SUPREME COURT, STATE OF COLORADO

NO. 82-SA-256

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AMICUS CURIAE

MT. EMMONS MINING COMPANY, a Delaware corporation, and AMAX INC., a New York corporation,

Plaintiffs-Appellees,

-vs-

TOWN OF CRESTED BUTTE; DIRECTOR OF PUBLIC WORKS OF THE TOWN OF CRESTED BUTTE; LARRY ADAMS, Director of Public Works of the Town of Crested Butte; TOWN MANAGER OF THE TOWN OF CRESTED BUTTE; HAROLD J. STALF, Town Manager of the Town of Crested Butte,

Defendants-Appellants.

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STATEMENT OF THE ISSUES

The Colorado Municipal League's ("League") brief is limited to the following issues which are of concern to Colorado municipalities statewide:

1. Has the Colorado Water Quality Control Act, C.R.S. 1973, §25-8-101 et seq., as amended, preempted Colorado municipalities from adopting regulations to prevent the pollution of their water supply?

2. What is the scope of authority granted to municipalities by C.R.S. 1973, §31-15-707(1)(b) (1977 Repl.Vol.), as amended?

3. Does Section 1 of Article XX of the Colorado Constitution grant to Colorado home rule municipalities the authority to adopt regulations to prevent the pollution of their water supply?

STATEMENT OF THE CASE

The Colorado Municipal League adopts the statement of the case appearing in the brief of the Town of Crested Butte.

SUMMARY OF THE ARGUMENT

The Colorado Water Quality Control Act has not preempted to the state the regulation and control of water pollution.

Colorado municipalities, including home rule municipalities, have a specific grant of authority in C.R.S. 1973, §31-15-707(1)(b) (1977 Repl.Vol.), as amended, to adopt regulations to protect their water supplies from injury and pollution. The Colorado Water Quality Control Act does not irreconcilably conflict with this specific grant of authority and there is no evidence that the Colorado General Assembly intended to repeal §31-15-707(1)(b) by implication. §31-15-707(1)(b) is an extraterritorial grant of jurisdiction authorizing municipalities to adopt all regulations necessary to protect their municipal water supplies from injury or pollution. Even if §31-15-707(1)(b) has been preempted by the Colorado Water Quality Control Act, home rule municipalities are authorized to adopt such regulations by Section 1 of Article XX of the Colorado Constitution and that constitutional authority cannot be preempted by state statute.

INTEREST OF THE AMICUS

The League is a nonprofit association of approximately two hundred and thirty-three cities and towns located throughout Colorado. Colorado's municipalities have a long history of providing safe drinking water to Colorado residents. One factor which has enabled municipalities to supply high quality drinking water is the ability of

municipal governing bodies to regulate activities which may result in pollution and injury to those water sources from which domestic water supplies are obtained. The need for this authority was recognized by the General Assembly as early as 1877 when it originally adopted what is now C.R.S. 1973, §31-15-707(1)(b) (1977 Repl.Vol.), as amended, in Colo. Gen. Laws, Art. III, §14 at 889 (Nov. 1877).

Pursuant to the grant of authority in §31-15-707 (1)(b), a number of Colorado municipalities have adopted ordinances designed to protect from pollution the sources of their municipal water supply. Some examples of the types of activities regulated by municipalities within or near the municipal water supply include the following: boating, floating, swimming, bathing and fishing; the location and operation of pigsties, slaughterhouses, corrals, cemeteries, stockyards, barns, chicken yards, dairies, dog kennels, cesspools, leach fields, houses, sheepsheds, fertilizer and bone factories; the throwing or discharge of garbage, rags, minerals, clay, rock, litter, excretion, dung, dead animals, oil, paint, chemicals, construction materials, and junk; and the watering or bathing of animals or livestock. Clearly, these activities present potential health hazards and their continued regulation is important to protect the health and welfare of Colorado residents.

The decision of the Gunnison County District Court in this case, if affirmed, would preclude municipalities from adopting regulations to prevent the pollution of their municipal water supplies from these types of activities. The Court has held that the Colorado Water Quality Control Act ("Act"), C.R.S. 1973, §25-8-101 et seq., as amended, has preempted to the state the regulation and control of water pollution. It is this conclusion of law that is of greatest concern to Colorado municipalities.

