been found to contain mercury. The Epidemiology Division is the lead health department agency in this matter, along with the CPD. WQCD has been integrally involved in this issue.

Division of Minerals and Geology

The Division of Minerals and Geology is a newly formed organization within the Department of Natural Resources. The Division consists of the pre-existing Division of Mined Land Reclamation, the Division of Mines and the Joint Review Process. The Division is organized into two Offices, the Office of Mined Land Reclamation (OMLR) and the Office of Active and Inactive Mines. Mined Land Reclamation is comprised of two regulatory programs, Coal and Minerals, both of which interact with Water Quality Control. Active and Inactive Mines is composed of the Mine Safety and Training and Inactive Mines Programs. Only the Inactive Mines Program interacts with Water Quality.

- Office of Mined Land Reclamation

  Coal Program: The Coal program interacts with the Water Quality Control Division (WQCD) on a routine basis primarily in regard to NPDES discharges. The Coal program also has limited interaction with WQCD in regard to ground water protection (SB 89-181) and storm water permitting.

The NPDES discussions are structured in the context of a Memorandum of Understanding (MOU) between the two agencies. The MOU is designed to eliminate dual jurisdiction over the enforcement of NPDES discharges. By statute, both agencies are responsible for enforcing water quality effluent limitations at coal mines. The MOU provides a mechanism whereby OMLR obtains samples of point source discharges for the Water Quality Control Division. These samples are analyzed at the Department of Health lab, and the results are returned to OMLR. If an exceedance has occurred, OMLR notifies WQCD of the event, and the two agencies are to agree as to which will take the enforcement action. If WQCD issues a violation for the exceedance, OMLR will issue a violation for the cause of the exceedance (sediment pond failure, for example). OMLR will cite both the exceedance and the cause if the WQCD declines to issue a notice of violation.

The OMLR also interacts with the WQCC/D in implementing Senate Bill 89-181. Under the terms of SB-181, OMLR is an "implementing agency," and has entered into a Memorandum of Agreement (MOA) with the WQCC which defines each agencies obligations under the statute. The MOA requires OMLR to establish rules to implement SB-181, to verify that compliance is being achieved and to report annually to the WQCC of its accomplishments and progress in reaching these goals.

The OMLR Coal program has initiated the SB-181 rule making process, and has consulted interested public and constituency groups. These rules will be formally adopted in the Spring of 1993. The Program has submitted two annual reports to the WQCC. These reports focused on the rule making process and OMLR progress in identifying aquifers potentially impacted by coal mining.

The WQCD has modified the coal mining NPDES permits to accommodate the storm water provisions. Therefore, the Coal program will become increasingly involved in the storm water implementation process. This will be achieved through modification of the NPDES MOU. Modifications to the MOU will probably result in an agreement pertaining to OMLR responsibilities regarding the sediment control technology implemented at the coal mining sites. Such issues as permitting, inspection and enforcement responsibilities will need to be negotiated and defined in the agreement.

The primary strength of the OMLR and WQCD interaction lies in the NPDES MOU. This document outlines with some specificity each agencies responsibilities in regard to point source discharges. This approach is beneficial in that interagency conflict is minimized. The weakness in the arrangement seems to be that in order for WQCD to reach a decision regarding enforcement, they must wait until OMLR notifies them of the

exceedance. This delay in obtaining information may hinder and complicate the decision making process.

An issue which needs to be resolved involves the fate of NPDES permits at coal mines where the mining permit has been revoked. WQCD has expressed its desire that OMLR accept the responsibility for NPDES permit requirements at these sites. It is the position of OMLR that the NPDES permittee is not relieved of his obligations simply by walking away from the site. This is an interagency problem that requires further discussions.

A third issue to be resolved is the implementation of SB-181. The WQCC has not set ground water standards for most coal mining regions. Without standards in place, clearly it is not possible for OMLR to implement ground water standards. The WQCD maintains that the OMLR can implement existing surface water standards in those situations where a mine related discharge to ground water could reasonably be expected to impact nearby surface waters.

- Minerals Program: The OMLR Minerals Program and the WQCD mainly interact in regard to Senate Bill 181 and storm water implementation. The agencies do not have a cooperative agreement regarding NPDES issues.

The OMLR Minerals program began an intensive rule making effort in regard to SB-181 in the Fall of 1991. The process was actively followed by constituency groups as well as organized citizen groups. The result is a comprehensive rules package which addresses ground water protection for the minerals industry. These rules will be adopted by the Mined Land Reclamation Board in October, 1992. The Minerals program has also submitted two annual reports to the WQCC. These reports have focused primarily on the rule making process.

The Minerals Program and the WQCD have been pursuing various alternatives in order to effectively implement storm water at minerals mines. Negotiations have centered on the definition and implementation of best management practices. The WQCD took an active interest in a particular mineral mine during the fall of 1991. This interest sparked joint negotiations and interagency discussions regarding the implementation of reclamation plans in order to achieve specific water quality standards in the context of the storm water requirements.

The relationship between the agencies could be improved through further clarification of each agencies responsibilities. Both the Water Quality Control Act and the Mined Land Reclamation Act overlap in terms of ground and surface water protection. Each set of implementing Regulations potentially creates further duplication. Due to the differences between the

statutes staff level opinions regarding problem resolution may give way to divergent solutions. At times, a lack of coordination has caused confusion and frustration for the agencies and the affected individuals.

- Office of Active and Inactive Mines

Inactive Mines Program. The Inactive Mines Program (IMP) currently interacts extensively with the Water Quality Control Division, Non-Point Source (NPS) program. In the future, it is anticipated that storm water requirements may require a very close relationship between these programs.

The Non-Point Source program provides Environmental Protection Agency (EPA) monies to the Inactive Mines program annually. The amount of these grants usually vary from $150,000 to $450,000 per year.

The Inactive Mines Program coordinates its non-point source construction projects by designing and contracting the work, and providing project oversight. IMP collects hydrologic data related to the projects, which is sent to WQCD quarterly in a report format. WQCD periodically graphs the data in order to identify water quality trends.

Colorado Oil and Gas Commission

SB - 181: OGCC is an implementing agency and operates under the MOU. After making two annual reports to WQCC, it seems there could be more informal interchange and coordination to supplement the hearing presentation. Issues which have been raised could be resolved more efficiently.

Aquifer Protection: OGCC has statutory requirements to prevent the pollution of fresh water supplies from oil and gas operations - C.R.S. 34-60-106(c). This is accomplished by construction or operational rules. The problem for the OGCC is determining what is a fresh water supply and what is the extent of it. This leads to the water quality issue, whether TDS or other contaminants. Better coordination and communication of information and determinations of aquifers, water quality, special rules, etc. would improve OGCC's ability to fulfill its responsibilities.

Underground Injection: The OGCC has primary responsibility for all Class II injection wells; these are associated with oil and gas activity and do not accept any other wastes. All other classes of injection wells remain under the jurisdiction of the EPA. Although there are few of the other type injection wells in the state, better coordination and availability of the relevant information would make OGCC implementation of its responsibilities more efficient.

Remediation: Citizens and the OGCC are concerned about water pollution and remediation. Often testing or analysis of water may be required prior to determination of procedures. Opportunities to easily utilize the CDH laboratory to perform such measurements would be very helpful.

Economics: Protection and/or remediation are costly steps which can be so prohibitive as to preclude development of the resource. Consideration should be given to this effect when rules are adopted. Also the use of risk-based analysis to establish compliance rules might be a means of including economic factors.

Soil Conservation Board

- Nonpoint Source Water Quality Program: The State Soil Conservation Board has been involved in the nonpoint source program since Governor Lamm designated the State Board as the responsible agency for activities regarding nonpoint source pollution in March of 1978. The Board has been involved in numerous funding contracts for nonpoint projects both locally and statewide, monitoring efforts, protection of wetlands and riparian areas and the development of Best Management Practices to address the water quality concerns. The Board was instrumental in the development of nonpoint source water quality plans in the nondesignated areas of the State under the Section 208 of the Clean Water Act. All these activities have involved a close working relationship with the WQCC/D.

  Domestic Sludge Program: The application of domestic sludge to agricultural lands has raised a serious concern about the potential surface and groundwater contamination. The State Board and the local soil conservation districts have worked closely with the Health Department to provide guidance in Weld, Adams, Larimer and Prowers Counties. In fact, the Adams County Commissioners have designated the soil conservation districts in that county to oversee the sludge application program to insure that the application is according to Health Department guidelines. The Prowers Soil Conservation District is now involved in the oversight of the sludge coming from New York.

Stream Classification: The State Board has provided information to the Division and Commission regarding the classification of streams throughout Colorado. This has been of key importance to keep abreast of any changes that will impact agriculture water users.

Groundwater Protection: The State Board has been actively involved with the Health Department and other agencies in the development of a groundwater monitoring protocol to be used in all sampling programs. The system will provide reliable data on groundwater and also make this data available to all water users.

Animal Feedlots: Although these large feedlots are controlled by a permitting process, the State Board and the local soil conservation districts provide information regarding soils, drainage, and other information needed in siting these facilities.

Pesticide Recovery: The State Board is now working with the Hazardous Waste Division and other agencies on a program which will provide for the collection and disposal of unknown pesticides and their containers.

Hazardous Waste and Landfill Sites: Soils, topography, drainage and other information is provided by the State Board and local soil conservation districts to assist in the siting of these type of facilities.

Stream Monitoring: The Board and several local districts have organized monitoring programs for various streams to determine the severity and source of pollution impacting the streams. These monitoring projects have been in cooperation with the local health departments as well as the State Department of Health.

Other: Staff from the State Board have been the chairperson of co-chairperson of the Colorado Nonpoint Source Task Force appointed by the Water Quality Control Commission as well as the Agriculture/Silviculture Subcommittee of the Task Force since their beginning in 1987.

Colorado Geological Survey

The state geologist is a required signatory on waste water treatment facility applications. The principal thrust of the State Geologist's evaluations is to determine what, if any, influence the geologic conditions at the proposed site will have on the disposal/treatment plan and vice versa. Areas of major concern are slope instability induced or exacerbated by the introduction of additional moisture to the disposal area, presence of geologic pathways which might adversely interfere with the proposed plan, and general physical and geotechnical suitability of the site for the proposed facility. In FY'92, the Geological Survey performed 31 of these reviews. The greatest number of these are non-controversial and are performed in-house with standardized forms submitted to the Health Department or returned to the applicant for additional work on their part with respect to the other signatories. A few each year are associated with relatively large, regional sewage treatment facility construction or expansions, requiring more detailed review and, obviously, more time and effort.

D. Integration Between the Water Quality Control Division and Department of Agriculture Programs

Agricultural Chemical Ground Water Protection Program

Under the provisions of Senate Bill 90-126, the Colorado Department of Agriculture (CDA), the Water Quality Control Division and the Colorado Cooperative Extension Service are to work jointly to prevent pollution of ground water by agricultural chemicals.

The role of the WQCD is to identify agricultural management areas and to undertake a statewide sampling program of ground water to determine the effectiveness of the various grant, educational or cooperative programs implemented under the statute. The roles of the extension service and the CDA are to develop and adopt best management practices to prevent pollution of surface and groundwater.

The Division is to determine the presence of any agricultural chemical in ground water at levels which currently, or which has a reasonable likelihood in the future, of exceeding any applicable water quality standard. The Division is also to determine the likelihood that an agricultural chemical will enter ground water, based upon the existence of sufficient, scientific data which will reasonably predict the behavior of a particular agricultural chemical in the soil. If mandatory BMPs adopted by the CDA for an identified agricultural management are not successful in maintaining water quality within applicable standards the WQCC may adopt control regulations to achieve compliance with standards.

Agricultural Chemicals Management Plan

The CDA is responsible for preparing a state agricultural chemical management plan, with funding from the U.S. Environmental Protection Agency. The plan will consist of best management practices for farmers to use to prevent contamination of ground and surface waters by agricultural chemicals. The WQCD will assist CDA in developing the plan through review and comment.

Chemigation Act

CDA also administers the Chemigation Act. The act is designed to protect ground water from contamination through facilities designed to apply agricultural chemicals through certain crop irrigation equipment. In FY90-91, a total of 2,615 chemigation permits were issued statewide. The Chemigation Program is a significant ground water quality protection program, but it is one in which the WQCD has little or no involvement.

E. Relationships Between the WQCD, the Colorado Water Resources and Power Development Authority and the Department of Local Affairs

SB 88-50 established the Colorado Water Pollution Control Revolving Fund in response to the provisions of the 1987 amendments to the federal Clean Water Act. The program involves the WQCD, the Department of Local Affairs and the Colorado Water Resources and Power Development Authority. The WQCD has the responsibility for the general administration, as well as, all of the technical aspects of the program. The Department of Local Affairs completes analysis on each applicant's ability to repay the loan requested.
The Water and Power Authority, which has the power to issue revenue bonds serves as the funding agency and takes steps to leverage the seed money awarded to the state by EPA. A very close relationship is necessary between all three agencies involved with the program to assure that wastewater treatment facility needs are identified and funded in a timely fashion.

The WQCD and the Division of Local Government serve in a clearinghouse role to assist local communities in identifying funds for construction of needed treatment facilities. Both divisions also develop the Water and Sewer Needs List for the states which serves as the basis for funding decisions.

F. Relationships Summary

Relationships between the WQCD and other CDH Programs

There is a relatively high degree of coordination and integration among the Environmental Protection programs within the CDH. This is likely due to the organizational structure within the Department. The Office of Environment (formerly Office of Health and Environmental Protection) was established in the late 70's to provide a management umbrella over all environmental programs. Since that time direct line supervision has been maintained over the environmental programs by the Director of the Office of Environment. Personnel evaluations and management oversight functions are carried out by the Director of the office. Monthly meetings of environmental program directors and the Director of the Office of Environment are held to discuss issues of cross cutting concern, multi-media integration needs, and general information sharing. Specific issue oriented meetings are held more frequently between the appropriate division directors and senior staff. Inter-disciplinary/multi-program teams are formed to resolve problems that are of concern to multiple agencies and programs.

Generally a lead agency is designated by the Director of the Office of Environment based on the primary media or program being impacted. The WQCD generally is the lead agency on issues that relate to water quality unless the problem is wholly within the aegis of CERCLA or RCRA. Over the past year a regulatory coordinating council has been established to deal with multi-media issues related to permitting, compliance inspections and enforcement actions. With the passage of SB 116 in the last session of the general

assembly, the Board of Health has assumed a role of coordinating a multi-media advisory committee comprised of members of the Board of Health, WQCC, Air Quality Control Commission, and the new Hazardous Waste Commission.

At the staff level within the Office of Environment a team of representatives from different agencies has been established to develop administrative systems to insure rulemaking activities are conducted in a manner where impacts on other regulatory programs and potential multi-media shifts of pollution are fully considered. Additional teams have been established to develop risk based management approaches to environmental programs which are consistent between agencies and to develop integrated information systems to facilitate data sharing between environmental programs.

Relationships Between WQCD and DNR Programs

The WQCD maintains close relations with the Water Resource Division. A data sharing agreement provides for continuous exchanges of information related to water rights and stream flow conditions. The Water Resource Division utilizes water quality data available through WQCD. Cooperative efforts are under way to develop water quality related automated data processing systems which would be integrated into the South Platte and Colorado River decisions support system. Staff currently working in the WQCD formerly worked in the State Engineer's office. This has improved the level of understanding about the statutory constraints and program functions within the State Engineer's office on the part of the WQCD staff.

A fairly high degree of coordination and frequent communications take place between WQCD and the Mined Land Reclamation Division. Many facilities are regulated by both agencies. Memorandum of understanding have been developed to address program coordination issues to reduce areas of potential program overlap and duplication and to avoid regulatory conflicts. There are staff currently working in the WQCD who transferred from the Mined Land Reclamation Division providing for improved understanding about regulatory and statutory constraints and program directions. Never the less there are difficult program coordination issues between these agencies because mining operations and reclamation outcomes significantly impact water quality. The NPDES program is very explicit with respect to the control of mining activities discharges.

WQCD relates to the Oil & Gas Conservation Commission most frequently on issues where there is concern about the adverse effects of Oil and gas exploration or extraction on ground water quality. Occasionally there are surface discharges from oil and gas facilities which are addressed by WQCD in compliance or enforcement actions. Also, there is a data sharing agreement between these divisions. In particular, the WQCD has relied on the ground water quality data base available through the OGCC.

Several WQCD programs are directly related to areas of concern by the DOW. The establishment of stream standards and classifications by the WQCC, that provide the necessary safeguards for the maintenance of viable fisheries is of primary importance.

The DOW is a voting member on the 319 Nonpoint Sources Committee organized by the WQCD to develop and implement individual projects that reduce nonpoint source pollution in the state. The WQCD issues discharge permits for all state fish hatcheries and must approve 404 permits for wildlife management activities including habitat improvement projects. Lastly, the two divisions work cooperatively on fish kill and water pollution investigations when there is a loss of wildlife

The WQCD has funded an number of nonpoint source control projects undertaken by the Soil Conservation Board (SCB). The SCB serves on the Colorado Nonpoint Source Task Force established by the WQCC, and the Agriculture/Silviculture Subcommittee of the Task Force. The SCB has provided valuable information to the WQCD and WQCC for consideration regarding the classification of streams and in the development of a groundwater monitoring protocol to be used in all sampling programs.

