

# WATER

<b>South Platte River Issues</b>		
<b>HB 08-1030</b> (Postponed Indefinitely) <i>Exempt Pre-1974 Well Depletions</i>	<b>HB 08-1044</b> (Postponed Indefinitely) <i>Excess Augmentations Credits Spots Market</i>	<b>SB 08-053</b> (Postponed Indefinitely) <i>Include 100-year Wells Designated Basins</i>
<b>SB 08-136</b> (Postponed Indefinitely) <i>Delay Winter Replacement Well</i>	<b>SB 08-247</b> (Postponed Indefinitely) <i>Water Supply Plans Pre-2003 Depletions</i>	
<b>Residential Water Supplies</b>		
<b>HB 08-1014</b> (Signed Into Law) <i>Track Residential Well Ownership Records</i>	<b>HB 08-1141</b> (Signed Into Law) <i>Concerning Sufficient Water Supplies For Land Use Approval</i>	<b>SB 08-119</b> (Signed Into Law) <i>Authorize Domestic Exempt Cisterns</i>
<b>Water Rights Issues</b>		
<b>HB 08-1280</b> (Signed Into Law) <i>Protected Leased Instream Flow Water Right</i>	<b>HB 08-1369</b> (Postponed Indefinitely) <i>Incentives for Donations of Water Rights</i>	
<b>Water Supply</b>		
<b>HB 08-1241</b> (Signed Into Law) <i>Colorado Watershed Protection Fund Checkoff</i>	<b>HB 08-1346</b> (Signed Into Law) <i>Water Conservation Board Construction Fund</i>	<b>SB 08-036</b> (Postponed Indefinitely) <i>Water Supply Reserve Account</i>
<b>SJR 08-003</b> (Signed Into Law) <i>Water Projects Eligibility Lists</i>		
<b>Water Quality Issues</b>		
<b>SB 08-141</b> (Postponed Indefinitely) <i>State Water Quality Pretreatment Program</i>		

During the 2008 legislative session, the Colorado legislature considered a broad range of water bills. The General Assembly addressed water issues related to the South Platte River Basin, residential water supplies, state water supplies, water rights, and water quality.

## South Platte River Issues

The South Platte River Basin Task Force was created in 2007 by Governor Ritter to consider changes to current water law or policy to provide relief to junior groundwater users in the basin without injuring senior water right holders. Junior groundwater users rely on wells that pump water that is hydraulically connected to the river, called tributary wells. Colorado Supreme Court decisions and statutes prohibit junior users from pumping unless they have a water court-approved augmentation plan that protects senior water rights. An augmentation plan replaces the water depleted from a stream by an out-of-priority diversion. Depletion is the amount of water that does not return to a stream after it has been used due to evaporation, plant uptake, and other mechanisms. Some junior wells in the basin are located miles from the river. Due to this distance, the effect of

groundwater pumping may not reach the South Platte River until years after the pumping occurred. The General Assembly considered five bills that addressed junior groundwater users in the South Platte River basin and all five bills were postponed indefinitely.

The South Platte River Basin Task Force recommended **House Bill 08-1044**. This bill would have allowed a person to lend excess agricultural water resulting from a decreed augmentation plan for current-year water depletion caused by previous-year well pumping. The owner of the excess water would use "excess augmentation credits" to lend the water.

Because rules on wells in the South Platte did not go into effect until 1974, and well pumping prior to 1974 did not require augmentation, the task force recommended **House Bill 08-1030** which provided that augmentation was not required for current depletions caused by pumping prior to 1974.

**Senate Bill 08-247** would have authorized the State Engineer to approve substitute water supply plans for the replacement of out-of-priority depletions caused by diversions from wells that occurred prior to January 1, 2003, and are also included in decreed augmentation plans. Both the authority of the State Engineer and any water supply plans approved under the provisions of the bill would have expired on July 1, 2018.

Under certain conditions, **Senate Bill 08-136** would have allowed a water division engineer to temporarily delay or cancel the required replacement of well depletions by junior water rights holders for the duration of the non-irrigation season. The required replacement of well depletions could be delayed or cancelled if a water division engineer concluded that downstream senior water right holders would be unaffected and the applicant demonstrated the ability to deliver water to any downstream senior reservoir to prevent injury.

**Senate Bill 08-053** would have broadened the definition of "designated ground water" to include ground water that, if depleted, takes more than 100 years to affect the nearest surface water. The bill would have also required the State Engineer to investigate whether designated ground water meets this new definition and to exclude such depletions from the water right system if it could be shown that the effect of depletions would not affect surface right users for 100 years.

## **Residential Water Supplies**

**House Bill 08-1014** requires a buyer of residential real estate that includes a small capacity well or a domestic exempt water well to complete a form notifying the Division of Water Resources, Department of Natural Resources, of the well's change of ownership. The bill also requires the person who provides closing services for the transaction, or the buyer, to submit the appropriate forms to the division within 60 days after closing with as much information as is available. This requirement goes into effect January 1, 2009.