ARGUMENT

I. THE COLORADO WATER QUALITY CONTROL ACT HAS NOT PREEMPTED COLORADO MUNICIPALITIES FROM ADOPTING REGULATIONS TO PREVENT THE POLLUTION OF THEIR WATER SUPPLIES.

In order for this Court to hold that the regulation and control of water pollution has been preempted to the state, it must find that the statutory grant of authority to municipalities in §31-15-707(1)(b) has been superseded by the Colorado Water Quality Control Act. There is ample evidence that the General Assembly did not intend the Act to supersede §31-15-707(1)(b).

The Colorado General Assembly has expressly granted to Colorado municipalities the authority to protect from pollution or injury those water sources from which a

municipality obtains its water supply. §31-15-707(1)(b) provides:

> The governing body of each municipality has the power: ... To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect.

The District Court, in this case, found that this express grant of authority irreconcilably conflicted with the Colorado Water Quality Control Act and therefore was superseded by the Act:

> The court concludes that the statute, C.R.S. 1973, §31-15-707(1)(b) as limited above, and the Ordinance, are in conflict with the Colorado Water Quality Control Act.... Under this statute the State has adopted a comprehensive program for protecting the quality of water in the state.

District Court Order as to Defendants' Motion for Summary Judgment and Plaintiffs' Motion to Compel Discovery at 5 (Nov. 9, 1981). In its Order Denying Defendants' Petition to Show Cause of March 9, 1982 at 2, the Court reemphasized its conclusion:

> Even if Ordinance #5 [The Crested Butte Watershed Ordinance] is construed to regulate the discharge of pollutants, the Defendants

> can no longer rely on 31-15-707(1)(b) as broad authority to support the Ordinance because said statute has been superseded by the Water Quality Control Act adopted in 1966. Said Act established the protection of water quality as a matter of statewide concern and preempted to the state the regulation and control of water pollution and reserved to local governments only the authority to control nuisances in this regard.

The District Court erroneously concluded that §31-15-707(1)(b) has been superseded by the Colorado Water Quality Control Act.

A. The Colorado Water Quality Control Act Does Not Irreconcilably Conflict With §31-15-707(1)(b).

Statutes are considered to be of equal dignity. In order for one statute to supersede another statute, there must be an irreconcilable conflict. Burton v. Denver, 99 Colo. 207, 61 P.2d 856 (1936); Bagby v. School District No. 1, 186 Colo. 428, 528 P.2d 1299 (1974).

The District Court based its finding of conflict on the following general language appearing in the Colorado Water Quality Control Act:

> (3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health,

> peace, safety, and general welfare of the people of this state.
>
> (4) This article and the agencies authorized under this article shall be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

C.R.S. 1973, §25-8-102, as amended.

The District Court apparently interpreted §25-8-102(3) and (4) to mean that sole authority for the administration of water pollution, prevention, abatement, and control rests with the State of Colorado as set forth in the Colorado Water Quality Control Act. Pursuant to this interpretation, §31-15-707(1)(b), insomuch as it grants authority to municipalities to regulate water pollution, is in direct conflict with the Colorado Water Quality Control Act. However, statutes must be construed, where possible, to avoid conflict. Colorado State Board of Medical Examiners v. Jorgensen, 198 Colo. 275, 599 P.2d 869 (1979); see also, Alpert Corp. v. State Department of Highways, 603 P.2d 944 (Colo. Sup.Ct. 1979). The two statutory provisions in this case can be construed to avoid conflict if "final authority" as used in the Colorado Water Quality Control Act is not

interpreted to mean "sole authority." "Final authority" anticipates regulations by municipalities and other political entities provided the regulations are no less restrictive than the State's regulations. Notably, subsection (4) expressly recognizes that municipalities and other political entities have "jurisdiction over water pollution, prevention, abatement, and control." §31-15-707(1)(b) is an example of a statute which grants this jurisdiction. Moreover, subsection (4) only precludes the authorization for discharge of pollutants into state waters by municipalities and other political entities when such discharge is not authorized by the Colorado Water Quality Control Act. Noticeably, municipalities and other political entities are not denied the power to restrict discharges into state waters.

