

# CCI LEGISLATIVE ISSUE FORM

## for 2018 Legislative session

CCI is soliciting potential legislative issues for the 2018 legislative session. Please answer each of the questions below for each of your county's legislative issues. If your county submits multiple issue forms, please prioritize your issues. Submitted issues are discussed during the summer steering committees and district meetings. We encourage you to confer with your county managers or administrators and department heads, as well as other elected officials, to determine what issues are the most pressing in your county and have implications for other counties. All submitted issues forms must have the support of the Board of County Commissioners or the Mayor/City and County Council.

In accordance with the Legislative Principles that are part of CCI's Policy Statement, "...initiated legislation should be realistic and closely related to the conduct of our members' responsibilities if we are to retain a high level of credibility. Local elected officials groups, county and otherwise, as well as other interest groups, should be encouraged to find sponsors for and initiate their own proposals, allowing our members and CCI to take a supportive role when the bill is introduced."

Please fax or email your issue forms to Jeanne DeHaven at 303.861.2818 or [jdehaven@ccionline.org](mailto:jdehaven@ccionline.org). Please feel free to use more than one page when submitting issues and to submit additional documentation or background information related to the issue. Legislative Issue Forms should be returned by **Friday, June 30, 2017** in order to be discussed during the summer legislative review and steering committee meetings.

Name: Kara Silbernagel Title: Management Analyst  
County: Pitkin Phone: 970.429.2815 E-mail: kara.silbernagel@pitkincounty.com

**1.) Issue:** Water Compact Assurance Flows - Dedication of water rights not likely to be developed to satisfying state compact obligations while improving water quantity and quality in west slope streams.

### 2.) Background

Greater scrutiny is being paid to all water uses and conditional water rights holders are now required to submit diligence filings every six years. This results in both holders of the water right and opposers spending significant dollars preparing for the filing; and then repeating the same expenditure of funds every six years, often for water rights that are unproven or largely unused. Current water law only gives conditional rights holder two alternatives; pay the engineers and attorneys to demonstrate diligence in perfecting one's water rights every six years, or abandon those rights.

Additionally the Colorado Water Plan calls for maintaining the states natural environment by maintaining healthy rivers and streams. While communities plan and spend resources attempting to restore rivers and streams, it is being done while the 'cloud' of unperfected conditional water rights looms large.

### 3.) Proposed Solution/Legislative Remedy (Please provide the specific statutory citation your board is requesting to modify AND the proposed language you are requesting.)

Support legislation that would supplement the [Colorado Water Plan](#) that would create a new state water right for 'Colorado Compact Assurance Flows' which would allow the holder of West Slope conditional water rights to voluntary convert conditional rights to a perfected right that is dedicated to helping Colorado assure its required delivery of water to the lower basin states.

More detailed information attached in white paper.

### 4.) County Commissioner role in this issue?

Advocate about the need to maintain local government's role in water rights and the responsibility to current water right holders and lower basin states.

### 5.) Proponents/Opponents (Please indicate if your board has had conversations with proponents/opponents to date and their perspective on this proposal):

Proponents include NWCCOG Water Quality/Quantity Committee, Colorado River Conservation District, Colorado Basin Roundtable

Opponents unknown at this time.

### 6.) Have you visited with your legislator(s) about their reaction to this proposal? Are members of your delegation likely to sponsor, support, or oppose this proposal?

Collaborated with regional and statewide water organizations to solicit feedback and revise to move forward. Have not spoken directly about this, but delegation has been supportive of maintaining healthy rivers and streams in the past.

**7.) Anticipated Fiscal Impact:**

None. However, tax credits or other enhancements may be used to stimulate use of the program.

**8.) Please list the subject matter experts CCI staff can follow-up with for more information on this proposal:**

Rachel Richards, Pitkin County Commissioner

**9.) Priority Ranking (If multiple issues submitted):**

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## Colorado Water Plan: Compact Assurance Flows

**Issue statement:** The State Water Plan has quantified the ‘gap’ in Colorado’s future water needs, and actual water availability, as well as highlighting the risk that all state water providers will face if Colorado is unable to meet its Colorado River Compact obligations for water delivery at Lees Ferry or the state line for upper basin obligation. In the Water Plan, the State commits to “support[ing] strategies to maximize the use of compact water while actively avoiding a Colorado River Compact deficit.”<sup>1</sup> To begin addressing that long term risk, significant efforts are being made to enhance efficiency and conservation measures in agricultural production, and to create a state ‘water-bank’ to pay farmers not to use their water rights should Colorado need that water to ensure compact compliance in future years.