The Colorado Geological Survey is a required signatory on all wastewater treatment facility site applications. Their review of site applications is to determine what, if any, influence the geologic conditions at the proposed site will have on the disposal/treatment plan and vice versa.

CHAPTER IV

OTHER STATE'S APPROACHES TO THE INTEGRATION AND ORGANIZATIONAL PLACEMENT OF WATER PROGRAMS

In their book entitled "Controlling Water Use, The Unfinished Business of Water Quality Protection": Getches, McDonnell, and Rice surveyed the 19 western states as to how they are dealing with water quality and water rights integration issues. The book project arose out of a perception that water quality protection is incomplete; the integral relationship between water use and water quality is not being addressed adequately.

Several conclusions were reported in the book such as: Western States are struggling with water quality problems that are not covered by existing regulations; most uncontrolled water quality degradation today relates to water uses authorized by state water allocation systems; and, states can respond to public demand to improve water quality by better use of western water laws. Much of the discussion in the book was based on the premise that all uses of water alter its quality. Four specific examples types of water quality impacts associated with water use were examined in detail (e.g. Depletion degradation, physical alteration in storage impoundments, incidental pollution from return flows, and cumulative degradation effects from multiple uses).

The balance of the book examines the extent to which states are beginning to integrate their water allocation laws and policies with water quality safeguards. Specific integration and coordination mechanisms are examined. Opportunities for protecting water quality within the prior appropriation system are presented. The potential of using water management areas to protect water quality is discussed. Finally the ability of states to consider the effects of water uses within existing water quality protection programs such as the non-point source control program, 401 certification, and anti-degradation program is analyzed. The conclusions presented in "Controlling Water Use" are especially significant because no other study has been done which addresses the issue of how water quality programs are being integrated with water allocation and water development programs in western states.

The analysis of western state's approaches to integrating water use and water quality is discussed below and reprinted in its entirety in Appendix C by permission of the authors. In addition, the Water Quality Task Force was interested in getting detailed information about the integration of water quality and water quantity programs in Pennsylvania, Florida, and Mississippi. A survey of water use and water quality officials in those states was conducted by the Water Quality Task Force staff using the same format as was included in the Getches, et al study. The results of that survey are presented below as well. Finally a matrix which was prepared by the staff shows generally how water quality and quantity programs are organized in most of the states in the nation.

Western States Approaches to Integration and Organization of Water Programs

The possible approaches to integrating and organizing water programs range from formal agreements among agencies to complete integration of these functions within a single agency. Four general types of approaches are discussed below:

Cooperative Mechanisms: Examples of cooperative mechanisms western states employ to coordinate water quality concerns with water allocations and administration include regular meetings at a cabinet level or agency level and cross memberships between boards and commissions with water related responsibilities. Oklahoma has a Pollution Control Coordinating Board comprised of the heads of a number of state agencies. Oregon has established a State Water Management Group and a Governors Watershed Enhancement Board involving cabinet officials and the heads of several water related agencies and commissions. Utah has established a water development coordinating committee that includes the directors of the agencies concerned with water resources, water pollution control, water supply, and community development.

In New Mexico and North Dakota there are cross memberships between water quality and water resources commissions and boards. The South Dakota legislature enacted a law which enumerates all state authorities for protecting groundwater and requires coordination among all agencies responsible for administering these functions. Texas has established an interagency committee to develop a comprehensive groundwater protection strategy. Other cooperative mechanisms being used by states include memoranda of understanding between agencies, data sharing agreements, and special issue oriented coordinating committees.

Formal Coordination of Policy and Planning: Kansas formally coordinates water quality and allocation issues in the water planning process but relies on administrative methods to implement policy. This is an example of a strategic water management group under the governors auspices. The strategic planning process allows a variety of policy alternatives to be explored from a variety of perspectives prior to selecting from among options that are available. Once a policy decision is made, however, it becomes a mandate of every state agency. Also in Kansas there are formal procedures established whereby copies of applications for permits for new water uses and copies of discharge permits are exchanged between agencies. Comments provided by reviewing agencies may be imposed as conditions or limitations on permits.

California also implements water quality planning goals in the water allocation permitting process. Water use permits must be consistent with the applicable regional water quality control plan.

Coordination Within a Single Department: The state of Washington's water allocation program and water quality control program are in a single executive department under the same director. Applications for water use permits are routinely passed to the water

quality section for review and comment. Water quality officials may participate in the drafting of water use permit provisions and vice versa. Fisheries and wildlife officials are notified if water quality permit applications or water allocation permit applications indicate a potential impact on these resources.

Similarly the Texas Water Commission reviews and provides policy oversight for both water administration and water quality regulations. Water use applications with potential impacts on water quality are referred to the water quality division which makes recommendations for mitigation of impacts. The Commission holds evidentiary hearings when water use applications are contested. The Commission may modify recommended quantity or other conditions of water use permits based on water quality concerns.

Integrated Responsibility for Water Allocation and Water Quality Within a Single Agency: The California Resources Control Board is responsible for both water resource allocation functions and water pollution and water quality control. The board is required to insure that proposed uses of water are consistent with adopted water quality plans. The board may limit existing water uses as well as newly permitted uses in order to impose water quality standards and to carry out the public interest. Conditions on existing and newly permitted water uses may include setting limits on quantities taken out of the stream at particular times and the requirement of by-pass flows and other measures to maintain minimum stream flows. Groundwater protection is conspicuously absent from California's integrated system. The imposition of water quality protection mandates on existing and newly permitted water uses has created uncertainties among many water users about their obligations.

Water Quality and Quantity Integration Approaches in Florida, Pennsylvania, and Mississippi

Florida

There are eight agencies in the State of Florida involved in one way or another with water quality or water quantity issues. Three are state agencies. The remaining five are autonomous Water Management Districts which are responsible for water planning and water allocation across the state through the issuance of Water Use Permits.

Coordination is accomplished through a Commission consisting of the heads of each of the agencies involved with water quality or quantity. The water use permitting activities of the Water Management Districts are further guided by the policies developed by the state Water Facilities Division. Increasingly, these policies have addressed water quality, due to three key problems facing the state, saltwater intrusion, contaminant plume movement and inter-aquifer exchanges.

Water quality concerns are in part incorporated into the water use permitting process by the inclusion of specific requirements. Examples of such requirements are that an

applicant may be required to use the lowest quality water suitable for the intended use, or an applicant that has adequate water treatment facilities may be required to use, and therefore treat, water that may be of lower quality than might normally be used, in an attempt to improve the quality of the water through this treatment.

Pennsylvania

In the Spring of 1992 the water quality and quantity agencies in Pennsylvania started a process of reorganization. As a result of this reorganization, both types of agencies have been placed under one Secretary, but they remain separate Bureaus. All of the environmental programs, as well as all of the natural resources programs, are located within the Department of Environmental Resources.

As part of the administrative changes that are currently taking place there will be an increase in the level of integration between water quality safeguards and water allocation practices. This is being brought about by the decentralization of staff that deal with water quality and quantity issues to six regional offices. The staff will be required to consider both the needs of the water user as well as water quality concerns prior to any allocations being made.

Overall integration is a mixture of formal and informal arrangements. The Water Supply and Community Health Bureau is responsible for water quality and treatment for public water supplies. The Water Planning and Allocations Bureau issues water allocation permits and the Bureau of Water Quality Management is responsible for all other water quality issues and determinations of negative impacts caused by water allocations.

Special water management areas have been designated for both the Delaware River Basin and the Susquehanna River Basin. Pennsylvania participates in both of the Basin Authorities that have been established for these areas. The Authorities are made up of federal and state agencies.

Mississippi

Mississippi has undergone a major shift in its water rights structure. In 1985 the legislature passed legislation that placed responsibility for the management of ground water in the hands of state agencies and changed the water rights system from one of prior appropriation to one employing water use permits for beneficial uses.

Responsibility for water quality and quantity in the state rests with four entities, the Pollution Control Bureau, which is concerned with water quality, the Land and Water Resources Bureau which deals with water quantity, and the Permit Board which issues both water quality permits (NPDES), and water use permits. All three of these agencies, as well as all of the natural resources agencies in the state, are located in the Department

of Environmental Quality. The Drinking Water Program is located within the Department of Health.

Special water management districts have been formed to deal with water quantity issues but which have no permitting or regulatory authority. These district are under the guidance of the Land and Water Resources Bureau.

Summary: State efforts to integrate control of water use with water quality protection are in their infancy. Western states have attempted to establish coordination mechanisms among the agencies with significant responsibilities for water allocation and water quality protection. Such mechanisms include informal and formal coordination of planning and administration as well as structural integration of water quality and water quantity functions in a single department or a single agency within a department. Coordination works in Kansas because there is a single policy plan for all the agencies. Wyoming and Nebraska do not handle water allocation and water quality functions in a single department but report that the level of coordination is adequate. Coordination is effective in Washington's Department of Ecology in which the separate water quality and water allocation agencies are subject to management control by the same cabinet level official. California's approach provides the most direct integration by placing responsibilities for water allocation and water quality in a single agency (State Water Resources Control Board) with statutory direction to integrate both functions.

The Task Force expressed interest in the organizational structure of water quality and the water quantity programs in Florida, Pennsylvania, and Mississippi. Each of these states, or are in the process of, reorganizing their water agencies. Under the new structures responsibility for quality and quantity are spread across eight agencies in Florida, five in Pennsylvania, and four in Mississippi.

Florida assures coordination through a Commission comprised of the heads of each of its eight water agencies. Pennsylvania placed all of the state agencies under a single Secretary but has two basin authorities that are autonomous and made up of federal, state, and local agencies. Mississippi created a Department of Environmental Quality and placed all state water agencies in that department. All three states described their approach to coordination as a mixture of formal and informal methods.

The Getches et. al. study on "Controlling Water Use" concludes that the most integrated and coordinated systems appear to work the best but that separating water quality expertise from agencies charged with regulating other types of pollution (e.g., air, hazardous wastes) will fragment overall multimedia pollution control efforts. There is a strong recommendation for states to improve their institutions in ways that will enhance water quality and comport with water allocation systems.

CHAPTER V
OPTIONS FOR IMPROVED EFFECTIVENESS AND INTEGRATION OF WATER QUALITY CONTROL AND WATER QUANTITY PROGRAMS

Nonstructural Options for Improving Inter-departmental Coordination

The following nonstructural options are expected to result in only minor redistributions of staff time or fiscal resources with the possible exception of computer hardware or software needs related to improvements in data sharing between CDH and DNR.

Improve Existing Inter and Intra-Agency Coordination Mechanisms

- Improve coordination and review related to Section 25-8-104 of the Water Quality Control Act, and evaluate and improve, as needed, execution of responsibilities under Memoranda of Understanding between the implementing agencies designated in Senate Bill 181. Schedule meetings among WQCD, SEO and WCB to discuss emerging patterns in the consultation process and long range concerns about water quality regulation, administration of water rights and water development opportunities. Seek additional fiscal resources for WCB staff to assure the consultation process is addressed fully.

- Improve existing automated data-sharing capabilities between CDH and DNR

- Continue further development of multi-media coordination mechanisms, risk-based management approaches, consistent pollution prevention approaches, along with integrated information systems within the CDH Office of Environment.

Establish New Coordination Mechanisms Among Agencies

- Strengthen existing relationships between water programs with or without additional memoranda of understanding. Schedule regular meetings among CDH, DNR and DOA division directors and their senior staff to discuss common issues, and allocate fiscal and human resources to insure proper inter-departmental integration, including maximum data sharing occurs.

- A "one-stop" permit information center could be created to assist the regulated communities in determining which regulations and which provisions of those regulations apply to their activities. (See Section 25-8-402(3), 34-10-101)

- Develop training programs to increase the understanding of water quality staff about water resource management considerations and the understanding of CWCB and Water Resources Division staff about water quality matters.

- Develop cross training programs, particularly in the areas of water quality sampling for surface and groundwater and groundwater level and stream flow monitoring.

Cabinet Level Coordinating Council

- Establish a coordinating council comprised of executive directors from Natural Resources, Health and Agriculture and other cabinet members involved with significant water related issues to provide interdepartmental policy direction. This is an example of a cooperative mechanism to allow water quality and water allocation issues to be formally coordinated. A linkage mechanism between this Council and legislative leaders, particularly from the agriculture and natural resources committees, should be established.

Modifications to the Water Quality Decision Making Process

- Long Range WQCC Regulatory Plan: While the WQCC has a long range schedule of future regulatory hearings, the commission could develop a plan as to how to address current federal guidelines (e.g.EPA's FY 92 Priority Plan which includes requirements for promulgating biocriteria, wetlands and sediment standards), policies (e.g. antidegradation)and regulation-based mandates such as biomonitoring. This approach could allow for broad based input from the regulated and environmental communities and executive agencies in the formulation of the WQCC regulatory agenda. It should be noted that EPA exerts pressure upon states to implement guidelines, priority plans, regulatory initiatives, policies and regulatory mandates through conditions on federal grants.

- The Commission could meet annually or biannually with the appropriate legislative committees to discuss legislative priorities, the long range regulatory agenda and policy issues of statewide import. This could be helpful in coordinating legislative and executive level policy development

- Identify Additional Selection Criteria for WQCC Members: In addition to geographic distribution, specific requirements for experience or expertise and participation of certain major affected interests could be mandated through statutory revisions to insure balanced representation (see Section 25-8-201(1)(a) and 1992 revision to 37-60-106). This approach could allay

the concerns some have expressed that their interests are not fairly represented on the WQCC. However, it is presently quite difficult to find qualified individuals to fill vacancies on the Commission given the existing statutory selection criteria which are quite general. The number of legitimate additional selection criteria is quite large (e.g. affirmative action goals, political party affiliation, water basin, industry, mining, municipal, hunting, fishing, tourism, hunting, fishing, recreation, environmental, water development, and special district representatives)

- Institute Cross Memberships on Boards and Commissions: Institute cross memberships or representation between boards and commissions. Such positions could be ex officio or appointed and could be voting or non-voting. A member of the Water Conservation Board could be appointed to the Water Quality Control Commission. Conversely, a member of the Commission could be appointed to the CWCB.

  Another approach would be for the Executive Director of CDH to designate an appropriate, senior official (e.g. The Administrator of the WQCC or WQCD Director) to sit in a non-voting advisory capacity on the Water Conservation Board and for the Executive Director of DNR to designate an appropriate official (e.g. the State Engineer or the Executive Director of the CWCB) to sit in a similar capacity on the Water Quality Control Commission. Both of these options are examples of formal coordination or integration between water quality and water quantity programs.

  Commission and Board appointments are extremely time demanding and few of the existing appointees could afford to serve on both, given the need to attend to their career and family responsibilities. A major element in the decision to remove the Executive Director of DNR from the WQCC (pursuant to SB 81-10) was the excessive time demands upon that key state official.

- Revision of the Rulemaking Process: Revise the statutory provisions governing the existing rulemaking process of the Water Quality Control Commission in order to enhance and encourage greater public participation. Revisions to the Administrative Procedures Act and the Water Quality Control Act potentially are needed. Such revisions could provide for informal rulemaking, formal negotiated rulemaking or informal task force or focus group efforts.

- Greater Utilization of Task Forces: Continue to pursue informal task force or focus group approaches involving all potentially affected interests preceding formal rulemaking by the WQCC or administrative policy development by the Division, and insure that:

1. The problem which purportedly requires a regulatory or policy solution is clearly stated and that alternate regulatory, policy and non-regulatory solutions are fully considered;

2. The WQCC receives direct information during or following task force or focus group processes and that detailed accounts, written statements, supplemental documents and any negotiated agreements resulting from such focus or task force groups receive due consideration and weight in the formal rulemaking process; and

3. The task force has an opportunity to determine that the benefits to public health and the environment under the proposed rule or policy are reasonable in relation to their impacts on the regulated community and other regulatory programs.

Past experience has shown that parties with significant interests in particular regulatory matters often do not become seriously involved in informal processes prior to formal rulemaking and that agreements tentatively reached during task force proceedings are sometimes disavowed by parties during formal rulemaking proceedings. However, if such informal proceedings were specifically recognized in the Administrative Procedures Act and the Commission made it known that informal task force groups would significantly affect the final notice of rulemaking, interested parties might become engaged in the process earlier.

Structural Options to Achieve Improved Program Integration

Alter Structure and Function of WQCC

Change the current commission structure (e.g.,citizens which reflect various interests in water and which achieves geographical representation) to:

(a) a single, full time, paid, professional, technically qualified administrator or commissioner with rulemaking and adjudicatory authorities; or,

(b) a full time paid commission, either linked to the various geographic and user interests in water, or with specific professional and technical qualifications. A full time paid commission could potentially serve other environmental programs (e.g. waste, air, etc.) as well. This alternative would be patterned off of the Public Utilities Council.