In construing a statute, an entire act must be read as a whole. In Re Interrogatories By the Governor as to Senate Bill No. 121, 163 Colo. 113, 429 P.2d 304 (1967). See also, Wheeler v. Rudolph, 162 Colo. 410, 426 P.2d 762 (1967); Clark v. Fellin, 126 Colo. 519, 251 P.2d 940 (1952); 2A C.D. Sands, Sutherland on Statutory Construction §46.05 (4th ed. 1972); and C.R.S. 1973, §2-4-201 (1980 Repl.Vol.). A reviewing court must not look to isolated words and expressions. Public Utilities Commission v. Stanton Transportation Co., 153 Colo. 372, 386 P.2d 590 (1963). See

also, In re Webb's Estate, 90 Colo. 470, 10 P.2d 947 (1932). An examination of the entire Colorado Water Quality Control Act indicates that it is not intended to be an exclusive program for the regulation and abatement of water pollution. Its purpose is to "provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality." C.R.S. 1973 §25-8-612, as amended (emphasis added). Moreover, it expressly provides that the Colorado Water Quality Control Act is not to be "construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances." C.R.S. 1973, §25-8-612(3).

The Colorado Water Quality Control Act and the regulations adopted pursuant to it focus on specific water quality management processes: stream standards and classifications; effluent limitations; discharge permits for point source[1] polluters; site applications and grants for

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[1] "'Point source' means any discernible confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 'Point source' does not include irrigation return flow." C.R.S. 1973 §25-8-103(14), as amended.

domestic treatment works. However, there is no comprehensive regulation of nonpoint sources of pollution.

> A wide range of pollutants associated with natural conditions and man's activities contribute to the nonpoint source problem. These pollutants include sediments, natural salts, pesticides, chemical fertilizers, animal wastes, plant residues, salts, minerals, oil, acid, and numerous other substances. They find their way into water through diffuse overland runoff from rural and urban areas, seepage, natural drainage channels, man made drainage systems, and various combinations of these routes.

Bureau of Reclamation, U.S. Dep't. of the Interior, Critical Water Problems Facing the Eleven Western States, at 113 (1975).

It is important that nonpoint sources of pollution be regulated. For example, sediment from erosion due to a variety of land disturbances can decrease the storage capacity of reservoirs and increase treatment costs for domestic water supplies. Bureau of Reclamation, U.S. Dep't. of the Interior, Critical Water Problems Facing the Eleven Western States, at 115 (1975). See also, Interest of the Amicus P. 3 for examples of other nonpoint sources of pollution regulated by municipalities.

A statute should be given the construction which will render it effective in accomplishing the purpose for which it was enacted. In Re Questions U.S. District Ct., 179 Colo. 270, 499 P.2d 1169 (1972); Cross v. Colorado State Bd.

of Dental Examiners, 37 Colo.App. 504, 552 P.2d 38 (1976). The overall goal of the Colorado Water Quality Control Act is "to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state," C.R.S. 1973, §25-8-102(1), as amended (emphasis added). Allowing municipalities to adopt regulations which prevent injury or pollution to the sources of their water supplies and which do not conflict with the Colorado Water Quality Control Act or the regulations adopted pursuant to it is consistent with this goal. On the other hand, restricting the authority of municipalities to regulate in this area will prevent achievement of the overall goal.

Both the Colorado Water Quality Control Act and §31-15-707(1)(b) focus on a need to protect the health, safety and welfare of Colorado inhabitants and to protect the quality of the public water supplies. These goals can only be achieved by a concerted effort by the State of Colorado and units of local government to adopt regulations which will protect the quality of Colorado water.

B. The Colorado Water Quality Control Act Has Not Repealed §31-15-707(1)(b) By Implication.

The District Court's holding that §31-15-707(1)(b) has been superseded by the Colorado Water Quality Control Act results in the repeal by implication of §31-15-707(1)(b). The implied repeal of a statutory provision is not

favored. U.S. v. Best, 476 F.Supp. 34 (D. Colo. 1979); Colorado State Board of Medical Examiners v. Jorgensen, supra; 1A C.D. Sands, Sutherland on Statutory Construction §23.10 (4th ed. 1972). The only permissible justification for a repeal by implication is when there is an irreconcilable conflict or manifest inconsistency between the two statutes. Watts v. Hadden, 651 F.2d 1354 (10th Cir. 1981); Fuhrer v. Department of Motor Vehicles, 197 Colo. 325, 592 P.2d 402 (1979). In this case, there is no manifest inconsistency or irreconcilable conflict between the Act and §31-15-707(1)(b). See discussion supra. The statutes are designed to accomplish the same purpose, the abatement of water pollution, through different means.

