

## Water rights addressed by House committee

Written by Marianne Goodland, State Capitol reporter  
Wednesday, 06 February 2013 13:30 -

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The House Agriculture, Livestock and Natural Resources Committee spent a long afternoon last week plowing through the first of a dozen bills on water issues expected in the 2013 legislative session.

The committee unanimously approved House Joint Resolution 13-1004, which encourages the U.S. Department of Agriculture Forest Service to withdraw a 2012 directive that requires ski areas to turn over their water rights, without compensation, for federal lands leased from the Forest Service.

HJR 1004 points out that federal law requires federal agencies to abide by the water laws of the states in which federal lands are located. However, according to resolution sponsor Rep. Jerry Sonnenberg (R-Sterling), the Forest Service drafted the 2012 directive in violation of that law, known as the McCarran Act.

The National Ski Areas Association filed a lawsuit against the Forest Service over the directive, and a Denver District Court judge recently ruled in favor of the NSAA, but only on procedural grounds and not on the substance of the directive. According to testimony in the Jan. 28 ag committee hearing, the judge told the Forest Service that “they didn’t do it right” when they issued the directive without public input, a violation of federal administrative procedures.

Daniel Jiron of the Forest Service told the ag committee that a process for public input into the directive will begin later this spring. He said the Forest Service “fully supports” the ski industry and the state’s water laws. “We want the water to stay with the land,” Jiron said. He noted that if a ski resort went out of business, the water rights could be viewed as a salable asset of the resort.

In response to committee questions, Jiron said a new directive would apply only to new special use permits rather than to existing permits. That was disputed by several ski area representatives, who said that any change in permit (such as adding a ski lift) would trigger the directive being applied. This could apply to water rights that had already been adjudicated in Colorado’s water court.

But the issue doesn’t just apply to ski areas. According to attorney Glenn Porzak, similar directives have been issued for special use permits for federal lands used by ranchers for grazing purposes and to other agricultures users.

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“This directive flies in the face of Colorado water law,” said Rep. Diane Mitsch Bush (D-Steamboat Springs). Sonnenberg noted that the Forest Service has already “shown its cards,” that they want the water rights as part of the special use permit. The resolution makes it clear, he said: a predetermined outcome is unacceptable, and the directive is unconstitutional under Colorado law.

Sonnenberg didn’t fare quite as well with his second water measure, House Bill 13-1013. The bill, which was amended by the ag committee at Sonnenberg’s request, states that the federal government cannot demand water rights from a lessee as a condition for granting a special use permit.

HB 1013 drew strong support from the Colorado Farm Bureau and the Colorado Water Congress. However, it ran into some surprise opposition from a ski county resident: Summit County Commissioner Dan Gibbs. Gibbs told the ag committee the bill was opposed by Colorado Counties, Inc. (CCI), an association of county commissioners.

The bill, as introduced last month, prohibited any landowner from requiring water rights as a condition of granting the lease or permit. Andy Karsian of CCI confirmed the original bill was opposed by his organization. However, Sonnenberg addressed that concern with his amendment to narrow the bill to apply only to the federal government. Karsian said this week that CCI now supports HB 1013.

Following Gibbs’ testimony, committee chair Rep. Randy Fischer (D-Fort Collins) briefly recessed the committee. Upon their return, he announced the ag committee would postpone action on HB 1013. It is re-scheduled for the committee this week.

In other action at the capitol:

—Sonnenberg had better success in the ag committee with a bill to modernize the receipt process for commodity elevators. HB 1034 got unanimous support from the committee Monday. The bill would allow elevators to move to electronic receipts for commodity sales, which would make the process for proving payment easier for farmers. HB 1034 is now on its way to the full

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House for further action.

—The “Drinking with Dad” bill offered by Sen. Greg Brophy (R-Wray) failed to gain enough support to get out of the Senate State, Veterans and Military Affairs Committee.

Senate Bill (SB) 13-054 was rejected by the state affairs committee on Jan. 30 on a 4-1 vote.

The bill would have allowed 18-to-21-year-olds to be served alcohol in a restaurant or other establishment with a liquor license, so long as the young adult was accompanied by a parent or legal guardian.

SB 54 drew opposition from the Tavern League of Colorado and the Fraternal Order of Police. The Colorado Restaurant Association also opposed the bill, though its representative, Nick Hoover, said it was a difficult decision since Brophy has been a supporter of the association in the past. The restaurant and tavern groups opposed the bill because it might place waitstaff, who must check identification, into difficult situations with their customers.

Nine other states, including Texas, have similar laws. Brophy told the state affairs committee that allowing such a law in Colorado would help educate young adults on responsible consumption of alcohol. But committee chair Sen. Angela Giron (D-Pueblo) pointed out that this education can take place in the home.

After the hearing, Brophy said there is a quiet movement building, nationwide, to do a regulated drinking age, post-high school and before the age of 21. “I’m happy to be a part of raising that issue and elevating it to the front of people’s minds. We’ll get there some day.”

—The Senate Judiciary Committee killed a bill last week to allow school personnel to carry handguns in schools. Under SB 9, school boards could adopt written policies to allow a school employee to carry a concealed handgun on school grounds, if that person holds a valid concealed weapons permit.

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Jeremy Weathers of Yuma, the district accountability chair for the Lone Star School District northeast of Yuma, was among the witnesses testifying in support of SB 9. Weathers said the Lone Star school board supported the bill, and that local citizens volunteered to cover the cost of training teachers who volunteered to take concealed carry classes. SB 9 died on a 3-2 vote.

SB 9 is one of more than a half-dozen gun-related bills offered by Republicans this session. That includes SB 140, which would prohibit state employees, including police officers, from enforcing any federal rules or laws on firearms that are commercially manufactured in Colorado or are owned within the state border.

It would also apply to high-capacity magazines. In addition, under SB 140, any federal agent who attempts to enforce government regulations on firearms in Colorado would be committing a class I misdemeanor. Brophy and Sonnenberg are co-sponsors. SB 140 has been assigned to the Senate state affairs committee.

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