Transfer the Water Quality Control Commission and Division to DNR

Transfer the Water Quality Control Division and Commission to the Department of Natural Resources. Such a transfer may or may not include the drinking water program. This could provide a means of better assuring water quality regulatory programs are developed and implemented in a manner that comports with natural resource management programs. Inter-departmental multi-media coordination mechanisms and pollution prevention programs would need to be initiated between the remaining CDH environmental protection programs and DNR programs-especially the WQCD. Automated data-sharing capabilities between CDH and DNR which are compatible with the CDH KLEROS data-sharing system would be needed. This option is an example of providing integrated responsibility for water allocation and water quality within a single Department.

Transfer the State Engineer's Office and Water Conservation Board to the Department of Health

Transfer the State Engineer's Office and Water Conservation Board to the Department of Health. This could result in better understanding and evaluation of water use related impacts upon water quality and potential water quality impacts associated with various water development alternatives. Such impacts could be evaluated and potentially controlled in a comprehensive water quality management framework which addresses natural sources, point sources and nonpoint sources of pollution. Strong program coordination mechanisms between such agencies as the SEO, WCB and the Division of Wildlife would be needed along with data sharing arrangements between DNR and CDH.

Create a Department of Water

Create a new Department of Water which would include the Water Quality Control Division, Water Resources Division and Water Conservation Board. A single Board or Commission could provide planning, policy, rulemaking and adjudicatory role functions. Effective coordination mechanisms and automated data-sharing capabilities between other natural resource and environmental protection programs would be needed. The state of Texas has approached the option by placing drinking water, water quality and water allocation programs under the Texas Water Commission. This is an example of providing for integrated responsibility for water allocation and water quality within a single agency.

Create a Department of Natural Resources and Environment

Create a new Department of Natural Resources and Environment which would include environmental protection programs from the Department of Health and Department of Natural Resources programs. (See summary of other states approaches in chapter IV for examples). This is another example of providing for integrated water quality and quantity responsibility within a single Department.

Create a Department of Health and Environment

Rename CDH the Department of Health and Environment. This was proposed in HB 91-1293, which was not enacted by the General Assembly. Such a name change would require legislative action. The effect of the name change likely would be to provide greater recognition of the +importance of environmental programs in the Department.

Create a Department of Environmental Quality

Establish a Department of Environmental Quality including such environmental protection programs as Air Quality, Water Quality, Hazardous and Solid Waste, Radiation Control, Environmental Epidemiology and other selected programs. Develop appropriate coordination mechanism between the environmental protection programs and the existing DNR programs, especially, between water quality and the water resource and conservation programs. (See summary of other states approaches in chapter IV for examples).

Human and Fiscal Resource Issues Associated With Reorganization Options to Improve Program Integration

Each of the options considered by the Task Force have some associated cost. No attempt was made to quantify what these costs might be due mainly to a lack of time for a complete analysis. Many of the options under consideration would have fiscal impacts. For example, improving the SB 181 consultation process may require additional staff. Extensive reliance on informal focus group or task force efforts prior to rulemaking will be very staff intensive. Transferring one agency to another department may result in increased workloads (and potentially additional FTE) for certain support functions such as budget, accounting, data services and personnel. Options that call for the creation of a new department would involve an entirely new administrative (management, accounting, budget, personnel) and support (maintenance, mail room, reproduction) staff and would require additional leased space, telephones, etc.

CHAPTER VI

CONCLUSIONS and RECOMMENDATIONS

The following conclusions are based upon the input received during the four Focus Group Meetings, written followup statements from the Focus Groups and discussions among the Water Quality Task Force members.

1. Water policy in this state needs to be formulated and implemented in a balanced manner and in accordance with legislative direction so that Coloradans can benefit from the use and development of water resources while continuing to maintain and improve water quality.

2. Organizational changes such as transferring water quality or water quantity programs from one department to another or creating a new department won't resolve underlying communication and coordination issues and therefore are not warranted at this time.

3. Significant improvement in communication between agencies and officials with responsibility for water quality and water quantity is needed.

4. Better coordination between affected state agencies must occur before water quality decisions are made which affect the State's water resource management program, and, conversely, when water resource management decisions are made which affect water quality.

5. The formal WQCC rulemaking process presents barriers which inhibit broad public participation. The existing process is costly to all participants, and intimidating to the general public.

6. There may be opportunities for increasing staff efficiencies and decreasing program costs through the sharing of expertise or office space, coordinating schedules in the field, cooperating on projects of mutual interest and cross training certain individuals.

RECOMMENDATIONS

Recommendations for Maintaining the Most Effective Water Quality Control Programs for the State of Colorado

- Identify the provisions in the Administrative Procedures Act and the Water Quality Control Act governing the existing rulemaking process of the Water Quality Control Commission which present barriers to broad-based public participation. Analyze alternative rulemaking approaches such as informal

rulemaking, formal negotiated rulemaking or means of more effective utilization of informal task force or focus group efforts to improve public participation.

- The WQCC and WQCD should continue to pursue informal task force or focus group approaches involving all potentially affected interests preceding formal rulemaking or administrative policy development. Such informal proceedings should allow alternate regulatory proposals as well as policy and non-regulatory approaches to be considered fully. Prior to formal rulemaking task force groups should have an opportunity to evaluate whether the benefits to public health and the environment under the proposed rule or policy are reasonable in relation to their impacts on the regulated community and other regulatory programs.

- Improve existing automated data-sharing and computer modeling capabilities between CDH and DNR, particularly those in the geographic information systems environment.

Recommendations to Improve Integration of Water Quality Programs with Public Health, Environmental Protection, and Natural Resources Programs

- Structural modifications to the Water Quality Control Commission and Water Conservation Board **are** recommended. Specifically, the Executive Director of CDH should designate an appropriate, senior official (e.g. the Administrator of the WQCC or WQCD Director) to sit in a non-voting advisory capacity on the Water Conservation Board and the Executive Director of DNR should designate an appropriate official (e.g. the State Engineer or the Executive Director of the CWCB) to sit in a similar capacity on the Water Quality Control Commission. Such structural modifications in the WQCC and CWCB would require statutory authorization.

- Alterations in the existing selection criteria for the WQCC are **not** recommended.

- Interdepartmental transfers of state agencies (e.g. moving the WQCD to DNR) are **not** recommended at this time.

- Training programs to increase the understanding of water quality staff about water resource management considerations and to improve the understanding of CWCB and Water Resources Division staff about water quality matters, should be developed.

Recommendations to Improve Integration of Water Quality Control and Water Quantity Considerations in a Manner that will Create the Best Public Policy for the State of Colorado

- Schedule quarterly meetings among WQCD, SEO and CWCB to discuss emerging patterns in the SB 89-181 "consultation process" and other long range concerns relative to water quality regulation, administration of water rights and water development opportunities.

- Schedule quarterly meetings among CDH, DNR and DOA division directors and their senior staff to discuss common issues, and allocate fiscal and human resources to insure proper inter-departmental integration and maximum data sharing occurs.

- Establish a cabinet level coordinating council comprised of executive directors from Natural Resources, Health and Agriculture and other cabinet members involved with significant water-related issues to provide interdepartmental policy direction and to allow water quality, water allocation, and water development issues to be formally coordinated. Develop a linkage between this Council and the legislature.

- The commission should develop a long range plan as to how to address matters of state interest, current federal guidelines, EPA policies and regulation-based mandates. This planning process should allow for broad-based public input.

- The General Assembly should invite the Commission to meet with it at least annually to discuss legislative priorities, the long range regulatory agenda and policy issues of statewide import.

Recommendations to Promote the Most Efficient Utilization of Human and Fiscal Resources Within CDH and DNR and to Promote the Protection of the State's Water Quality and Water Rights

- Opportunities for increasing staff efficiencies and decreasing program costs through the sharing of expertise or office space, coordinating sampling schedules or other needs should be identified during the quarterly meetings described above and implemented where possible.

- Develop cross training programs, particularly in the areas of water quality sampling for surface and groundwater and groundwater level and stream flow monitoring.

- All of the recommendations listed above should be re-evaluated periodically by the proposed cabinet level coordinating council.

APPENDIX A

DETAILED ACCOUNTS OF FOCUS GROUPS

FOCUS GROUP MEETING - CACI/CWC
August 17, 1992

NAME	ORGANIZATION
Fucik, Ken	T.H.E. Lab
Kimball, Kit	Amax
Raisch, Jerry	CACI
Kirby, Bob	
Schleiger, Gene	NCWCD
Dempsey, Stan	CACI
Fleming, Peter	
Allbright, Martha	Transform Env. Waste
Martinez, Peter	
Biggs, Barbara	Denver Metro
Kriss, Judy	W.R.& Power Authority
Kitchell, Robert	
Evans, Jo	Environ. Coalition
Law, Dan	W.R.& Power Authority
Eisel, Leo	CWCB
Anderson, Fred	NCWCD
Duncan, Sara	Denver Water Board
Volmit, Lawrence	
Frohardt, Paul	WQCC
Cazier, Stan	
Holm, David	WQCD
Meyerkord, Louise	Public Serv. Co.
Dubois, Dave	NFRWQPC
Ward, David	EG&G
Cox-Wagnoer, Susan	RMOGA
Gearhart, Mary	WQCC
Pokorney, Ed	Denver Water Board
Treese, Chris	Colo. River District
Sanderson, Jim	SSR&D
Kraus, Julie	State Engineers Off.
Ferries, Steve	REI
Grover, R	Western
Horn, Steve	CDA
Remda, Chris	ESN
Lyle, Chuck	CWCB
Wiant, Chris	Tri-Co.Health
Simpson, Larry	WQCTF
Dehaan, Sarah	John Faught & Assoc
Brown, Reeves	Colo. Cattlemen
MacRavey, Dick	CWC

COLORADO ASSOCIATION OF COMMERCE AND INDUSTRY/COLORADO WATER CONGRESS FOCUS GROUP ON HOUSE BILL 1200 STUDY CONCERNING ORGANIZATIONAL PLACEMENT OF WATER QUALITY PROGRAMS

10:00 A.M., AUGUST 17, 1992 - 1390 LOGAN STREET

Ed Pokorney: Introductory comments about HB1200 and the purpose of the focus group. Introductions of the forty participants present at the meeting (see attached list.)

Ken Salazar: Introduction of governor-appointed task force members. Mention of executive order creating task force and appointing members. It's time to take a good hard look at this issue of the relationship between water quality and water rights administration. There is a need for a credible process not just an internal interdepartmental study. Additional meetings of a subcommittee created from this CACI/CWC focus group would be appropriate with a written product for consideration by the water quality task force appointed by the governor.

Fred Anderson: Recitation of the twenty year history of the debate about the organizational placement of water quality programs, including 1968 Government Reorganization Act, SB 480, interim committee study, SB 10 and SB 181. It's always been a concern to have water quality and water quantity programs in different agencies. Marcia Hughes negotiated provisions of SB 10 as assistant attorney general for water quality. Section 104 of the water quality act was a tradeoff in lieu of transferring the water quality programs to the Department of Natural Resources at that time. There has been a desire to have the state in control of all federal environmental programs including the 404 program. The majority of western states administer water quality protection out of a DNR equivalent agency or out of a stand-alone department of environmental quality. Water quality and water rights/policy need to be combined. It's incumbent upon us to resolve this longstanding issue. We have issues such as wetlands, hydromodification, groundwater standards where integration has been a big issue and this led to John Irwin's HB 1200.

Jerry Raisch: This water quality/water quantity integration issue has been around at least ten years. There are at least two sides to the issue. We need to focus on the four statutory directions in HB 1200 (i.e. how to maintain the most effective water quality control program for the state of Colorado; best integration of water quality control programs with pubic health, environmental protection, and natural resource programs; integration of water quality control and water quantity considerations in a manner that will create the best public policy for the state of Colorado; the most efficient utilization of available human and fiscal resources within the department of

health, the department of natural resources and the department of agriculture to promote the protection of the state's water quality and water rights). Water quality programs were originally based upon public health concerns. Recently, there has been a great deal of interaction with Department of Natural Resource agencies such as the State Engineer's Office and the Division of Wildlife in addressing water rights conflicts and protecting aquatic life. Now there is a shift again back to protection of public health (e.g. organic standards and control of toxic pollutants). If we shift the water quality programs to natural resources, we will create a new vacuum with respect to public health concerns.

Fred Anderson: Explanation of type 1 vs type 2 agencies. Type 1 agencies are essentially independent from the department in which they reside where the executive director of the department has little control other than addressing budgetary comments to the agency. Type 2 agencies are subject to complete direction by the executive director of the department. Perhaps a shift to DNR is too extreme, but we need a better relationship between water quality and water rights. We need cross-pollination between the programs. The recent groundwater proceeding was an example of poor communication where the Water Quality Division elicited broad-based input but then produced a regulatory proposal that led to confrontation and major expenditures of time and energy. We need an understanding of problems in both areas.

Dick MacRavey: Ask the water quality task force members to stand and be identified. In attendance were Jerry Raisch, Jo Evans, Leo Eisel, Chris Wiant, Steve Horn, Ken Salazar, Reeves Brown, Larry Simpson, and Mary Gearhart on behalf Sue Ellen Harrison.

Ken Salazar: Ask Fred Anderson what the problem with the Water Quality Control Commission has been in terms of major categories.

Fred Anderson: Named wetlands, hydromodification, groundwater regulations, SB 181 and State Engineer's Office role in water quality protection.

Jim Sanderson: I am not critical of particular decisions or personnel at the Water Quality Control Commission and Division. I think section 104 of the Water Quality Act has had a great impact. On a scale of awareness where 1 is low and 10 is high, I think ten years ago the water quality control programs were at a 2 or 3 and today it is closer to 8 to 10. It is true that there is a high cost related to the water quality programs. I believe this cost is related to the fact that we are dealing with a dwindling water resource rather than the administration of water quality programs. Clearly better integration would help reduce transaction costs but that is not the primary issue. Let's not throw the baby out with the bath water. Dischargers may be concerned about relocation of water quality programs because of the inherent uncertainty in politics and practices in a new administration and a new interface for the

regulatory system. This state needs to take a greater role of leadership in balancing the need to protect water quality with the need to provide for human needs. There is a national movement to return waters to physical and biological integrity. We need to engage in this national debate through the discussions related to HB 1200. It is possible to stop a water project by claiming it will disturb the natural balance in an area. However, most areas are super-managed already. There are hardly any pristine or unmanaged systems in the arid western states.

Ed Pokorney: Does not think it is the role of the focus group or the task force to address national water quality issues or that that is the charge within HB 1200.

Ken Salazar: The third point in HB 1200 is broad enough to include such policy concerns.

Jerry Raisch: Our charge is to address the organizational forum versus the substantive issues raised by Jim Sanderson.

Fred Anderson: Integration has not been there. I disagree with Jim Sanderson about the awareness rating, I believe it is about at a 5 now.

Sara Duncan: We are missing the point. The Water Quality Control Commission creates uncertainty for water rights owners with respect to how they can use their water rights.

Jim Sanderson: Ask whether Sara was referring to the potential for downstream states like Nebraska to use water quality issues to prevent water resource development in Colorado.

Sara Duncan: I am more concerned about abuses of Colorado programs by Colorado organizations than by other states' use of water quality to limit our water development. The Water Quality Control Commission has been seen as the enemy threatening valid use of existing water rights.

Mary Gearhart: I think a major problem is that the Clean Water Act is evolving based on continuously developing science whereas the water rights system is not changing in a manner that addresses water quality issues adequately. We need a dictionary to translate between the two different systems.

Jerry Raisch: Water Quality Control Commission does not dream up these new regulations. The Clean Water Act and EPA dictate, to a large extent, what regulations are adopted.

Stan Cazier: I think we are trying to reconcile the irreconcilable. Water quality policy is driven by the federal government to achieve one set of goals while state interest continues to press for water development under our system of water rights.

Ed Pokorney: Perhaps we could hear from Dave Holm about how other states are approaching this integration issue.

David Holm: Two states that have integrated water quantity and water quality programs under one agency are Texas and California. The Texas integration is very recent and there is not much of a track record to comment on. In California the integration occurred some time ago. The Water Resources Board has authority over both water rights administration and water quality. In California water quality is a major constraint on the administration of water rights. In Iowa the programs are integrated, as well, but water quantity or supply is not such a problem. Most states with combined programs have much larger water resource bases than Colorado.

Dick MacRavey: What further input does the water quality task force expect from this focus group? Should we provide a written document which summarizes further discussions which may take place among our task force?

Steve Horn: I believe our objective is to get as much information as possible. Yes, by all means put together a task force and provide written comments.

Ken Salazar: It is impossible to get sufficiently detailed information from work groups such as this in only a single, two hour meeting. The water quality task force will count on interested groups to dig into greater depth and detail than we can today.

Larry Simpson: Water quality agencies and special interest groups have promoted programs without any awareness of the impacts those programs have on others such as water users. Wetlands is a good example where communication and understanding about water resource management is extremely important. I disagree with Jerry Raisch that EPA is the primary source of concern. I believe EDF was the main originator of the Division's wetland proposal. Historically the Division staff and Water Quality Control Commission have not had a clue about water resource management. Communication is the major problem. Reorganization may be what is needed or at least new processes to ensure communication and coordination. Possibly a review and comment approach to addressing new proposals would be helpful. HB 1200 is the indication that a problem exists. What is needed is communication with an open ear and no agendas.