The legislative history of §31-15-707(1)(b) and the Colorado Water Quality Control Act further indicates that the General Assembly did not intend to repeal by implication §31-15-707(1)(b) and that the two statutes are consistent with each other.

§31-15-707, in its entirety, was reenacted in 1975, subsequent to the 1966 adoption of the Colorado Water Quality Control Act.[2] Had the Legislature intended to do

[2]The reenactment of §31-15-707 appears in H.B. 1089, 1975 Colorado Session Laws at 1116. The original enactment of the Colorado Water Quality Control Act appears in S.B. 2, 1966 Colorado Session Laws at 199 - 209.

so, it could have used that opportunity to modify or delete subsection (1)(b).

Additionally, §31-15-707 was amended in 1981 during the same session that the Colorado Water Quality Control Act was repealed and reenacted.[3] Although the General Assembly amended §31-15-707 to authorize municipalities to acquire heating and cooling utilities, it did not change or delete the language appearing in subsection (1)(b) which authorizes municipalities to protect their municipal water supply from injury or pollution. If the 1966 version of the Colorado Water Quality Control Act repealed by implication subsection (1)(b), surely that section would have been deleted by the Legislature in 1981 when amendments to §31-15-707 were being acted upon.

There is a presumption that all laws are passed with knowledge of those already existing, City and County of Denver v. Rinker, 148 Colo. 441, 366 P.2d 548 (1961). This is particularly true when the statutes concern the same subject matter. Uzzell v. Lunney, 46 Colo. 403, 104 P. 945 (1909); Golden State Bank v. Dolan, 37 Colo.App. 29, 543 P.2d 1307 (1975). Consequently, the Legislature is presumed

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[3]The amendments to §31-15-707 appear in S.B. 481, 1981 Colorado Session Laws at 1455 - 1456. The repeal and reenactment of the Colorado Water Quality Control Act appears in S.B. 10, 1981 Colorado Session Laws at 1310 - 1339.

to have been aware of §31-15-707(1)(b) when it adopted the Colorado Water Quality Control Act. Both statutes address in different contexts Colorado's water quality, and authorize action for the abatement of pollution. There is no evidence that a repeal of §31-15-707(1)(b) was intended.

II. §31-15-707(1)(b) AUTHORIZES MUNICIPALITIES TO ADOPT ALL REGULATIONS NECESSARY TO PROTECT THEIR MUNICIPAL WATER SUPPLIES FROM INJURY AND POLLUTION.

Colorado municipalities not only have a right but a duty to maintain the purity of their water supplies for the domestic use of their inhabitants. Phillips v. Golden, 91 Colo. 331, 14 P.2d 1013 (1932). One means of performing that duty is provided by §31-15-707(1)(b) which authorizes municipalities:

> To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect;

(emphasis added). Under this broad grant of authority, municipalities are authorized to regulate those activities

which may lead to the drainage or discharge of pollutants into the municipalities' water supply and consequently pose a threat to the health and welfare of municipal residents. This includes the regulation of uses of land which adversely affect water quality.

In Durango v. Chapman, 27 Colo. 169, 60 P. 635 (1900), the Court recognized the validity of an ordinance which precluded the placement of a pigsty or slaughterhouse upon or near the stream within five miles from where the municipality obtained its water supply.[4] It indicated that a municipality might rely on common knowledge to determine which land use activities will likely pollute the water supply and then regulate accordingly:

> The fact that these places may have been well kept is no defense, for it needs no evidence to demonstrate that if water flowing over the surface of an enclosure in which swine are kept, or from a slaughter-house or over the ground in its near vicinity, whether from natural causes or otherwise, reaches the stream from which the city draws its water supply it will be rendered impure and unwholesome. Common knowledge teaches this would be the result, without proof.

Durango v. Chapman, 60 P. 635 at 636. In a different

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[4]Durango v. Chapman was overruled in part by People v. Horvat, 186 Colo. 202, 527 P.2d 47 (1974) on its holding regarding dual sovereignty for the purposes of prosecution and punishment of an accused in both a state and municipal court for the same act.

context the Court has recognized the right of a municipality to drive livestock off lands within the watershed from which the municipality obtained its water supply. Phillips v. Golden, supra.