With greater scrutiny being paid to all of our water uses, Colorado now requires diligence filings by conditional water rights holders every six years. This often results in both holders of the water right and ‘opposers’ spending significant dollars preparing for the filing; and then repeating the same expenditure of funds every six years, often for water rights that are unproven or largely unused. Currently water law only gives conditional rights holder two alternatives; pay the engineers and attorneys to demonstrate diligence in perfecting one’s water rights every six years, or abandon those rights.

Additionally, Colorado’s Water Plan calls for maintaining the states natural environment and its tourism recreational economy via maintaining healthy rivers and streams, and restoration of impaired reaches of the same. While communities plan and spend resources attempting to restore rivers and streams, often it is being done while the ‘cloud’ of unperfected conditional water rights looms large. Are dollars being spent to narrow and restore depth to a stream that will later have significant amounts of water taken from the same stream via an older conditional right? Should mitigation efforts try to work with today’s average flows or try to anticipate restoration work based on older conditional rights being perfected and new diversions being taken from the river?

**Proposed solution:** Create a new state water right for ‘Colorado Compact Assurance Flows’ which would allow the holder of West Slope conditional water rights to voluntarily convert conditional rights to a perfected right that is dedicated to helping Colorado assure its required delivery of water to the lower basin states. Some potential parameters of such a new water right would include:

- The conversion of unneeded, or impractical conditional water rights to a newly created Compact Flow Assurance right would be **entirely voluntary**, simply a 3<sup>rd</sup> option to evaluate when approaching a diligence filing instead of just defend or abandon them
- Only applicable to conditional water rights filed on the West Slope on waters that flow into the Colorado River Basin, as they are potential diversion of water currently flowing westward toward Lees Ferry and helping fulfil Colorado’s compact obligations.
- Only Conditional water rights filed for before July 1, 2017 would be eligible for conversion to a Compact Assurance Flow right.
- Conditional water rights converted into a ‘Compact Flow Assurance’ right would **take a new date at the time of conversion, to the date of conversion**, protecting perfected-junior water rights holders with lower priority than the conditional right- which theoretically could have swept water away from current junior users. This will work to help keep the rivers the ‘same’ as current diverters know it to be, reducing the fear that their junior right will cease to produce water if the older conditional rights were perfected and began to take water the junior had become accustomed to using.
- Allows conditional water rights holders to avoid the every six year expense of a contested diligence filing, with the potential to create tremendous East Slope/West slope goodwill by lifting the cloud over West Slope watersheds, given the uncertainty of how much westward flow will continue in already impaired stream reaches, and assures that stream restoration projects are working with the appropriate hydrology to accomplish lasting outcomes.

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<sup>1</sup> [Colorado’s Water Plan, Section 9.1](#): Protecting Colorado’s Compacts and Upholding Colorado Water Law, 9-5.

- Begins to address the very real concerns of Colorado falling out of compliance with its obligations under the Colorado River Compact in an era of rising temperatures, earlier runoff and DOI predicted increased dryness in our region.
- Ideally, a mechanism to provide something of value- beyond the avoided expense of diligence filings- and goodwill-such as either a one-time tax credit or deduction, or other form of one-time compensation would be made available to the water provider or other holders of unneeded conditional rights who voluntarily convert their conditional water rights to Compact Flow Assurance rights
- Allows the conditional water rights holders to receive support for converting the water right through possible third party investment with the guarantee of water being used for compact compliance. Another incentive could be third party investment in the process of converting the conditional water right, thereby saving the conditional water right holder that additional expense, and possibly even remuneration for converting the water right.
- A key benefit of this concept is that one wouldn't have to pay to build a structure and begin diverting water out of a river or stream for a beneficial use, before then being able to use that water right to help meet Colorado's Compact obligations or to benefit stream health, via a lease of water for in-stream enhancement or achieving Minimum Stream Flows. Right now you have to take water out of a river or stream before being able to actually put it back into the river
- Compact Assurance Flow rights would be held in trust and called for use by the Colorado Water Conservation Board, to work in tandem with their Minimum Stream Flow program
- Based on ongoing calculations of water required to meeting Colorado Compact obligations and other administrative mechanisms to ensure Colorado is not sending a surplus of water to Lake Powell.