Dick MacRavey: With some exceptions the focus group does not represent real water users who irrigate and produce crops. A copy of Frank Miliniski's article/editorial was provided for review by the water quality task force. The Colorado Water Congress and CACI will meet to plan future discussions and activities surrounding the HB 1200 study.

Gene Schleiger: The Colorado Water Conservation Board needs to be more aware of water quality just as the Water Quality Control Commission needs to understand water rights issues.

Ken Salazar: Thank you (CACI/Colorado Water Congress), for organizing this task force meeting. I look forward to your majority and minority report.

Introduction of Chuck Lyle recently appointed as director of Colorado Water Conservation Board.

FOCUS GROUP MEETING - ENVIRONMENTAL LAW SECTION/ NATURAL RESOURCES LAW CENTER

August 24, 1992

NAME	ORGANIZATION
Holm, David	WQCD
MacDonnell, Larry	Nat. Res. Law Center
Evans, Peter	Dept of Nat Resources
Gearhart, Mary	WQCC
Allbright, Martha	
Rudolph, Martha	WQCC/Env. Law Section
Cybushe, Pamela	City of Thornton
Laitos, Jan	Univ of Denver
Kassen, Melinda	EDF
Meyerkord, Louise	Public Service Co
Bartlett, Brent	CBA Env. Law. Section
Dehann, Sarah	John Faught & Assoc
Merkel, Lee	NWCOG
Hynes, Jeff	Colo Geological Survey
Madore, Catherine	Broggin & Assoc, P.C.
Comer, Bob	SSRD

ENVIRONMENTAL LAW SECTION OF THE
COLORADO BAR ASSOCIATION/NATURAL RESOURCES
LAW CENTER FOCUS GROUP ON HOUSE BILL 1200 STUDY
CONCERNING ORGANIZATIONAL PLACEMENT OF
WATER QUALITY PROGRAMS

9:00 a.m., August 24, 1992
4210 East 11th Street, Denver, CO.

David Holm: Introductory comments about House Bill 1200 and the Focus Group process. Introduction of Martha Rudolph, representing the Environmental Law Section of the Colorado Bar Association and Larry Mac Donnell, representing the Natural Resources Law Center.

Ken Salazar: Introduction of Governor appointed water quality task force. Task force members present: Steve Horn, Jo Evans, Chris Wiant, Leo Eisel, Jerry Raisch, Pat Nolan, Ken Salazar, Larry Simpson, Reeves Brown, and Mary Gearhart representing Sue Ellen Harrison.

Jan Laitos: I have served seven years on the Water Quality Control Commission. One thought that I would like to pass along, is that the Water Quality Control Commission is unique in that it has been captured by the regulated community (i.e., the dischargers and water rights holders). The Water Quality Control Commission is beholden to these interests. To the extent the Commission can represent environmental interests, it does so only when forced to by EPA. The Baucus bill (S. 1081) is reflective of this reality, not only in Colorado, but in other states, as well. Water pollution control agencies can not act independently. They are controlled by well-funded, organized groups. It is a text book case of an agency which has great difficulty setting its own course. I do not expect that to change so long as the Water Quality Control Commission is under legislative control. State agencies hands will be forced on issues like ecological integrity. Without EPA there would be very little environmental regulation in Colorado.

Larry Mac Donnell: What could be done to improve this situation?

Jan Laitos: Nothing, really as long as the agency is a creature of the legislature unless a political shift somehow increases political pressure {For environmental protection}.

Reeves Brown: Where would you put the water quality programs?

Jan Laitos: Perhaps in a department of environmental regulatory agencies which would include air, water, hazardous waste programs. That is what the major states like California, Michigan, Illinois, and New York have done. Few water quality programs are in departments of health.

Reeves Brown: That would remove the political pressure?

Jan Laitos: I do not know. Most other states do not have nearly as an extensive a water bar as does Colorado.

Jerry Raisch: Wyoming may go the other way (i.e. from a department of environmental quality back to a natural resource or health agency).

Melinda Kassen: New Mexico has gone back and forth with different administrations. For example, under Governor Anaya the water quality program was in a Department of Environmental Investigations, under Carruthers it was in the department of health. Under Governor King it is back to a department of environmental quality. It has gone back and forth with different Governors.

Pat Nolan: That is certainly how to keep things shook up.

Melinda Kassen: No other state than Colorado places so much discretion/responsibility in the hands of an appointed Commission. It is much less efficient than having a full time administrator or a board which is not beholden to any interests.

Leo Eisel: The California Water Resources Control Board has responsibility for both quality and quantity. Do you think that is a better system?

Melinda Kassen: Our battles in front of the Water Resources Control Board are every bit as fierce as before the Commission. But at least we feel we have a shot before them. We do not feel that way with respect to the Water Quality Control Commission.

Larry Simpson: I gather that you feel the process should be removed from the control of the legislature.

Melinda Kassen: I do not think that shifting responsibilities to an appointed administrator subverts the democratic style of government. The Governor is an elected representative of the people. If the Governor makes an appointment which is confirmed by the senate, that is the democratic process in action. A full time

administrator would be more capable than an appointed commission. Also, other things are going on to improve the process. There is the Water Quality Forum and the Head Waters Forum. Everybody recognizes that there are process problems with the Water Quality Control Commission, but there is no great groundswell of support to move water quality to DNR or to give it back to EPA. I do not hear people saying the process is not working. Its just that there are ardent advocates on both sides and when one side loses the complaints increase. People are mad whenever they lose.

Larry Simpson: I am concerned about the lack of understanding on water resources management and the implications of regulatory decisions on the part of the Commission and particularly the Division staff.

Larry Mac Donnell: Would a tie of linkage between the Water Quality Control Commission and Colorado Water Conservation Board help?

Larry Simpson: It is deeper than that. There needs to be a better understanding of the implications of regulatory decisions. They need facts and to study the facts. For example on the ground water rulemaking proposal, the Division was trying to protect the potability of water resources that have never been potable.

Marty Allbright: I have practiced water rights law and appeared before the Water Quality Control Commission since 1978. I think there have been people on the Water Quality Control Commission who have had an environmental agenda without regard for the facts. That has been frustrating. I favor the status quo in terms of organizational placement of the water quality programs. However, some improvements are in order, for example, adding the State Engineer to the Water Quality Control Commission. There should be a requirement that the Water Quality Control Division consult with the State Engineer's Office prior to rulemaking.

Reeves Brown: What credentials are required for Water Quality Control Commission members? What coordination has occurred in the past, between the Division and the State Engineers Office?

David Holm: The Groundwater Regulations have come up as a big black mark against the Division. A great deal of coordination went into the development of the Division's proposal for the groundwater rulemaking. A year prior to the notice of that rulemaking we were meeting with the State Engineer's staff and we relied on the State Engineer's data in the preparation of our proposal. We also made

significant efforts to coordinate with the agricultural users of the water in the basins to be affected by the rule. The State Engineer's comments at the rulemaking hearing came as a great surprise.

Jerry Raisch: The Water Quality Control Act provides geographic guidelines and requires representation of various water user interests on the Water Quality Control Commission.

Jo Evans: I disagree with Larry Simpson and Marty Allbright that Water Quality Control Commissioners have strong Environmental agendas. The agricultural committees of the legislature cherish opportunities to protect water rights when they review the Governor's Water Quality Control Commission nominees.

Larry Simpson: The Water Quality Control Commission needs to hear more directly from real people, rather than a lot of hired guns. I applauded Jon Scherschligt for his outreach efforts on the groundwater rulemaking proposal but was frustrated that the information that Jon received did not get into the rulemaking proposal.

Melinda Kassen: A part of the problem is that the regulated community does not take the water quality control division staff seriously until the formal rulemaking process begins. If the Division gets input in a task force which it relies upon in developing a regulatory proposal, the political dimension then becomes dominat during the formal rulemaking process. Task force members change their positions once the formal rulemaking begins. Also lawyers do not pay attention until something is due. When a proposal is on the table they take a hard look with their clients and get unhappy. The State Engineer's office did not pay close attention to the groundwater proposal until very late in the process.

Chris Wiant: What is the problem? Is it the system really broken or are we dealing with sour grapes. Is a funding problem or a question of getting the right people involved in the process early on. Is it a process or structure issue?

Melinda Kassen: Its very definitely an economic issue for the small players to get involved. We need to reform the rulemaking process. When we have a large number of parties for a two day hearing it becomes a comedy of the absurd. You have attorneys saying I need another minute from your time to finish this sentence.

Marty Allbright: In 1978 through 1982 the Commission held 2 to 3 day hearings

which went from 9:00 a.m. to 2:00 a.m. That was one extreme. But now we get 5 minutes for direct testimony, cross examination, and summation. There is a real question as to whether you go to the expense of bringing an expert witness with the process as it now exists.

Larry Simpson: It is becoming as complex as a court case. Folks are trying to suppress evidence just as in a trial. Do we need a judge to deal with these issues? Citizens must have access to the process. When the Water Quality Control Commission was formed (and I stumped to get it established) the process was much more open and informal.

Melinda Kassen: That is informal rulemaking. The Water Quality Control Commission is required by law to do formal rulemaking. Other states do it by informal rulemaking and it works very well. In Colorado we need to change the law in order to do informal rulemaking. Colorado is in the minority of states which do formal rulemaking.

Ken Salazar: What role did the Department of Natural Resources have on the Water Quality Control Commission in the past and why was it changed?

Marty Allbright: The Executive Director of DNR chaired the Water Quality Control Commission and had a vote. That was in the days of Harris Sherman and Monte Pascoe. This was changed by the legislature in Senate Bill 10. This was because the executive branch was perceived as having too many votes on the Commission.

Pat Nolan: One of the seats was the Board of Health seat which is not really part of the executive branch.

Marty Allbright: It may have been personalities at the time which were part of the concern. The underlying concern was insuring all the interest groups get to provide input to the Commission. That includes the concerns of water rights holders. Colorado system of water law is 140 years old. Water quality has been recognized as part of Colorado's water right system from the start. In the early days the concern was insuring that senior water users received water of sufficient quality to provide for their beneficial use. Now the focus has shifted to depletion of dilution flows and to the protection of the aquatic ecosystem.

Larry Simpson: We have gone to dilution of pollution as a major water quality concern. Dischargers cannot rely on upstream quantities of water

to dilute their pollution. A discharger does not have a right to rely on dilution quantities.

Melinda Kassen: No solution will be found for that problem with this task force.

Ken Salazar: The water quality task force needs to consider opportunities to improve the process for water quality decisions. Larry (Mac Donnell) and David (Getches) you have more experience in addressing these questions than probably anyone up here on the task force. You have done a study on how water quality issues are handled in other states. What can you tell us about how it is done elsewhere and how satisfactory it has been.

Larry Mac Donnell: The Natural Resources law center in conjunction with the Western States Water Council conducted a survey of 17 western states concerning the current integration between water quality and water quantity programs. AS you might expect there is a real diversity among the states. California's program is the most centralized one where there is the greatest level of integration. The water resources control board controls both the allocation of water rights and is primarily responsible for water quality standards. There are some other states where quality and quantity are administered in the same agency. For example the Washington Department of Ecology administers water quality, air quality, toxics, and water rights. These programs all talk together by virtue of them being in the same agency. A third level of formalized coordination is seen in the State of Kansas. A water rights applicant must go to the water quality control agency for review and comment prior to issuance of a permit or water right. Pennsylvania has fully integrated water quality and water quantity in a single agency. Apparently there is a high degree of satisfaction in Penn. over their arrangement. In fact, what we discovered in our survey process is that only where there is formal integration between water quality and water quantity is there a significant degree of satisfaction. Where there is low integration there is not high satisfaction.

David Getches: In terms of recommendations it is clear that some degree of formal integration is desirable. A mechanism is needed to use instream flows to deal with water quality issues. The water courts need greater authority to address public interest issues concerning water quality.

Larry Simpson: Florida and Mississippi have integrated water quality and water quantity programs in a fashion similar to Penn. How is Mississippi doing?

David Getches: Florida has been highly touted as a successful state. I do not have any information about Mississippi's experience.

Ken Salazar: David, what was behind the change in commission membership which occurred through Senate Bill 10.

David Getches: Senate Bill 10 was enacted just before my nomination as Executive Director of the Department of Natural Resources. Legislation changed the composition of the water quality control commission. I believe it had something to do with personalities in the legislature at the time.

Larry Simpson: Yes, I think personalities were part of the issue. Also there was the perception that the Governor controlled too many votes for a citizen board.

Larry Mac Donnell: Also, I recall that Monte Pascoe and Harris Sherman felt they had too many responsibilities and that the position on the Water Quality Control Commission was one more than they could deal with.

Marty Allbright: No one is satisfied with the Commission's process today. There is not enough time allowed to make good decisions.

Larry Simpson: People on the ground like farmers do not want to be cross examined.

Jo Evans: That concern extends to environmental folks. They are also intimidated at the thought of being cross examined by industry lawyers.

Pat Nolan: The informal process does not seem to be working too well either. The feedlots hearing was an example where the informal process led to a formal notice of rulemaking but the regulated community changed their position after the notice became final.

Ken Salazar: The State Engineer's office has received complaints that the Water Quality Control Commission does not use the available data from that office. The Colorado Water Conservation Board is concerned that the Water Quality Control Commission does not consider interstate compact issues. I have no preconceived position about a transfer of Divisions. My mind is open. David and Larry, what would be your recommendation.

David Getches: It helped us to look at other states. The need for data sharing is self evident. We are separated in this state by our history. It is an

encumbrance. We need to avoid looking at issues in a parochial way. Our suggestion is that there is a need for formal integration. California does not have it right yet. Water rights in that state are being severely disrupted to achieve water quality goals. The Kansas model is great for water quality planning. They rely on a MOU between the water quality agency and water rights agency to achieve integration. It appears that the Washington model is the best of the three. We should also look carefully at the Penn., Mississippi, and Florida models. In Colorado there is a great fear that we will hand over water resource decisions to someone primarily concerned about development or environmental concerns. We are not in a trade off between development and environment. These two go hand in hand. An adversarial setting where decisions are bifurcated between two agencies will not help us achieve optimization between development and the environment. We need to look at what the goals are of both programs. For the water rights allocation program it is the optimization of uses we are seeking. For the water quality program we are interested in protecting the highest and best use for each waterway. How can we possibly make decisions independently. Both concerns have essentially the same goal. Colorado should be able to find the best solution to this integration challenge.

Larry Simpson: In Washington, they rolled air quality, water quality, hazardous waste, and water rights into one agency. Safe drinking water is a public health issue.

Pat Nolan: There are strong links between the air program, waste program and water program. In addition the drinking water link is very important. The protection of drinking water supplies relates directly to waste management and water quality protection.

Leo Eisel: How about the other kinds of programs? It seems to be an easy choice to integrate water quality and water quantity programs. They would be treated together. There are other things in the Colorado Department of Health that are closely allied to water quality. Some things have nothing to do with water, however. Some things in the Department of Natural Resources do not have any relationship to water quality either.

Martha Rudolph: There are several other issues we should talk about. The water quality program does not protect the highest and best existing use, it protects the present and potential uses which could be achieved. This potential use could be for aquatic life. That raises the minimum stream flow issue which we really can not deal with

here. Also hearings are a problem. The Water Quality Control Act and the Administrative Procedure Act require formal rulemaking. A lay water quality control commission is having to deal with a vast array of issues. Everyone can submit written information and not be subject to cross examination. It is very tough to get volunteers for the Water Quality Control Commission.

Jo Evans: We should pay the Water Quality Control Commission members.

Martha Rudolph: It is still very tough to coordinate with employers if a commissioner is taking off 25% of his work time for commission business.

Mary Gearhart: The informal task force process for developing rules has been effective in resolving issues down to a few important ones. That makes it more reasonable to limit the amount of time for oral presentations by the parties.

Larry Simpson: In the Penn. model, are the decisions reached by the agency subject to judicial appeal?

Larry Mac Donnell: There is one agency conducting NPDES permitting and water rights allocation business.

David Getches: Decisions reached by the agency would be subject to appeal to a hearing officer with judicial review of that decision.

Lee Merkle: No one takes the middle way. In Region XII we often take the same position as the division because we find that we must represent the positions of dischargers, water users, and environmental constituents. Paranoia breeds participation. The public's interest in water quality is not always being served. It makes sense to have an informal process to find common ground. We have to hire an attorney in order to participate in water quality control commission hearings and we cannot always afford it.

FOCUS GROUP MEETING - COLO ENVIRONMENTAL CAUCUS
August 27, 1992

NAME	ORGANZIATION
Renner, Steve	Div of Minerals & Geology
Kraus, Julie	State Engr. Office
Evans, Peter	Dept of Nat. Resources
Salazar, Ken	Dept of Nat. Resources
Frohardt, Paul	CDH
Looby, Tom	CDH-Off of Env
Harrison, Sue	WQCC
Hanson, Kent	
Boddie, Peter	Caucus
Hoagland, Bruce	Caucus - Co. TV
Wade, John	Sierra Club Rky Mtn Chap
Vickery, Anne	Caucus - Colo Mtn Club
Horn, Steve	Dept of Agric
Bennett, Chuck	Coors
Luecke, Dan	EDF
Evans, Jo	WQCTF
Simpson, Larry	WQCTF
McNulty, Hester	League of Women Voters
Brown, Reeves	WQCTF
Smith, Rocky	Colo Envirn Coalition
Montano, Peggy	WQCTF

COLORADO ENVIRONMENTAL CAUCUS FOCUS GROUP ON HB 1200 STUDY CONCERNING ORGANIZATIONAL PLACEMENT OF WATER QUALITY PROGRAMS

3:00 P.M. August 27, 1992, 6060 Broadway

David Holm: Introduction of HB 1200 study process, introduction of task force members, discussion of focus group process.