Authority to regulate activities outside of the municipal boundaries which may pollute the water supply is necessary for municipalities to carry out their obligation to maintain the purity of their water supplies for the domestic use of their inhabitants. Pursuant to §31-15-707(1)(b), municipal jurisdiction is extended to include areas outside of the corporate boundaries. The express grant of extraterritorial jurisdiction indicates the high level of importance the General Assembly placed on the ability of municipalities to protect the source of their water supply since a grant of extraterritorial jurisdiction is not common. City of Pueblo v. Flanders, 122 Colo. 571, 225 P.2d 832 (1950); Peerless Insurance v. Clark, 29 Colo.App. 436, 487 P.2d 574 (1971).

III. COLORADO HOME RULE MUNICIPALITIES ARE AUTHORIZED PURSUANT TO ARTICLE XX, SECTION 1, OF THE COLORADO CONSTITUTION TO ADOPT ORDINANCES TO PROTECT THE SOURCE OF THEIR MUNICIPAL WATER SUPPLY FROM POLLUTION.

A home rule municipality has all the power of a statutory municipality, unless otherwise provided by its

charter.[5] Colorado Open Space Council, Inc. v. City and County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975). Thus, if this Court holds that §31-15-707(1)(b) has not been superseded by the Colorado Water Quality Control Act, it need not decide whether a home rule municipality is constitutionally authorized to adopt regulations to protect its water supply from injury and pollution. Constitutional issues should be avoided, of course, if a case can be resolved without reaching the constitutional question. Ricci v. Davis, 627 P.2d 1111 (Colo. Sup.Ct. 1981); Friedman v. Motor Vehicle Division, 194 Colo. 228, 571 P.2d 1086 (1977). If, however, this Court decides that §31-15-707(1)(b) has been superseded by the Colorado Water Quality Control Act, then the constitutional issue should be addressed and the Court should find that Article XX, Section 1 of the Colorado Constitution authorizes a home rule municipality, such as Crested Butte, to adopt ordinances to protect its municipal water supply.

Article XX, Section 1 provides, in part, that a home rule municipality

> ... shall have the power within or without its territorial limits, to construct, condemn and purchase, purchase and acquire, lease,

[5]There is no allegation in this case that the Crested Butte charter limits the Town's authority under §31-15-707(1)(b).

> add to, maintain, conduct, and operate water works ... in whole or in part, and everything required therefor, ...

(emphasis added). A municipality, including a home rule municipality, in the absence of specific authority has no jurisdiction over territory outside its municipal limits. Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976). However, Article XX, Section 1 specifically grants home rule municipalities jurisdiction within and without the municipal boundaries.

The scope of that grant of authority includes the protection of the municipal water supply from injury or pollution since uncontaminated water is essential to the successful operation of a municipal waterworks. This construction of Article XX, Section 1, is consistent with the construction given to it in other Colorado cases. The Court has previously held that water and water rights, flowage easements, and channel improvements are required for the operation of waterworks and thus within the scope of Article XX, Section 1. City of Thornton v. Farmers Reservoir, 194 Colo. 526, 575 P.2d 382 (1978); Toll v. City and County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

Since Article XX, Section 1 grants home rule municipalities authority to adopt regulations to prevent injury or pollution of their water supplies, there can be no preemption of that authority by the Colorado Water Quality

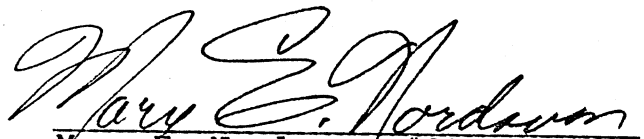
Control Act. A statutory limitation on a constitutional grant of authority must fail. Glendale v. Denver, 137 Colo. 188, 322 P.2d 1053 (1958); Denver v. Board of Commissioners of Arapahoe County, 113 Colo. 150, 156 P.2d 101 (1945); Town of Lyons v. City of Longmont, 54 Colo. 112, 129 P. 198 (1913). Consequently, the only remaining questions would be whether Crested Butte's ordinance falls within its constitutional authority or is preempted by some federal act.