Ann Vickery: If the Division were transferred to the Department of Natural Resources, what would you do about the laboratory?

Rocky Smith: The laboratory should go with the Division.

Tom Looby: It is true that the laboratory serves the Water Quality Control Division but it also serves other divisions in the office of environment as well as divisions within the office of health.

Hester McNulty: What about the drinking water program? Would the drinking water go with the other programs of the Division? HB 1200 was a last minute bill. There was very little consideration of the question of transferring the Division.

Jo Evans: HB 1200 emerged in its present form on third reading at 10 minutes to midnight.

Paul Frohardt: Well, actually the Senate passed the bill at 10:45 P.M.

Jo Evans: We were still meeting to discuss the bill at 10:30 P.M.

Hester McNulty: The HB 1200 process was not like its supposed to be in the League of Women Voters literature on how a bill passes. The drinking water program does not fit anywhere but with the Board of Health. It is a Health Department function. What about epidemiology?

Tom Looby: The Division of Epidemiology is in the office of health. It is no longer within the office of environment but clearly their environmental epidemiology section provides crucial information to both the drinking water and water quality program.

Ann Vickery: What about logistics? If the Water Quality Control Division cannot use the laboratory, how will it get its water quality data.

Tom Looby: Ann, I think during these meetings we are trying to deal with functional issues related to the agencies rather than specific logistical questions. There is no specific proposal on the table

right now that we can look at in order to answer more specific questions.

Rocky Smith: Logistics are real problematic. If this laboratory issue is not resolved it would seem to impede the Division from addressing its functional mission.

Dan Luecke: I think what we are trying to discuss here is whether you think it is a good idea from an environmental point of view to transfer the water quality programs to the Department of Natural Resources.

Hester McNulty: No.

Ann Vickery: I do not know. Does it work now?

Jo Evans: The proposal in HB 1200 came from the water development community.

Ken Salazar: This debate has been raging for years. The Governor has been in a veto position more than once. My recommendation, when this issue came up, was to take an honest look at the issue of moving the Water Quality Control Division. There has been fiery debate but no objective review of the issue. If a decision is made to leave water quality control programs in Health that is fine, if a decision is made to move the program to the Department of Natural Resources I am equally fine with it. We are here to look at the issue and to provoke some outside debate. Jeris Danielson argued for integration of the programs. I believe he thought there were major functions the two Divisions had in common. Water Commissioners could gather water quality data to help the Commission in its decision-making. We decide compact issues. Presently Water Quality decision making could impact our compact decisions. Also if you look at the Getches report on controlling water use, the conclusion is a recommendation for strong integration of Water Quality and Water Quantity programs. Some in the environmental community and some at Colorado Department of Health presume it will weaken the Water Quality program to be located in the Department of Natural Resources. I do not think that is the case. Water Quality mandates come from EPA. So let us get beyond that. The question is how we can better integrate the functions. Maybe we go back to a system where the Department of Natural Resources or the State Engineer was on the Water Quality Control Commission. I do not know. Your feed-back will be helpful.

Hester McNulty: In an ideal world we would have created a Department of

Environmental Quality a long time ago. Could not your Water Commissioners give data to the Water Quality Control Division. SB 181 was suppose to insure coordination between these Divisions. In the age of computers, it is ridiculous if data cannot be shared. It would still be two separate agencies even in DNR. The goal is to have the agencies talk together.

Rocky Smith: There is no reason to move Water Quality if there is no clear advantage. Water Quality Control is clearly a health function. Sure, some decisions have an impact on water quantity, but certainly not all decisions. Plus there are all of the logistical problems associated with the move.

Ken Salazar: It is tough to get agencies to work together. I have had real challenges as you know, with the State Engineers office and the Water Conservation Board. It is a major difficulty. Now, because of changes we have made, we have the basis for coordination and cooperation between those programs. An example is in the dam rehabilitation program. Before, there was a lot of resistance in water conservation and the State Engineers Office to work together. Now it is a joint venture. Coordination between the Colorado Department of Health and the Department of Natural Resources has not worked well.

Hester McNulty: I think a Department of Environmental Quality is more appropriate. Water Quality programs have very serious relationships to other environmental programs. For example, Water pollution comes from air pollution. There is a great benefit to keep those programs together.

Tom Looby: We have preferred keeping environmental programs together. There is a question of how best to achieve integration between water quality and water quantity while maintaining close integration of all environmental programs and with agriculture programs.

Ann Vickery: Are we asking the right questions? Is it just between DNR or CDH. The water quality task force should look at a Department of Water or a Department of Environment.

Rocky Smith: Isn't there a limit on the number of Departments the State can have.

Ken Salazar: You could create a Department of Environment. Health programs could be merged with human services programs. It is appropriate to explore these options. Also Melinda Kassen raised concern with the formal rulemaking process. Are we using an effective

process to get environmental input.

Ann Vickery: Why does the Water Quality Control Commission not recognize tourism and recreation as beneficial uses.

Sue Ellen Harrison: That is what the battle over recreation classifications has been all about.

Ann Vickery: High country streams could not be classified for whole body contact recreation.

Paul Frohardt: The Water Quality Control Commission recently expanded the recreation Class I classification. That led to law suit and proposed legislation.

Sue Ellen Harrison: That is old history now Ann.

Paul Frohardt: Activities where ingestion of water is likely, now provide the basis for the Class I Recreation use classification. That classification has been expanded greatly.

Sue Ellen Harrison: For example, rafting and kayaking are now included within that classification.

Jo Evans: I think it is helpful for the water quality task force to hear how frustrated the environmental community is about Water Quality Control Commission decisions. We want the Commission to be more stringent.

Sue Ellen Harrison: We want your input about these important issues.

Rocky Smith: I will repeat my question. If there are some advantages to moving, they should be clear cut. If the Water Quality Control Division gets moved then perhaps the health functions they are responsible for will require close coordination back with the Department of Health. It seems like we are trading one problem in coordination for another. I do not see an advantage. At best it would seem to be an equal trade-off, although that would be stretching because of all the logistical problems that would be created. If the move does weaken the Water Quality program, and that has been our perception, then that would be another disadvantage.

Hester McNulty: I will second Jo. I have been around the Water Quality Control

Commission for 20 years. They are not radical. We generally want them to go further than they go. However, we cannot afford to be a party to most rulemaking hearings. The Commissioners are courteous when we provide public testimony, but we do not know if we are listened to, really. The Commission is not a wild eyed group. They always err on the side of caution.

Chris Wiant: Is it your opinion that the Water Quality decisions are giving too much emphasis upon water quantity considerations. I am concerned about how to address the question of achieving balance.

Ann Vickery: I am not sure you really have a choice if the issue is whether to degrade a stream below standards. In that case Water Quality will drive water resource decisions.

Rocky Smith: It seems that there is an effort here to make water quality and water quantity separate. In the Clean Water Act, maintaining water quality is not suppose to affect a water right. In Colorado with our pure appropriation doctrine we do not want anything to affect our water resource decisions.

Jo Evans: This issue is addressed in section 104 of the Colorado Water Quality Control Act.

Hester McNulty: When the 1972 Clean Water Act was passed and then later in 1974 when the Colorado Water Quality Act was enacted, it was wonderful. No one knew what it meant. Suddenly it dawned on folks that water quality could affect water rights. SB 181 put water rights in the drivers seat more than environmental protection. It has been very hard since then. Water Resources people have more say in water quality matters. HB 1200 replaces a very bad bill (SB 106). But it is not such a good bill either.

Rocky Smith: The Commission's very formal procedure favors powerful interests. Lawyers and experts dominate the process. We cannot compete. We are shut out except during public testimony. We cannot cross-examine anyone but they can cross-examine us. Water resource people have a built-in advantage.

Hester McNulty: SB 181 has its consultation provisions to insure water quality regulations do not cause material injury to water rights.

Ann Vickery: The connection between water quality and water quantity are very important and should be strengthened. Also Mined Land

Reclamation should have a strong relationship to water quality. If agencies do not work together, that is the real problem. The answer is not moving them together, it is to get them to work together.

Peggy Montano: How do you do that. Is it not a question of who has authority over the divisions?

Hester McNulty: SB 181 gave you authority.

Ann Vickery: The State Engineer's office and Mined Land Reclamation should work together with the Water Quality Control Division. Integration is very important.

Peggy Montano: How do you make them work together? You need authority, an oversight responsibility.

Jo Evans: What I hear is that the focus has been on the impact water quality has upon the exercise of water rights. An equally important concern or corollary is the impact the exercise of water rights has upon water quality.

Bruce Hoagland: I am from Trout Unlimited. I am amazed at what I have heard here. You want to know what is our opinion, but you do not listen. We have said over and over again, we do not want the transfer. If you do not have a good reason to do it, then do not do it.

Larry Simpson: We are not trying to sell you on anything. We want your input. We have had other focus groups to hear what they think about these issues.

Bruce Hoagland: You all have information that we are not in possession of. You have been given notebooks with information that we were not given. Let us debate this issue again after the report is done.

Larry Simpson: You can put your thoughts down in writing which will be part of the written report.

Jo Evans: There is a difference of opinion among the water quality task force members.

Hester McNulty: I think we are dealing with perceived problems versus real problems with respect to the impact of water quality on water rights. It is a shame that we get all this legislation because of

perception problems. Water quality has not interfered with water rights at all.

Peter Boddie: I will argue for more integration. My experience has been that on some water quality matters Water Quality Control Division staff could tap into the expertise of the State Engineer's office particularly, with respect to ground water understanding. The State Engineer's office has information about the movement of ground water, location of ground water resources and how ground water is used. Also, folks in the Division Engineer's office deal daily with observations of how the surface water system and ground water system works. I am a consultant. Water quality and water quantity are equally important to water districts, cities, conservation districts, etc. Water quality is a significant issue. Having the entities (agencies) separate but not working well together is a problem. I do not know about the transfer proposal. But there is a lot of expertise that is not being utilized in both directions.

Rocky Smith: Larry, you mentioned something about providing written comments for the report.

Peter Evans: Comments are due on September 11th.

John Wade: I have no reason to believe it is a great idea to move water quality to water resources. I think it is important for us to see what the inter-relationships between the programs are.

Kent Hanson: What I am hearing is that part of the analysis is to look at the functions and relationships between the various environmental and natural resource programs. Where is the functional analysis? How do you analyze it? Is there a more important relationship between the drinking water program and the Water Quality Control Division or with Mined Land Reclamation. We cannot put politics aside here. This is a political problem. We could wind up with a very schizophrenic agency. An agency with one important function put down in favor of another. In a single Department with responsibilities for both water quantity and water quality one will prevail. If water quality is at DNR water rights will prevail. If water quality remains at the Colorado Department of Health, water quality and environmental protection may prevail. In the current system we have a check and balance. If the program remains at the Department of Health there is a pretty good chance that water quality interests will at last be represented.

Sue Ellen Harrison: We have left out the Division's relationship with EPA. EPA is a big part of the Water quality program.

Hester McNulty: EPA drives the drinking water, water quality, hazardous waste and air quality programs. Having all of these programs in a single department would seem to make more sense.

Jo Evans: EPA also interfaces with DNR.

Rocky Smith: That may be, but certainly EPA has more dealings with the Health Department.

Ann Vickery: I am still concerned about giving adequate consideration to tourism and recreation. The Drinking water program is extremely significant. A bad drinking water situation could do a lot of damage to Colorado's tourism and recreation industry. Also if there is a fish kill, that would be a very serious problem.

John Wade: A bad reputation lasts a very long time.

Dan Luecke: Ann, is your concern related to where water quality is located. Why is the location of the drinking water program a factor?

Ann Vickery: If the tourist gets giardia from a small town water system, he does not come back to Colorado.

Larry Simpson: Does the Division do the drinking water program or does it oversee local health departments doing the drinking water program.

David Holm: The drinking water program is administered by the Water Quality Control Division. Local health agencies are involved in certain circumstances (e.g., insuring establishments with food service licenses are in compliance with drinking water regulations). My concern about splitting drinking water off from the Water Quality Control Division is a very practical one. Drinking water treatment and wastewater treatment processes are largely the same. Many of the same unit processes are involved in treating drinking water and wastewater. We are responsible for reviewing plans and specifications and doing inspections on both kinds of facilities. Not only are the same kinds of people required to do the inspections and plans and specs review, but in fact, it is the very same individuals that do both kinds of work within the Division. In order to efficiently use our staff, we schedule wastewater inspections and drinking water inspections to be done at the same time by the same individual. If the drinking water program is split off from the Division our cost per unit inspection would increase dramatically and we would have fewer staff to do the work.

Jo Evans: If the drinking water program stayed behind you would have to duplicate engineers at the Health Department?

David Holm: Yes, or there would have to be some other kind of staff sharing arrangement made.

Larry Simpson: Is there not a logistical problem in that the Board of Health is the rulemaking authority for the drinking water program.

David Holm: Yes. The Board of Health makes the rules for the drinking program.

Peter Boddie: Ken, what kind of authority would you have over the Water Quality Control Commission?

Ken Salazar: It would be analogous to my relationship to the Wildlife Commission. The Commission has rulemaking and policy-making authority. I have authority with respect to the budget, personnel matters and purchasing. I would have the same kind of authority over the Water Quality Control Commission.

Kent Hanson: How would transferring the Commission enable you to insure integration if you are not setting policy.

Ken Salazar: I can get them together if they are in my department.

Kent Hanson: Do you have a better ability to do integration with two different policy boards (i.e. Water Conservation Board and Water Quality Control Commission) than in the present situation.

Ken Salazar: If I had the Water Quality program we would have team effort between different agencies. I could get whoever is the water quality director to work closely with the State Engineer and water conservation board director - we'd have a team.

Rocky Smith: I still do not see how you are gaining better control over policy making?

Peter Evans: By putting it all under one administrative head.

Hester McNulty: The water quality program is working under the federal act. There is really very little flexibility in how the programs are carried out. It is more of a regulatory environment at the Colorado Department of Health with EPA providing strong oversight than there is at DNR. EPA is a player in what we do and what we do not do. There is strong federal oversight.

Kent Hanson: This idea of coordination is a warm and fuzzy concept, like family values. On a day to day level I am missing how this really works. How does it cut costs and make a more efficient program?

Ken Salazar: I have a 150 water commissioners. If we want a good data base they could get information into the process. That is a big force which could be very helpful to the water quality program.

Hester McNulty: Why is not data coordinated now?

Ken Salazar: The Water Conservation Board has not done much on water quality yet.

David Holm: No one has an adequate budget to deal with enhancing the water quality data base. 90% of the cost of water quality data is in laboratory analysis. 10% is in the acquisition. We have no short fall in the area of human resources available to collect data. There just is not an adequate budget to pay for the analysis of samples in the laboratory. I would also like to respond to the question of whether data is being shared between DNR and Water Quality Control Division. To my knowledge there is no data at the State Engineer's office or other DNR divisions that is not being used by the Water Quality Control Division and Commission presently.

Larry Simpson: The Northern Conservancy District is currently spending $140,00 to collect water quality data. We are in the business of providing good quality water. We are not the anti-environmentalists that some of you think we are.

Hester McNulty: Larry, do you give your data to the Water Quality Control Commission.

Larry Simpson: They have never asked for it.

Hester McNulty: Why do we not get all of the data together, no matter who collects it. These questions about the lack of integration could be solved by a requirement to talk together and to share information.

Peter Boddie: Regardless of whether a transfer is done it should be the mission of the state to integrate water quality with the other water resource programs. It makes since to me to put water quality into DNR. Drinking water ought to go with the water quality program.

Steve Horn: Not all of the barriers that we are concerned about are institutional. Some are political.

Peter Boddie: Unless the legislature says that people need to integrate, it will not occur.

Larry Simpson: The water users would be very concerned about the creation of a Department of Environmental Quality. They would fear that the enviros will wreak their will on them. Many of the concerns you all have stated we have heard elsewhere.

Peter Boddie: The Water Quality Control Commission hearings need to be changed. There is too much grand-standing by attorneys. On one case I was not even able to present my testimony until 11:00 at night because of all the cross examination games the attorneys were playing.

Kent Hanson: I would like to say with respect to CERCLA that there was very good integration between environmental programs at the Department of Health. But not at the Department of Natural Resources except for the Division of Wildlife. Water quality is best housed at the Colorado Department of Health. We have already heard that the Water Conservation Board is not even using the data it has about potential water quality impacts on water resource development.

Larry Simpson: Data is not the issue. The issue is that the Water Quality Control Commission is now creating regulations without adequate recognition of the impacts on the state's ability to use its water. This concern has arisen during the wetlands hearing and hydro-modification where we are seeing ideas like dilution is the solution to pollution beginning to take hold.

Hester McNulty: Larry your perception is that the Commission does not understand these issues. For example on hydro-modification there was tremendous debate. Water users were not willing to do anything. Just because you disagree, that does not mean that the Commissioners are dumb.

Kent Hanson: If that is the case, that we are dealing with fundamental policy differences, moving the Water Quality Control Commission will not solve the issue. That is, unless your intention is to push the conflict down to avoid a public policy debate on these issues.

Hester McNulty: Keep in mind that EPA forces the water quality program. The Water Quality Control program is fundamentally about environmental protection.

Dan Luecke: Ann, you said you did not like the choice between moving the

program to DNR or leaving at Health. Is there a middle ground? For example, could we bring the State Engineer or the executive director of the Department of Natural Resources over to serve on the Water Quality Control Commission. Do you see those as options to consider?

Ann Vickery: One clear option should be the creation of a central data bank. Also, I would like to see the matrices of relationships between the environmental programs and Natural Resources programs that Dave Holm mentioned are in the Task Force notebooks.

Dan Luecke: We have heard the Water Quality Control Commission process is very expensive to participate in. If the procedures were changed, would you be a party or not? Would the public be better served?

Hester McNulty: I was a party to a hearing once. There were 42 parties involved in the hearing. Then the hearing was canceled. It is so expensive to participate. Lawyers are even saying this is costing too much.

Larry Simpson: This process prohibits smaller people like farmers, from getting involved. They will not testify if lawyers including Melinda Kassen are chewing on them. Lawyers are on both sides of these issues. Private citizens are cut out.

Dan Luecke: With respect to the use of a citizen board, rather than one responsible administrator or rulemaker do you see any options. Would an administrator who is an expert in Water Quality matters be a better answer than the current Water Quality Control Commission?

Rocky Smith: If that vests all the power in one person and he is not an expert, I do not think it would really be an improvement.

Dan Luecke: But he would be an expert. If you are paid and not beholden to any special interests, maybe the state could do something new for a change - like follow the law.

Ann Vickery: Yes the administrator concept might be a good idea if we could get somebody who was right thinking!

FOCUS GROUP MEETING - AGRICULTURE
September 1, 1992

NAME	ORGANIZATION
Holm, Dave	WQCD
Wiant, Chris	Tri-Co. Health
Luecke, Dan	EDF
Brown, Reaves	WQCTF
Bennett, Chuck	Coors
Harrison, Sue Ellen	WQCC
Simpson, Larry	WQCTF
Nolan, Pat	CDH
Horn, Steve	Dept. of Agriculture
Kraus, Julie	State Engineer Office
Herney, Marcie	Colo. Wool Growers
Cline, Ken	Colo. Agriculture Assn
Evans, Peter	Dept of Nat. Resources
McLavey, Bob	Dept of Agriculture
Smedley, Hal	Colo. Corn Growers
Rice, Buford	Colo. Farm Bureau
Hanavan, Darrell	Colo. Wheat Admin.
Anderson, Brad	Colo. Cattle Feeders
Goldstein, Seth	WQCD
Jenkinson, Tom	Western Dairy Farmers
O'Hare, Bill	Colo. Pork Producers
Smith, Michael	Colo. Cattle Feeders
Rock, John	Dairymen
Gurley, Michael	Grant McHendrie
Thompson, Bill	Rocky Mt Farmers Union
Christensen, Ray	Colo Farm Bureau

AGRICULTURAL FOCUS GROUP ON HOUSE BILL 1200 STUDY
CONCERNING ORGANIZATIONAL PLACEMENT OF WATER QUALITY PROGRAMS

8:00 a.m., 700 Kipling Street, September 1, 1992

David Holm: Introduction of the House Bill 1200 study process and the activities of the water quality task force prior to today's meeting.

Larry Simpson: We want to encourage your participation in this meeting. There has been a concern expressed that water quality regulation is being conducted without concern for the interests of water users.

Sue Ellen Harrison: I will echo that. We want to know how the present structure has served or not served you, the agricultural community. We have listened to others talk about alternative organizational structures such as a department of environmental quality or a transfer of water quality programs to DNR. Some think that the status quo is preferred.

Steve Horn: I would also like to echo that. Other discussions have revolved around integration more than a particular organizational change. How do we maintain the most effective water quality program? How does integration occur most effectively? Do not just concentrate on where water quality programs should be located (i.e. Department of Natural Resources or a new department of environmental quality). Let us concentrate on how water quality programs are important to agriculture and your specific concerns.

Ray Christensen: Some of the issues you are outlining have been discussed in the water quality forum. The water quality forum participants were concerned about the Water Quality Control Commission process. For example, to file for party status any time there is a hearing is complex. You have to hire a lawyer and an engineer to get involved. Every rulemaking requires party status to get the information. It scares people off. The procedures are complex and technical. It has been said that the Water Quality Control Commission should be more technical, but that takes away from the citizen commission concept. Right now it takes a great deal of resources to become involved.

Reeves Brown: That is the first time that we have heard that!

Steve Horn: We have heard that complaint in every focus group session.

Pat Nolan: We have even heard that concern from lawyers.

Ray Christensen: I thought that they liked it!

Reeves Brown: This meeting lets us get at specific agricultural concerns. The option of having an administrator instead of the Water Quality Control Commission has been put forward. There has been a lot of concern with the hearing process. The environmentalists thought that the farm bureau has too much clout.

Steve Horn: There has been some criticism of the Governor's appointments of Water Quality Control Commissioners. It has been alleged that the Water Quality Control Commission loses sight of what it is supposed to be doing which is to protect water quality and water resources of this state. The Water Quality Control Commission can become politicized and then yield to special interests that it represents. Therefore, some feel that going to an administrator style of rulemaking versus the Water Quality Control Commission is the road to take.

Sue Ellen Harrison: Another model would be based on the public utilities council arrangement. There you have three full-time paid commissioners. In the environmental area, those commissioners might address rulemaking for water, waste, and air.

Steve Horn: The state land board follows that model essentially. They have three full-time paid commissioners.

Pat Nolan: It is cheaper the way we have it. We get volunteers full-time!

Steve Horn: In agriculture we use the Administrative Procedures Act. We get input from the regulated community. We go for consensus and then hold a hearing. After the hearing, we issue the regulation in somewhat a dictatorial fashion. It works here. Of course, we affect a smaller segment of society.

Ray Christensen: There is fear every time something comes down under the Clean Water Act that it will lead to more regulation of agriculture. There is some sentiment that now it is agriculture's turn to be regulated since they have been exempt for so many years. We have the example of Senate Bill 126 (ground water protection act), it is a voluntary program, but if it does not work the Water Quality Control Commission can step in with regulatory requirements. The agricultural community needs more input into potential regulations.

Sue Ellen Harrison: You are right. There will be more regulation of agriculture. Clearly,federal environmental legislation is headed in that direction. It is unclear in Colorado, where there is confusion about how various programs mesh together, how that will all come about.

Michael Gurley: I will echo Ray's concern about getting more input to the Commission. On the feedlot regulation, we went through 25 drafts. A lot of that time was spent in educating the participants in the task force meetings. It is to Dave Holm's credit that he stuck with it for that long of a period. The feedlot regulations went from one page to twenty-five pages. That is going to far at once. We need to get more input on alternatives earlier in the process. The more planning there is ahead of the regulatory process, the better.

Sue Ellen Harrison: I felt that that was one of the better processes in my experience. The testimony was great. There were a lot of representatives of agriculture, who provided very helpful information to the Water Quality Control Commission. It is very frustrating to have hearings where there are very few representatives of the interests that will be impacted by the regulation. The feedlot regulation was not that way.

Brad Anderson: The fact that the Water Quality Control Commission asked for a task force on the feedlot regulation was very good. My frustration was that the Water Quality Control Commission treated other parties who were outside of the task force process, as an equal when the actual rulemaking hearing was held. It did not seem right that while the task force members spent a year developing the regulation, that others who came in much later, were treated equally in the process. I would hate to see the Water Quality Control Commission dissolved into a single autocratic rulemaker (i.e. administrator). You get insights from a group of people, like are on the Commission, that you would not get from a single individual. Having people with different backgrounds, brings a lot to the Commission process.

Sue Ellen Harrison: There are two seats on the Water Quality Control Commission now open.

Reeves Brown: What seats are they?

Sue Ellen Harrison: One of the seats is traditionally been filled by someone from the western slope, and the other one has traditionally been filed by an environmental representative.

Reeves Brown: By using a task force process, it is possible to receive input on the economic impacts of a proposed regulation.

Sue Ellen Harrison: The Division does hold task force processes, where significant rulemaking hearings are scheduled. The limiting factor is the level of the Division resources. The feedlots rulemaking hearing got a lot of attention because of the major change. We have several task force processes going on right now.

David Holm: It is definitely a direction we are going (i.e. to have informal task force proceedings prior to a rulemaking hearing). It is a question of pay me now or pay me later (with respect to the division's commitment of resources).

Chuck Bennett: What kind of composition on the Water Quality Control Commission are you looking for?

Michael Gurley: It is important to have a balanced Commission. If it is loaded one way or the other, it is a problem. I am not sure the Water Quality Control Commission understood the task force process on the feedlot regulation. It was like starting over when we got to the rulemaking hearing. We were just one party among many. It was an adversarial process at that point. It was hard to communicate with the Commission. One had to communicate formally through lawyers. The Water Quality Control Commission needs real people to give input, not an adversarial process.

Sue Ellen Harrison: I have been involved in Commission matters since 1975. This system developed because things got so crazy. Hearings went on for days into the night. One hearing lasted five days. The process became unacceptable to everyone, including Commissioners. On the fifth day, I was convinced that no one was retaining anything in that hearing. Now the system is too structured. We need to find a new middle ground. We cannot go back to the way it was a long time ago.

Steve Horn: Do we need statutory changes in the structure of the Water Quality Control Commission? Do we need that kind of change to ensure all of the affected group's interests are balanced on the Commission?

Michael Gurley: I have not studied the law as it pertains to the Water Quality Control Commission. Maybe some unwritten rules need to exist to ensure that we get the proper balance. My experience is that the Commission has been open, and I do not recognize any biases on the Commission. It helped in the feedlot process having a

couple of Water Quality Control Commissioners who understood agriculture. Balance is the key.

Ray Christensen: As long as agriculture has an equal voice at the table along with other industries, that is what we care about.

Steve Horn: But agriculture is only two percent of the economy!

Ray Christensen: But that two percent owns 80% of the water.

Larry Simpson: Would anything preclude the Water Quality Control Commission from meeting with the task force prior to a hearing? That was the problem, I felt we got into on ground water and hydromodification. We had an excellent task force process, but there was a disconnect at the time of the hearing.

Bill O'Hare: It seemed that agriculture sort of got slapped when we got to free-wheeling during the feedlot hearing. The AG put a stop to it.

Sue Ellen Harrison: That was during deliberations. Once the Commission decides to close the record, there can be no more dialogue with the parties. If it were allowed, the decision the Commission came to would not be based on the record and therefore the decision could be overturned. The Commission has been in court a number of times in the past, but not much lately. Informal input needs to happen before the hearing begins.

Bill O'Hare: Could it happen if it is an open meeting?

Sue Ellen Harrison: Yes. There is no problem to have that kind of meeting. It is easy to notice them. However, keep in mind agriculture has two representatives on the Commission. One lives in Grand Junction and one in Monte Vista. Informal meetings take a great deal of time. We may need to look at the structure of the Commission. Do you want nine Commissioners being paid $1200.00 per year? I am very near the breaking point right now given my family and work responsibilities.

Bill O'Hare: I hear you. I would hate to see the structure change though.

Larry Simpson: Wouldn't it cut down on formal rulemaking if we had a longer more thorough informal process?

Chris Wiant: We seem to be taking about negotiated rulemaking here. Maybe there is a middle ground, where we could have an informal process involving a task force, and the result of that process would get more weight when

the formal rulemaking begins. It maybe be possible to streamline the process, but still keep the advantages of having a citizen commission make the final decisions.

Buford Rice: I do not know a great deal about the Water Quality Control Commission process. We discussed this issue, about the transfer at the Farm Bureau's State Board of Director's meeting last week. We also considered whether we would want a czar of rulemaking (i.e., adminstrator). I would like to respond to the assumption Sue Ellen made, that agriculture would be more regulated in the future. David Holm made the same kind of statement, a week or so ago, in Gunnison. Just because Congress and environmentalists are talking about more regulation of agriculture, does not make it a fact. We need to get to what is really going our on, out there, on the ground. Now, on the matter of the transfer. It was not an easy discussion. We felt that the same thing could happen, as exists now, after a transfer. All of the water would be under one department. Also, the idea of an environmental department, is repugnant. We have enough government without creating any more. We are not sure that the system is broken. We have talked about a number of issues today, where we have identified some areas of refinement. The Water Quality Control Commission deals with public health issues. There is some expertise in that department to deal with such issues and there is a rationale to keep water quality where it is. Where the Water Quality Control Commission takes action and consults with agencies in the Department of Natural Resources, and nothing happens, we need to shake up the Water Quality Control Commission or the DNR. We have to make sure that we get the input from DNR, so that people with concerns about water rights will be represented. Agriculture is important even if we hear about two percent of the economy being agriculture. Thousands in this state have water rights, and we have to be careful of whatever impacts them and that asset. I am trying to say that we need refinement. Let us not reinvent the wheel. I do not think that we need a total shake-up of the system.

Steve Horn: Buford, I think you are right on target. But how do we refine the process? How do we ensure the Water Conservation Board and the State Engineer's Office are responsive and cooperate on these matters?

Buford Rice: Well, we might be able to have members serving on different commissions. Sort of a watch dog system.

Larry Simpson: At one point there were voting representatives on the Water Quality Control Commission. Some thought the Governor was stacking votes on the Water Quality Control Commission. Maybe it should be ad hoc, like the Water Conservation Board.

Buford Rice: I don't think that they need to be voting members. There ought to be some way to get comments from water resource agencies to the Commission. Anyone who would not come or participate because they do not get to vote, ought to be really talked to. Maybe attendance needs to be part of the job description.

Peter Evans: The Water Conservation Board model, passed in last year's legislative session, had some guidelines in addition to geographic representation requirements. The guidelines addressed the kinds of experience or expertise conservation board members should have. For example, water project engineering and financing, water law, irrigated or agricultural production. Those kind of guidelines might ensure appropriate commissioners are appointed.

Buford Rice: You have so many factions, you cannot get all of the interests represented on a board.

Peter Evans: There was no change in the number of the Water Conservation Board members.

Ray Christensen: That came about even though the Governor was very reluctant to sign the bill. The Governor feels that specifying positions ties his hands. I will go back to my psition of insisting on equal representation on the commission. When agriculture was not represented (even though Shirley Ela has some connection with agriculture), Senate Bill 106 was introduced to provide specific agricultural representation. But that bill was killed. The legislative route is available if we try to work with the Governor to get who we want and that does not work. Then we could try to get the positions on the Commission mandated.

Buford Rice: Another significant concern, is that there is not significant consideration of the economic impact of regulations. In water quality, if we could get the Water Quality Control Commission to pay more attention to cost factors without relying on industry to provide that information in an adversarial process, it would be much better. There is a lack of that consideration in many rulemaking areas. But if it is fair to regulate, it ought to be fair to say what the cost of such regulation will be. We all want to protect the environment, but we have to be very conscious of the cost considerations. Some real focus in that area is needed.

Steve Horn: Are you getting to the notion of a fiscal impact statement along with the regulation?

Buford Rice: Right now the burden is on the agricultural producer to supply that information. He likely did not make the rulemaking proposal.

Peter Evans: Doesn't the APA require all regulations to go to the Attorney General for constitutional and statutory consistency, then to a legislative review committee and to a regulatory reform committee and even a small business review committee?

Buford Rice: That is not the problem. We need to be looking at costs ahead of the rulemaking proposal.

Sue Ellen Harrison: We do not get good cost information. The Division cannot get good information about economic impacts either. I am baffled that people come forward and say that this will cost us a lot of money with no specifics. You have to do a better job of presenting the cost implications.

Ray Christensen: It is not pursued by the Division. In the feedlots regulation, a statement was made that there was no significant cost impact. I was flabbergasted.

Sue Ellen Harrison: Economics is not an issue for certain issues the Commission deals with. For example, stream classifications. If the use is there, then we must classify it. There are some other things we do, where alternatives could be discussed based on economic factors.

Brad Anderson: Buford said the burden is on the producers. If so, then that is a role for the task force to play. It is difficult to be on the spot in a rulemaking hearing, and offer dependable answers on costs, off the cuff.

Buford Rice: Thank you very much for having this process and letting us let off some steam. I think that it has been very constructive.

Bill O'Hare: I would like to follow-up on what Buford said. Let's take a common sense approach here. I recently had several Department of Agriculture regulators show up and do an inspection under the Chemigation rule. I had County Health inspectors show up to find that I had 12 people on a well. They said it is a public water system, and asked "where is your license." A state health department inspector asked how many employees I had and how many wells are being used to supply them water. They told me I had another public water system and that I need to chlorinate 1.6 million gallons of water a day or supply bottled water. Now I have to add chlorine to all that water and then land apply it. Is that an environmentally sound thing to do. Meanwhile we have tested all of our waters and it has been shown to be okay with respect to bacteria. I have a problem with regulations that impact agricultural operations if you are doing a good job. We are monitoring the situation. Why do we

need additional regulation?