CONCLUSION

Based upon the foregoing arguments and authorities, the conclusion of the District Court that the Colorado Water Quality Control Act, C.R.S. 1973, §25-8-101 et seq., as amended, preempts to the state the regulation and control of water pollution and that such Act supersedes C.R.S. 1973, §31-15-707(1)(b) (1977 Repl.Vol.), as amended, should be reversed. If this Court concludes that §31-15-707(1)(b) has been preempted by the Colorado Water Quality Control Act,

then the District Court's conclusion that Section 1 of Article XX of the Colorado Constitution does not grant to home rule municipalities authority to adopt regulations to prevent pollution of their water supplies should be reversed.

Respectfully submitted,



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Appendix A

Relevant Constitutional and Statutory Provisions

ARTICLE XX

Home Rule Cities and Towns

Section 1. Incorporated. The municipal corporation known as the city of Denver and all municipal corporations and that part of the quasi-municipal corporation known as the county of Arapahoe, in the state of Colorado, included within the exterior boundaries of the said city of Denver as the same shall be bounded when this amendment takes effect, are hereby consolidated and are hereby declared to be a single body politic and corporate, by the name of the "City and County of Denver". By that name said corporation shall have perpetual succession, and shall own, possess, and hold all property, real and personal, theretofore owned, possessed, or held by the said city of Denver and by such included municipal corporations, and also all property, real and personal, theretofore owned, possessed, or held by the said county of Arapahoe, and shall assume, manage, and dispose of all trusts in any way connected therewith; shall succeed to all the rights and liabilities, and shall acquire all benefits and shall assume and pay all bonds, obligations, and indebtedness of said city of Denver and of said included municipal corporations and of the county of Arapahoe; by that name may sue and defend, plead and be impleaded, in all courts and places, and in all matters and proceedings; may have and use a common seal and alter the same at pleasure; may purchase, receive, hold, and enjoy or sell and dispose of, real and personal property; may receive bequests, gifts, and donations of all kinds of property, in fee simple, or in trust for public, charitable, or other purposes; and do all things and acts necessary to carry out the purposes of such gifts, bequests, and donations, with power to manage, sell, lease, or otherwise dispose of the same in accordance with the terms of the gift, bequest, or trust; shall have the power, within or without its territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate water works, light plants, power plants, transportation systems, heating plants, and any other public utilities or works or ways local in use and extent, in whole or in part, and everything required therefore, for the use of said city and county and the inhabitants thereof, and any such systems, plants, or works or ways, or any contracts in relation or connection with either, that may exist and which said city and county may desire to purchase, in whole or in part, the same or any part thereof may be purchased by said city and county which may enforce such purchase by proceedings at law as in taking land for public use by right of eminent domain, and shall have the power to issue bonds upon the vote of the taxpaying electors, at any special or general election, in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided.

2-4-201. Intentions in the enactment of statutes. (1) In enacting a statute, it is presumed that:

(a) Compliance with the constitutions of the state of Colorado and the United States is intended;

(b) The entire statute is intended to be effective;

(c) A just and reasonable result is intended;

(d) A result feasible of execution is intended;

(e) Public interest is favored over any private interest.

25-8-101. Short title. This article shall be known and may be cited as the "Colorado Water Quality Control Act".

25-8-102. Legislative declaration. (1) In order to foster the health, welfare, and safety of the inhabitants of the state of Colorado and to facilitate the enjoyment and use of the scenic and natural resources of the state, it is declared to be the policy of this state to prevent injury to beneficial uses made of state waters, to maximize the beneficial uses of water, and to develop waters to which Colorado and its citizens are entitled and, within this context, to achieve the maximum practical degree of water quality in the waters of the state consistent with the welfare of the state. It is further declared that pollution of state waters may constitute a menace to public health and welfare, may create public nuisances, may be harmful to wildlife and aquatic life, and may impair beneficial uses of state waters and that the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states.

(2) It is further declared to be the public policy of this state to conserve state waters and to protect, maintain, and improve, where necessary and reasonable, the quality thereof for public water supplies, for protection and propagation of wildlife and aquatic life, for domestic, agricultural, industrial, and recreational uses, and for other beneficial uses, taking into consideration the requirements of such uses; to provide that no pollutant be released into any state waters without first receiving the treatment or other corrective action necessary to reasonably protect the legitimate and beneficial uses of such waters; to provide for the prevention, abatement, and control of new or existing water pollution; and to cooperate with other states and the federal government in carrying out these objectives.