Steve Horn: Maybe what we need is a one-stop shop for pig farmers to get information on permitting requirements.

Chuck Bennett: It is not just pig farms, it is big industries like Coors as well, that are confused.

Pat Nolan: We are working on an information center where people can pick up packets with all the regulatory requirements in them. We are not working to let people know what permitting requirements apply across departments, though. It is very tough to do it even within the Department of Health.

Pete Evans: The Department of Natural Resources, for years, maintained a permit directory although a lot of people have not taken advantage of it and it has not been updated in a number of years.

John Rock: I believe our concerns (as dairy farmers) have been covered. As dairy farmers our feedlot runoff is under the control of the Water Quality Control Division and Commission. We do not recommend any change in the existing organizational structure. Of course, there is room for improvement with the Commission. The important things is for the Water Quality Control Commission to listen to the Agricultural community as things are coming down the road in the future.

Michael Gurley: It is very important for us to have input into the Commission process. Hopefully the procedures can be simplified. The cattle feeders asked me to do a manual on regulatory compliance. It is very tough to find out what applies to a given operation. Lawyers cannot figure it out. You need a one stop point in each agency where those regulatory requirements can be made known to an individual looking for information.

Brad Anderson: I would also like to follow up on what Michael said. It is one thing to figure out what regulations apply, but it is also the case that some regulations conflict with others. One incident that I have become aware of recently, involved a feed lot operator who had continuous flow waterers, which discharge to his wastewater retention lagoon. We have an individual who cannot irrigate with that water because it is classified commercial instead of agricultural water. The State Engineer recently issued a cease and desist to stop him from land applying that water, when in fact that is what the feed lot regulations intend for him to do with it.

Pat Nolan: We share in the frustration that relates to conflicting regulatory

provisions.

Reeves Brown: Is there a review process that goes on with respect to new regulations and how they relate to other regulations?

Larry Simpson: For this particular situation, we have certain kinds of water that an individual has no right to use the return flow. Years ago with the National Environmental Policy Act, we had a process to look comprehensibly at the impact associated with a project. Now what we need is a regulatory impact statement. Before we regulate we need to know that there is a problem. We need to know what are the impacts associated with regulation rather than a knee jerk reaction to use regulations to solve every problem.

Pat Nolan: I disagree to some extent. The whole point of the Water Quality Control Commission is to bring these issues into the process.

Larry Simpson: How do we get that kind of information to the regulated community. I believe the regulatory agencies have some burden to develop full information and knowledge about the impacts of regulation before a proposal is made.

Pat Nolan: The legislature does not give us resources to do that. Perhaps we need to simplify the process.

Larry Simpson: If the Division had to do a regulatory impact statement before every rulemaking, maybe they would get more information and find out there really is no problem that needs regulation.

Pat Nolan: The problem with the regulatory analysis is that if it is done early in the progress the regulation could change and render the impact statement out of date.

Chris Wiant: I find that people do not get involved early in these rulemaking efforts. If you try to get too much early involvement by advancing the process, you end up having a duplicate process. If the government agency would sit down with industry very early and say we think there is a problem, can you work with us to see how we can solve it together, industry might develop a voluntary process which addresses the problem. That could have the result of delaying the need for regulation. Of course, sometimes there are legal requirements that do not allow a non-regulatory approach to happen.

Steve Horn: We have taken that approach with respect with SB 126. The approach was to go with a voluntary BMP program which relies on information and education descimination with a procedure to assess and evaluate our

progress. If the voluntary program does not work we can mandate best-management practices.

Chris Wiant: We need to inform the Federal government about how the Health Department is affected by federal policies and regulations. We have got to work back through the system. It is not enough to just address the problem on a state and local level. SB 126 was a preemptive strike which was aimed at preventing federal regulation of agricultural chemicals.

Steve Horn: We need to get written comments from the agricultural community on this study by September 11, 1992.

Bill Thompson: Besides the regulatory impact analysis I think we in the agriculture community are very concerned about the flow of communication. We look to the Department of Agriculture to keep us informed about what is going on. How do we get information about water quality matters.

Steve Horn: There is no process.

Michael Gurley: We look to you.

Pat Nolan: We do not have any way to decide interagency policy issues. It is a very informal process at any rate.

Bill Thompson: I am not so concerned about a transfer of Water Quality programs. We need to determine how the Department of Agriculture can be involved in the flow of communication about water quality matters.

Pat Nolan: A good example of a problem of communication with agriculture was the setting up of this task force group. Ag was not included except as an after thought.

Steve Horn: Agriculture is tremendously impacted by water quality issues. We have important water quality programs.

Larry Simpson: It was assumed that I represent agriculture. However, I have other interests that I represent. Reeves Brown brought that out at the last task force meeting.

Reeves Brown: Are there any procedures in place that get at this idea of a regulatory impact analysis.

David Holm: There is a provision under the administrative procedures act that allows any party to a rulemaking hearing request a regulatory analysis to be done. The timing of that is that the rulemaking agency has to provide a copy of the regulatory analysis five days before the formal hearing. There are trade offs in this timing. If the regulatory analysis is done too early, the rulemaking proposal may change as a result of the testimony of the parties or the rebuttal statements. If it is done too late, there may not be an opportunity for parties to the rulemaking to consider the results of the regulatory analysis prior to their participation in the hearing.

Reeves Brown: I am not so sure we are talking about an analysis of the regulation but rather a problem analysis to see whether or not there is a need for a regulation. I am thinking more along the lines that Chris Wiant was thinking in his earlier comments.

Chris Wiant: I am not completely sure how the Commission's regulatory agenda gets shaped.

Larry Simpson: One perception is that the Commission's proposals come down as edicts from EPA, I am not sure EPA has the authority in all cases. Sometimes they are pursuing an issue that does not even relate to Colorado. For example, on hydromodification and, ground water, we have gotten ahead of the game with respect to real regulatory requirements. Sometimes we have regulatory proposals to solve non-existing problems.

Buford Rice: Will we get the report from this committee to look at prior to it becoming final.

Steve Horn: There will be an opportunity for public involvement prior to the final report.

Michael Gurley: This kind of discussion is very useful. I am particularly interested in finding ways to simply the information flow to the Commission. For example, the feedlots task force did not get to deal with the economic impacts associated with the regulation. After the regulation had been negotiated we needed time to think about the economic impacts of it so that information could have been provided to the Commission in an informal manner.

Larry Simpson: The requirements in HB 1200 to study the transfer is really evidence that there is a problem with the system. There is a message being sent. We need to keep focused on the fact that there is a problem rather than specifically whether to relocate the Water Quality Control Division to DNR.

APPENDIX B

WRITTEN FOLLOW-UP STATEMENTS FROM FOCUS GROUPS

COLORADO CATTLEMEN'S ASSOCIATION

8833 RALSTON ROAD / ARVADA, COLORADO 80002 / TELEPHONE (303) 431-6422

September 2, 1992

Steve Horn, Commissioner
Colorado Department of Agriculture
700 Kipling Street, Suite 4000
Lakewood, CO 80215-5894

Dear Steve:

Thank you again for arranging for the Water Quality Task Force to meet with the agriculture community this week. I was very pleased at the excellent turnout which we had and the comments which we received. I think this high level of response is moot testimony to the importance of the water quality issue to agriculture.

I'm not sure who should draft any written comments for agriculture to formally submit to the Task Force, however, as Ag Council chairman I thought I would summarize some of the input which we received so it's at least on the record.

1) Current rulemaking process is complex.

The current system of granting party status and then proceeding through a formal rulemaking process is too complex and costly (both financially and time-wise) for the common man. As a result, most of the testimony submitted in the process comes from hired guns (attorneys) rather than affected users. The Water Quality Control Commission (WQCC) needs to simplify this process to encourage more 'grassroots' participation.

2) Appointing a 'Task Force' to review specific issues is a good idea.

Whenever possible, the WQCC should appoint a Task Force of affected interests to review specific issues and make recommendations to the Commission PRIOR to any general public input. This process worked extremely well and had broad support from the various interests during the recent discussions on feedlot water quality.

However, the Commission should take into account the efforts of the Task Force and place more emphasis on their recommendations. The Task Force's input oftentimes represents a unified approach to arrive at delicate and necessary compromises; this input should therefore not

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be considered as only equal to all other general public input which may be based on nothing more than speculative opinion. The Task Force should be invited to share their findings with the Commission prior to soliciting any public input so that the members of the Commission can understand and appreciate the thought process which the Task Force went through in arriving at their recommendation.

These multiple-interest Task Forces should be created as soon as a specific and potentially controversial problem is identified by the Commission, BEFORE the rulemaking process begins and BEFORE any additional regulations are considered. The Task Force's charge should first be to review the identified problem and answer the following questions:

a. Is there a problem? If so, what is it specifically?
b. Who is affected by this problem? Are all of these interests involved in this particular Task Force?
c. What are the potential voluntary, administrative and regulatory options for solving this problem?
d. What are the economic and social impacts of the possible options? Which option does the Task Force recommend be implemented?
e. Does the Task Force's recommendation solve the original problem? Does the recommendation create any additional problems or unintended consequences?

The Task Force's objective, then, is to attempt to avoid additional regulatory burdens rather than "review" proposed regulations.

3) <u>A public commission is more appropriate than a sole administrator.</u>

Through the existing commission structure, there is a better opportunity for all interests to be fairly represented. Replacing this structure with a sole administrator could increase the possibility that water quality rules and regs could be driven by a personal agenda.

4) <u>The Commission needs to have balanced representation.</u>

The various members of the Commission should represent the many diverse interests affected by water quality decisions. The agriculture community is NOT looking for an advantage, but we would like to have representation on the Commission equal to that of other

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interest groups. While agriculture represents a distinct minority among the Colorado populace, it also controls nearly 90% of the water in question. Perhaps the appointments to the Commission should have more definitive selection criteria similar to the Colorado Water Conservation Board -- appointees would have to have some level of experience in water quality management, and specific interests should have at least minimal representation.

5) The WQCC and the CWCB should share representation.
In order to facilitate communication between the WQCC and the CWCB, a representative of each of these bodies should be a member of the other one, either as voting or ex-officio.

6) The WQCC should resolve economic impact question before any decision.
The Commission should refuse to adopt any regulations or issue any decisions without first having a firm grasp on the potential economic impact of such decisions. The appointment of a Task Force could help to accomplish this, and at a very minimum, all potentially affected interests should be invited to comment on the Commission's projected impact analysis prior to the issuance of such decisions.

7) Role of the Commission in regards to federal water policy.
Oftentimes, the Commission seems to feel compelled to adopt new regulations whenever a new water quality mandate is issued by the federal government. Certainly, Colorado needs to comply with federal law. However, the ag community feels very strongly that each of the federal mandates should be carefully considered as to how they will uniquely affect Colorado, and a compliance strategy should be developed around those unique circumstances. We don't think that a minimum standard from EPA, for example, should be immediately translated into the need for additional regulations on Colorado's many water users.

An additional concern which was voiced by the agriculture community, but one that doesn't necessarily involve the Commission structure or function, is the frustration which individual ag producers have with not

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knowing all of the permit requirements which they are subject to. The Commission should consider possible ways of simplifying the current permit maze so that producers can more easily find out (in one location) which permits they must obtain for a specific project.

Steve, I would appreciate it if you could consolidate these comments with any others which you might receive as part of the agriculture community's response to the Water Quality Task Force.

Sincerely,

Reeves Brown
CCA Executive Vice President

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September 9,1992

Water Quality Review Task Force
Office of the Governor
136 State Capitol
Denver, Colorado 80203

RE: Water Quality Regulation and Administration

In reference to our "focus" meeting with the Task Force on September 1,1992, I would like to confirm my comments and elaborate on them a bit.

In addition to the flow of regulatory procedures and rules, I believe it is important for the Task Force to consider the flow of communication regarding these matters. In order to involve those who are to be subject to new or improved regulations in the development and ruling process, early notification needs to be part of the system. As was pointed out in the focus meeting, early notification is key to the fairness and completeness of the hearing process.

The example I would point to was well brought out in the focus meeting by the cattle feeders. In order to establish an economic cost associated with new regulations, economists and business persons need time to do surveys, compile facts and analysis, and complete investigations. Most economic studies or surveys will take considerable time to develop and refine. If the burden of investigation of economic impacts is to rest on the industry to be affected, then this "lead" time must be built into the framework of the development of regulations.

In the case of agriculture, this notification should proceed to the affected groups from the Department of Agriculture. Therefore, we feel that the Department of Agriculture must be included in the network of communications at a very primary level.

The Department of Agriculture should be involved for a number of reasons. Traditionally, the DOA has been the regulatory agency for agriculture. Farmers, ranchers and agri-businesses have developed a comfort level with regulation by the DOA. DOA should continue to administer regulations affecting agriculture.

In addition, the DOA knows the constituencies involved in agriculture. Agriculture in Colorado is not monolithic--there is a wide diversity among producer groups, commodity organizations, general farm organizations, and others involved in agricultural production and sales. DOA is best positioned to know and understand these constituencies. With this base, DOA can serve as a sounding board to agencies regarding the potential impacts of regulatory changes.

Farmers and ranchers and agri-businesses have established a working relationship with DOA over the years, and DOA has established a position of credibility with the ag community. These groups may be apprehensive about dealing with state agencies with which they are not as familiar, and that have not established this working relationship with them. Therefore, DOA can serve as an interface between other regulatory agencies and the ag community.

As long as the Department of Agriculture is kept "in the loop" regarding potential changes in water quality regulation and administration, agricultural organizations like Farmers Union will feel comfortable participating in the process. We may see regulatory changes proposed that we consider objectionable, but if we know well in advance, we can prepare our case. Win or lose, we have had our chance to participate in the process. It is when regulatory changes are made without our foreknowledge and without fair opportunity to react and participate in the debate, that we cry "foul".

The importance of good communication and flow of information cannot be overlooked or taken for granted.

Thank you for your consideration.

Sincerely,

Bill Thompson

Bill Thompson
Assistant to the President

cc: Steven W. Horn, Commissioner, Department of Agriculture

THE COLORADO ENVIRONMENTAL CAUCUS

1405 Arapahoe Avenue, Boulder, Colorado 80302
(303) 440-4901

September 9, 1992

Mr. David Holm
Water Quality Task Force
Colorado Department of Health
4210 E. 11th Avenue
Denver, CO 80220

Dear Mr. Holm:

The Colorado Environmental Caucus wishes to thank you and the Water Quality Task Force for listening to the environmental community's concerns over the possible transfer of the Water Quality Control Division (and Commission) from the Colorado Department of Health (CDH) to the Department of Natural Resources (DNR). By means of this letter, we wish to summarize the concerns we expressed at the meeting on August 27.

HB 1200 requires the task force to make recommendations regarding how best to maintain an effective water quality control program in Colorado, how best to integrate water quality control with water quantity considerations, and with public health, environmental protection and natural resource programs and how best to utilize available state resources to promote the protection of water rights and the state's waters' quality. As a practical matter, however, most members of the Caucus understood the thrust of the Task Force's inquiry to be whether the Division should be moved from the Department of Health to the Department of Natural Resources as a way to reach the goals of the statute.

The Caucus feels that considerable logistical complications are likely to be incurred if the transfer is implemented. There must be a clear benefit to state government's administration of water quality and natural resources and/or other benefits. Otherwise, it is clearly not worth the trouble to effect the transfer. In other words, if it is not badly broken, do not attempt a major fix.

There could be some benefit from having water quality and water rights administered by the same department. In fact, the Caucus is aware that states with high levels of integration of water quality and water quantity administration (often with other environmental programs) have interested parties expressing less dissatisfaction with their systems. And, the Caucus agrees that effective integration is necessary. None-the-less, the Caucus does not favor achieving this integration in the State of Colorado by moving the Division to DNR.

The Caucus urges the Task Force to reject moving the Division to DNR for several reasons. Chief among them is that some parts of the Division's water quality administration, especially drinking water, belong in the Department of Health. For every situation where the Division is enforcing a water quality

regulation that affects the exercise of a water right, there is a situation where the Division is enforcing a water quality regulation that may implicate enforcement of regulations governing hazardous waste or that may affect work being done by the Department of health's epidemiology or laboratory divisions. Any problems with departments not communicating well with each other would thus not be helped by transferring the Water Quality Control Division (WQCD). Rather, it would be a case of relieving one problem (water quality/water rights coordination) at the expense of creating another (health functions in different departments instead of all in one department).

A central issue in the proposed transfer is: where would the drinking water section go? Having drinking water separate from the rest of the Water Quality Control Division is clearly not a good idea, as discussed above. But it would not be easy to move this section of DNR along with the WQCD because drinking water is controlled by the Board of Health. It would seem to create an administrative nightmare to have a Board from one department administer an agency of another department.

Similarly, if the Water Quality Control Division goes to DNR how will the Health Department's lab be administered, since the WQCD is the biggest user of the lab? Since CDH engineers now handle both drinking water and discharges, will a transfer require the hiring of additional engineers? We ask that the Task Force answer these and other practical questions before recommending that the transfer take place.