(3) It is further declared that protection of the quality of state waters and the prevention, abatement, and control of water pollution are matters of statewide concern and affected with a public interest, and the provisions of this article are enacted in the exercise of the police powers of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(4) This article and the agencies authorized under this article shall be the final authority in the administration of water pollution prevention, abatement, and control. Notwithstanding any other provision of law, no department or agency of the state, and no municipal corporation, county, or other political subdivision, having jurisdiction over water pollution prevention, abatement, and control, shall issue any authorization for the discharge of pollutants into state waters unless authorized to do so in accordance with this article.

(5) It is further declared that the general assembly intends that this article shall be construed to require the development of a water quality program in which the water quality benefits of the pollution control measures utilized have a reasonable relationship to the economic, environmental, energy, and public health costs and impacts of such measures, and that before any final action is taken, with the exception of any enforcement action, consideration be given to the economic reasonableness of the action. Such consideration shall include evaluation of the benefits derived from achieving the goals of this article and of the economic, environmental, public health, and energy impacts to the public and affected persons.

25-8-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commission" means the water quality control commission created by section 25-8-201.

(2) "Control regulation" means any regulation promulgated by the commission pursuant to section 25-8-205.

(3) "Discharge of pollutants" means the introduction or addition of a pollutant into state waters.

(4) "Division" means the division of administration of the department of health.

(5) "Domestic wastewater treatment works" means a system or facility for treating, neutralizing, stabilizing, or disposing of domestic wastewater which system or facility has a designed capacity to receive more than two thousand gallons of domestic wastewater per day. The term "domestic wastewater treatment works" also includes appurtenances to such system or facility, such as outfall sewers and pumping stations, and to equipment related to such appurtenances. The term "domestic wastewater treatment works" does not include industrial wastewater treatment plants or complexes whose primary function is the treatment of industrial wastes, notwithstanding the fact that human wastes generated incidentally to the industrial processes are treated therein.

(6) "Effluent limitation" means any restriction or prohibition established under this article or federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards, and schedules of compliance.

(7) "Executive director" means the executive director of the department of health.

(8) "Federal act" means the "Federal Water Pollution Control Act", commonly referred to as the "Clean Water Act".

(9) "Irrigation return flow" means tailwater, tile drainage, or surfaced groundwater flow from irrigated land.

(10) "Issue" or "issuance" means the mailing to all parties of any order, permit, determination, or notice, other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(11) "Municipality" means any regional commission, county, metropolitan district offering sanitation service, sanitation district, water and sanitation district, water conservancy district, metropolitan sewage disposal district, service authority, city and county, city, town, Indian tribe or authorized Indian tribal organization, or any two or more of them which are acting jointly in connection with a sewage treatment works.

(12) "Permit" means a permit issued pursuant to part 5 of this article.

(13) "Person" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, commission, or interstate body.

(14) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. "Point source" does not include irrigation return flow.

(15) "Pollutant" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal, or agricultural waste.

(16) "Pollution" means the man-made, man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(17) "Promulgate" means and includes authority to adopt, and from time to time amend, repeal, modify, publish, and put into effect.

(18) "Schedule of compliance" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with any control regulation or effluent limitation.

(19) "State waters" means any and all surface and subsurface waters which are contained in or flow in or through this state, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(20) "Water quality standard" means any standard promulgated pursuant to section 25-8-204.

25-8-612. Remedies cumulative. (1) It is the purpose of this article to provide additional and cumulative remedies to prevent, control, and abate water pollution and protect water quality.

(2) No action pursuant to section 25-8-609 shall bar enforcement of any provision of this article or of any rule or order issued pursuant to this article by any authorized means.

(3) Nothing in this article shall abridge or alter rights of action or remedies existing on or after July 1, 1981, nor shall any provision of this article or anything done by virtue of this article be construed as estopping individuals, cities, towns, counties, cities and counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances.

31-15-707. Municipal utilities. (1) The governing body of each municipality has the power:

(a) (I) To acquire waterworks, gasworks, and gas distribution systems for the distribution of gas of any kind or electric light and power works and distribution systems, or heating and cooling works and distribution systems for the distribution of heat and cooling obtained from geothermal resources, solar or wind energy, hydroelectric or renewable biomass resources, including waste and cogenerated heat, and all appurtenances necessary to any of said works or systems or to authorize the erection, ownership, operation, and maintenance of such works and systems by others. No such works or systems, except waterworks, shall be acquired or erected by a municipality until the question of acquiring or erecting the same is submitted at a regular or special election and approved in the manner provided for authorization of bonded indebtedness by section 31-15-302 (1) (d) and in accordance with the requirements of law, including requirements of law relating to the acquisition and financing of public utilities by municipalities. The question of acquiring or erecting a waterworks need not be so submitted and approved at an election.

(II) All such works or systems authorized by any municipality to be erected by others or the franchise of which is extended or renewed shall be authorized, extended, or renewed upon the express condition that such municipality has the right and power to purchase or condemn any such works or systems at their fair market value at the time of purchasing or condemning such works or systems, excluding all value of the franchise or right-of-way through the streets and also excluding any value by virtue of any contract for hydrant or private rental or otherwise entered into with the municipality in excess of the fair market value of the works or systems. If, after an election conducted in the manner prescribed in section 31-15-302 (1) (d), the municipality is authorized to acquire any of said works or systems after granting a franchise therefor to any person, the municipality shall purchase or condemn such works or systems within the municipal limits then utilized in serving the inhabitants of such municipality at their fair market value. Nothing in this subparagraph (II) shall require such municipality to purchase or condemn all or any part of such works or systems which is obsolete or which has outworn its usefulness.

(III) If the municipality elects to purchase such works or systems and if the parties in interest cannot agree on the purchase price, they shall enter into a written agreement to arbitrate the matter and to abide by the award of the arbitrators, in which event each party shall choose an arbitrator to determine their fair market value. If the two arbitrators cannot agree on the fair market value, they shall choose a third disinterested arbitrator, and the award of any two arbitrators shall be final and binding upon the parties.

(IV) Nothing in this paragraph (a) shall authorize the condemnation or purchase of any such works or systems within twenty years after the granting of any franchise therefor, except at periods of ten or fifteen years thereafter, without the consent of the owner of the franchise.

(b) To construct or authorize the construction of such waterworks without their limits and, for the purpose of maintaining and protecting the same from injury and the water from pollution, their jurisdiction shall extend over the territory occupied by such works and all reservoirs, streams, trenches, pipes, and drains used in and necessary for the construction, maintenance, and operation of the same and over the stream or source from which the water is taken for five miles above the point from which it is taken and to enact all ordinances and regulations necessary to carry the power conferred in this paragraph (b) into effect;

(c) To make such grant to inure for a term of not more than twenty-five years when the right to build and operate such water, gas, heating and cooling, or electric light works is granted to a person by said municipality and to authorize such person to charge and collect from each person supplied by them with water, gas, heat, cooling, or electric light such water, gas, heat, cooling, or electric light rent as may be agreed upon between the person building said works and said municipality; and to enter into a contract with the person constructing said works to supply said municipality with water for fire purposes and for such other purposes as may be necessary for the health and safety thereof and also with gas, heat, cooling, and electric light and to pay therefor such sums as may be agreed upon between said contracting parties;

(d) To assess from time to time, when constructing such water, gas, heating and cooling, or electric light works and in such manner as it deems equitable, upon each tenement or other place supplied with water, gas, heat, cooling, or electric light, such water, gas, heat, cooling, or electric light rent as may be agreed upon by the governing body. Gas, heat, cooling, and electric light shall be charged for according to use. At the regular time for levying taxes in each year, said municipality is empowered to levy and cause to be collected, in addition to the other taxes authorized to be levied, a special tax on taxable property in said municipality. Such tax, with the water, gas, heat, cooling, or electric light rents hereby authorized, shall be sufficient to pay the expenses of running, repairing, and operating such works. If the right to build, maintain, and operate such works is granted to a person by a municipality and the municipality contracts with said person for the supplying of water, gas, heat, cooling, or electric light for any purpose, such municipality shall levy each year and cause to be collected a special tax, as provided for in this paragraph (d), sufficient to pay off such water, gas, heat, cooling, or electric light rents so agreed to be paid to said person constructing said works. The tax shall not exceed the sum of three mills on the dollar for any one year.

(e) To condemn and appropriate so much private property as is necessary for the construction and operation of water, gas, heating and cooling, or electric light works in such manner as may be prescribed by law; and to condemn and appropriate any water, gas, heating and cooling, or electric light works not owned by such municipality in such manner as may be prescribed by law for the condemnation of real estate.