Given the historic tensions between the administration of water rights and water quality control programs in Colorado, it might not even be a good idea to have water quality and water rights administration in the same department. Perhaps, it would be best for each of these issues to have their advocates in separate departments. If they were in the same agency, that agency is likely to have a difficult time determining its mission. The predominantly regulatory nature of the Division's programs is fundamentally different from the types of programs administered by the Office of the State Engineer or the Water Conservation Board. (The latter, for example, has no permit programs that require enforcement in the way that the Division's discharge permit program or even its 401 certification responsibilities do. In the CDH, on the other hand, the regulatory function is common to all the environmental programs it administers.) Were the Division placed under the same roof as that which houses the state's water quantity administration functions, the director of the merged agency would have to make many hard decisions and choices. Most of these would end up being made on the basis of which group applied the most political pressure. In almost all cases, the Caucus fears that the water developer and user community would have the upper hand. In the end, water quality protection would not have an even chance.

That raises a related issue concerning the regulatory system for water quality. Given the extremely formal rulemaking procedures used by the Water Quality Control Commission, many members of the public are, in essence, shut out of the process, or at best, allowed only a minimal role in formulating

rules and regulations on water quality. Caucus groups like the Colorado Environmental Coalition, Colorado Mountain Club and the League of Women voters cannot afford the lawyers and experts necessary to be parties to rulemaking proceedings. It has been our experience, however, that the water development community, is always able to do so. This makes these proceedings one-sided. Some way must be found to level the playing field, that is, to ensure that all interested groups and individuals have an opportunity to participate and that water quality is treated equally with water rights.

Moving the water quality rulemaking process to DNR will not make it less formalistic, nor less frustrating for the parties who participate or for the interested members of the public who presently do not have the resources to do so; rather, the process needs reformation. The Task Force could recommend such restructuring without consideration of any transfer of agency from one department to another. In addition, to the extent that the Caucus believes that many of the difficulties under the present system arise because it fosters a symbiotic relationship between the Commission and the regulated community, it is reformation of the process and increasing access for the public to the decision-makers that will benefit the system. Simply moving the agency from one department to another doesn't address the problem; such a move is, in fact, irrelevant to the Caucus' criticisms of the present system.

One way to help ensure coordination of water quality and water rights might be to have one or more of the following as ex-officio members of the Water Quality Control Commission; the state engineer, the Director of DNR and the Director of the Water Conservation Board. It is our understanding that at least two of these positions used to have a seat on the WQCC.

Another important issue is sharing of data. Water quality data are useful to various divisions of both the Departments of Health and Natural Resources. It is important that data gathered by one division be available to other divisions within that department and to the other department. Right now, it appears that the Water Conservation Board does not use water quality data. But in the experience of one Caucus member, the Department of Health handled and shared its data among other agencies very well.

Moreover, the Caucus believes that mechanisms already exist to foster the integration of water quality and water rights programs. Legislation adopted in 1990 (SB 181) created "implementing agencies" that are given the responsibility to address certain ground water contamination issues within their jurisdictions, subject to veto authority of the Commission. This legislation also required the Commission and Division to consult with the Water Conservation Board and State Engineer regarding the impacts of their actions on the exercise of water rights. The Caucus suggests that before this Task Force recommends moving the Division, the Task Force first consider refinements to the measures that the legislature put into effect two years ago.

In summary, the Caucus sees no reason to transfer the Water Quality Control Division to the Department of Natural Resources. The administration of water quality will not improve; it could get even worse than it already is. Thus, we strongly encourage the Water Quality Task Force to recommend to the General Assembly that such transfer not be implemented.

On behalf of the Colorado Environmental Caucus, I wish to thank you for giving me the opportunity to offer these comments.

Sincerely,

Hester McNulty

Hester McNulty

cc: Evans
Caucus members

September 16, 1992

Mr. Kenneth Salazar
Executive Director
Department of Natural Resources
1313 Sherman Street
Room 718
Denver, CO 80203

RE: HB 1200 Task Force

Dear Mr. Salazar:

At a meeting on August 17 members of the Water Congress met with Ken Salazar and Steve Horn as well as with a few members of the Governor's Task Force who were appointed to conduct the study specified in HB 1200. At the end of the meeting the Water Congress requested an opportunity to present written comments on the HB 1200 issues as well as provide issue-relaed examples as requested by attending Task Force members. The following observations are a result of several meetings with a subcommittee of Water Congress members who have been involved with the Water Quality Control Commission (hereafter "Commission") and are qualified to evaluate the Commission's adequacy over the past number of years.

It is the general perception of those who deal with the Commission that the Colorado water quality program is hampered because the Commission's initial perspective on many water quality issues reflects a lack of sensitivity to water allocation issues and often ignores constitutional and statutory mandate. The following list was completed in response to the request for examples and is not meant to revive old grievances, but rather to assist the Task Force in evaluating the Commission's impact on the water dependent users.

1. Commission decisions appear to be politicized. For example, a member of a regulated entity was told by a former Commission member that the Commission would reconsider reclassifying the regulated entity's water, if the water user would stop lobbying for legislation which effected the Commission. Further, there appears to be some coercion to accept the Commission's rules as promulgated. For example, some members of the regulated community have been consistently chastised by the Commission for assisting their elected officials in redressing Commission actions which

impair property rights. The Task Force should be aware that water is a legally recognized property interest, and that many of the water uses adversely effected by Commission decisions are dedicated to public purposes.

2. Classification by the Commission of stream segments without adequate information regarding existing uses and current water quality information improperly shifts the burden of gathering this vital technical information to the water rights holder. An egregious example of classification without information occurred when the Commission proposed applying drinking water standards to groundwater located under several Front Range communities. While the Commission wants to protect public health by "erring on the side of the angels", this has resulted in over-regulation, and a failure to develop information on extant water quality conditions in order to establish an historic baseline to assist in informed decision making. The Commission's eagerness to promulgate rules based on insufficient knowledge is in contravention of its own standards. Often either courts or the legislature appear to be the only solution to rules promulgated without information. For example, the high quality 1 and 2 designations on the Gunnison and lower and upper Colorado River were made without adequate facts and appeared to effectively preclude water development of the remaining compact sources of water on the West Slope. A lawsuit was filed on this matter, and additionally, HB 1200 attempted to remediate the designation problems occasioned by the Commission's rulings. However, appropriate designation is clearly an issue which should have been addressed at the Commission level without the expense and hardship of litigation and without the need for legislative scrutiny.

3. There is a failure by the Commission to understand the effects of their rulings and to account for other regulations. Upon promulgation any water quality standard establishes the standard for clean up of Superfund and other sites. For example, in the blanket groundwater classification, discussed under paragraph 3, a drinking water standard would have been established for clean up of CERCLA sites in the Denver area without any consideration of the reasonableness, attainability, cost, or impact on overall water quality of such a requirement.

4. The Commission has failed to assure that "the water quality benefits of pollution control measures have a reasonable relationship to the economic, environmental, energy and public health costs and impacts of such measures" as required by CRS 25-8-103. Further in setting water quality standards the Commission is mandated to examine the "economic feasibility of treatment techniques." CRS 25-8-204. Finally, the Commission is forbidden to promulgate regulations which cause material injury to water rights. CRS 25-8-104. The commission has either failed to follow the statues, or in its application of the statutes, has failed to act responsibly or

reasonably. For example, the Commission has chosen to regulate the indirect impacts of activities which may have an incidental effect on water quality as part of its 401 certification review. This is interpreted as allowing the regulation of water diversion activities even though they do not result in the discharge of pollutants, but merely change the flow patterns. There is no statutory basis for such an approach. In addition, antidegradation designations can result in a prohibition of future water diversion activities on ONRW segments, or can greatly increase the costs associated with water development on high quality segments, even though beneficial users would be fully protected and no pollutants were added as a result of the water projects.

5. The Commission has failed to determine what is a reasonable standard of risk. In setting water quality standards for toxics, the state should factor the economic effects of treating effluent to low levels needed to achieve 10^{-6} protection levels and should better recognize the multi-layered elements of conservatism built into the health studies (i.e., assumptions that the same person drinks the same water for 70 years in vast amounts and that this stationary individual is most susceptible to health problems, or that the same person consumes large quantities of native fish [versus stocked fish] from same stream over a lifetime. If the Commission re-examined the basis of the assumptions and interpreted them rationally, more reasonable regulatory requirements would result without undue risks to public health.

6. The constituency of the Commission are the people of the state of Colorado and not the Federal Environmental Protection Agency. Yet the Commission often appears to act solely in resonse to EPA pressure. EPA's standards are often based on inadequate science and result in poor policy choices. The control of hydrologic modifications, which addresses how diversions and reservoirs are operated, was made an issue before the commission at the insistence of the EPA and with no apparent Commission resistance. The regulation of hydrologic modifications is not statutorily authorized in state or federal legislation, and only after great expense to the regulated community was a consensus document developed. A further example of EPA dominance and regulation without scientific basis is the biological diversity or "biocriteria" standard currently proposed by EPA. Implementation of such a program in the fashion advocated by EPA could have far reaching implications on water allocation decisions. The water quality program should be a pro-active, pro-water allocation full compact and entitlement usage undertaking, rather than one which automatically acquiesces to EPA desires.

7. The Commission has failed to provide for a full and fair hearing during rulemaking by placing severe constraints on the right to present and cross-examine witnesses as a part of the hearing process. Often only a few are

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7. The Commission has failed to provide for a full and fair hearing during rulemaking by placing severe constraints on the right to present and cross-examine witnesses as a part of the hearing process. Often only a few are

allowed to present testimony and to cross-examine. The witnesses answer is counted as a part of the questioner's time. Therefore a staff witness could give a lengthy answer because he would know that by taking a long time there would be no time remaining for further questions. Such a procedure results in a fundamental denial of due process.

While this listing of problems is not all inclusive, it is intended to demonstrate the scope of the issues regarding Commission performance and the impetus for the passage of HB 1200. Moving the Commission from the Department of Health to the Department of Natural Resources may not rectify the problems raised, but the Task Force study should focus on the best way to accomplish the following:

1. The state needs to take a leadership role in accomplishing the water quality goals of Colorado. The Commission and Department of Health have failed to advance the interests of Colorado, as a semi-arid state governed by the prior appropriation doctrine, in the federal legislative arena. The climate, hydrology and topography of our state demand site-specific, informed classifications and standards as well as implementation procedures. Further, water rights are not being protected in current federal proposals, such as S 1081. There is an increasingly intense movement at the federal level to focus on the physical and biological integrity of the nation's waters (water quality, aquatics, bugs, flow regimes, wetlands, wildlife using water from water bodies, the need for "natural" runoff, etc.). Therefore, there is a need for the State of Colorado to work toward and be an articulate voice for Colorado public policy interests. Congress may unintentionally preclude natural resource development by citing water quality issues. This HB 1200 Task Force should ultimately study how to identify the future problems facing protection of both water rights and water quality, and devise an organization best able to deal with them. The State of Nebraska and other downstream states will use water quality and environmental issues to stymie Colorado water development. The citizens need an organization that can fight for Colorado interests in national forums.

2. The Commission should comply with the clear legislative direction provided by the statutes. For example, CRS 25-8-102 and 204 require a cost/benefit analysis when classifying waters or directing treatment techniques. The Commission should develop and apply a cost/benefit analysis in these instances rather than automatically stating there is no adverse economic impact resulting from Commission activity. Also, as discussed earlier, the Commission has classified water and set water quality standards without sufficient information in contravention of the clear mandates of CRS 25-8-203 and 204.

3. The Commission should recognize the constitutional and statutory protections guaranteed to vested water rights. Any damage to these rights should be viewed as a regulatory taking by the Commission and the water rights holder should be compensated by the state.

4. The Commission should work with related state agencies as directed by the legislature. The state engineer and the director of the Colorado Water Conservation Board are to be consulted by the Commission "before any decision or adopting any rule or policy which has the potential to cause material injury to water rights." CRS 25-8-104. [emphasis supplied]. This is not merely advisory language as interpreted by the Attorney General, but rather a clear legislative directive to gather state resources in order to assure informed rulemaking by the commission. It may be useful to trigger consultation when an agency rule or policy necessitates a water rights holder to spend money in order to utilize historically protected water for beneficial use. In any event, intra-agency cooperation is crucial to accomplish water quality protection.

5. The rulemaking procedures of the Commission should be re-examined. The propensity to regulate through rulemaking appears to reflect an attitude endemic to the Department of Health. Water quality is a critical issue of statewide concern which deserves a thoughtful and knowledgeable ongoing response. The Commission has too many rules based on too little information by doing so and has undermined the credibility of the entire water quality program. Rulemaking is expensive, cumbersome and not always capable of allowing a complete opportunity to be heard in keeping with due process principles. The Commission needs to establish a procedure in which reasonable people can discuss the issues.

Thank you for the opportunity to submit this material by the subcommittee of the Water Congress. The Water Congress would like to continue in a dialogue with you to create a workable and credible Water Quality Control Commission which is responsive to proven needs in the state as well as to legislative mandate. Please call me at 628-6565 if you require further information or have questions; we look forward to working with you on these important issues.

We would appreciate it if you could forward these comments to the Task Force members.

Sincerely,

Sara Duncan

Sara Duncan
Chairman, Subcommittee
Water Congress HB 1200
1600 West 12th Avenue
Denver, CO 80254

cc: Leo Eisel
Jerry Raisch
Peter Evans

WtrCong

APPENDIX C

EXECUTIVE ORDERS

STATE OF COLORADO

EXECUTIVE CHAMBERS
136 State Capitol
Denver, Colorado 80203-1792
Phone (303) 866-2471

Roy Romer
Governor

B 012 92

EXECUTIVE ORDER

WATER QUALITY REVIEW TASK FORCE

WHEREAS, maintaining an effective environmental quality program is in the best interest of the State of Colorado for current and future generations; and

WHEREAS, water quality protection is a vital part of environmental protection, and requires a high degree of coordination with public health and other environmental programs; and

WHEREAS, water quality decisions and water rights decisions in the future will determine the attractiveness of Colorado as a place to live, do business, and visit; and

WHEREAS, the State of Colorado has a strong tradition of protecting Colorado's compact entitlements and water rights and this tradition should be continued while recognizing that water quality protection and water rights administration are strongly interrelated; and

WHEREAS, over the last several years, debate has continued in the State about the organizational placement of water quality control programs in the State of Colorado; and

WHEREAS, House Bill 92-1200 requires the completion of a specific study on this subject to be presented to the General Assembly by November 1, 1992;

NOW THEREFORE, I, ROY ROMER, GOVERNOR OF THE STATE OF COLORADO, UNDER THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF THE STATE OF COLORADO, HEREBY ORDER AND DIRECT:

1. A Water Quality Review Task Force is hereby created and will be comprised of (1) the Executive Directors of the Colorado Departments of Health, Natural Resources, and Agriculture; (2) a member of the Water Quality Control Commission; (3) a member of the Colorado Water Conservation Board; (4) two representatives from the Environmental Caucus; (5) two representatives from the water development community; (6) two representatives of dischargers subject to

water quality control regulations; (7) a representative of agricultural producers; and (8) one representative of a local government health department.

2. The Task Force will be staffed by the Colorado Departments of Health, Natural Resources, and Agriculture.

3. The Task Force shall undertake a study concerning the organizational placement and efficient conduct of the water quality program of the state. That study shall include an evaluation of the following parameters:

   (a) maintaining the most effective water quality control program for the State of Colorado;

   (b) integration of water quality control programs with public health, environmental protection, and natural resource programs in a manner which will assure the most effective protection of public health, water rights, and environmental quality for the state.

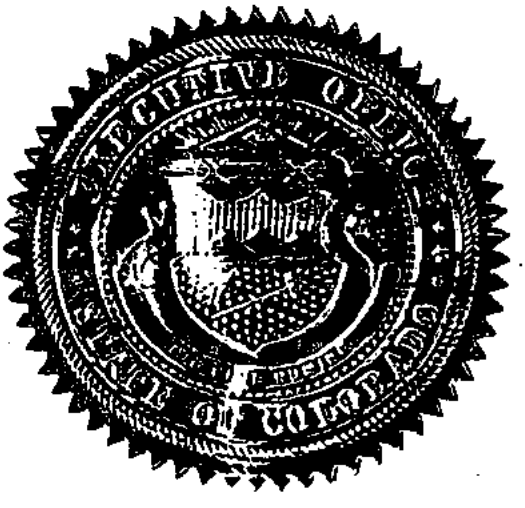
   (c) integration of water quality control and water quantity considerations in a manner that will create the best public policy for the State of Colorado;

   (d) the most efficient utilization of available human and fiscal resources within the Department of Health, the Department of Natural Resources, and the Department of Agriculture to promote the protection of the State's water quality and water rights; and

   (e) other issues the Task Force deems necessary to complete the study.

4. The study shall be submitted to the Governor and to the General Assembly with its conclusions no later than November 1, 1992.

5. This Executive Order shall expire on June 1, 1993.



Given under my hand
and the Executive Seal
of the State of Colorado,
the sixth day of August, 1992.

Roy Romer
Governor