Rainwater harvesting occurs when runoff from an impervious surface is intercepted and applied to a beneficial use such as lawn watering. The water captured by rain harvesting systems would have otherwise flowed into a stream, evaporated, or been consumed by vegetation. **Senate Bill 08-119** requires the Water Resources Review Committee to study the issues of rain harvesting systems during the 2008 interim.

**House Bill 08-1141** requires that building permit applications for developments of more than 50 single-family units include specific evidence of an adequate water supply. An adequate water supply is defined as one that is sufficient for the build-out of the proposed development, in terms of quality, quantity, dependability, and availability. The local government is required to determine if an applicant has an adequate water supply based on a review of application documents. A local government may also request any other information or analyses needed to determine whether the water supply for the proposed development is adequate, including comments from the State Engineer on a report or letter required with an application for a development permit. Also, if a development has a water supply plan that meets specified criteria, the authorizing local government can forgo the report or letter.

## **Water Rights Issues**

The Colorado Water Conservation Board (CWCB) is the state's primary water policy and planning agency. **House Bill 08-1280** specifies that water rights which have been leased or loaned to the CWCB for instream flow purposes to preserve or improve the natural environment be excluded from the water court's historic consumptive use analysis, and will not be considered an abandoned water right. The water court is required to determine that a lessor or lender has not entered into the contract or agreement for speculative purposes.

**House Bill 08-1369** would have established an instream flow incentive tax credit issued by the CWCB for income tax years beginning on or after January 1, 2008. The CWCB would have approved the credits by issuing certificates to water rights owners who permanently transfer water rights to the board. The credit would have equaled one-half of the value of the donated water right, and the value of the water rights must have been determined through a qualified appraisal, with a maximum value of \$250,000 per individual. The total amount of tax credits allowed by the state would have been limited to \$2 million on an annual basis.

The bill specified that if the amount of the credit exceeded the income tax due for the current taxable year, the excess credit could have been carried forward for up to six years. The bill would have also allowed the transfer of the credit to other taxpayers, or corporate partnerships, but portions of transferred credits could not be less than \$5,000. The bill also specified that the credit would not be allowed in a particular income tax year if state revenues estimates were insufficient to maintain the limit on appropriations. The bill was postponed indefinitely.

All contractual and appropriative water rights at the Bonny Reservoir held by the Division of Parks and Outdoor Recreation and the Division of Wildlife, Department of Natural Resources, would have been required to be assigned to the CWCB according to **Senate Bill 08-028**. The bill would have also required the board to use these rights to determine appropriate stream flows to reduce water evaporation at the reservoir. The bill was postponed indefinitely.

## **Water Supply**

In order to qualify for financial assistance from the Drinking Water Revolving Fund and the Water Pollution Control Revolving Fund, proposed projects must be included on the project eligibility lists. **Senate Joint Resolution 08-003** is the list of eligible projects that qualify for

financial assistance. The list is created by the Division of Local Government, Water Quality Control Commission, and Colorado Water Resources and Power Development Authority. This joint resolution makes additions, deletions, and modifications to the Drinking Water Project Eligibility List and the Water Pollution Control Project Eligibility List.

The CWCB Construction Fund is a revolving loan program to fund projects that increase the consumption of Colorado's undeveloped river entitlement and that repair and rehabilitate existing water storage and delivery facilities. The fund receives revenue from the repayment of loans, interest, and federal mineral royalty distributions. **House Bill 08-1346** funds a variety of water-related projects through loans, direct appropriations, and fund transfers from the CWCB Construction Fund as well as the Perpetual Base Account and the Operational Account of the Severance Tax Trust Fund. In addition, the bill also repeals the current prohibition on the use of the moneys in the CWCB Construction Fund by the CWCB to acquire instream flow rights, and continuously appropriates up to \$1 million for the acquisition of water, water rights, and interests in water for instream flow use.

Specifically, the bill authorizes a \$60.6 million loan from the Perpetual Base Account for the Republican River Compact Compliance Pipeline in East Yuma County, and a \$11.2 million loan from the CWCB Construction Fund to the Dry Gulch Reservoir Project for land acquisition in Archuleta County. The bill also directly appropriates about \$9.1 million from the CWCB Construction Fund for the continuation of projects and studies and for new projects and studies. The appropriations for continuing projects and studies include:

- \$1,000,000 for the South Platte decision support system;
  - \$500,000 for a Colorado River water availability study;
  - \$500,000 for floodplain map modernization;
  - \$350,000 for satellite monitoring system maintenance;
  - \$250,000 for a Colorado flood decision support system study;
  - \$175,000 for a weather modification program;
  - \$150,000 for a Cache La Poudre River floodplain improvement study; and
  - \$150,000 for instream flow engineering and technical support.
- \$3.075 million                      Total**

The appropriations for new projects and studies include:

- \$2,000,000 for the Chatfield Reservoir reallocation project;
- \$1,000,000 for the Tamarisk Control Cost Sharing Grant Program;
- \$500,000 for a study on state water rights administration issues;
- \$400,000 for the Wild and Scenic Rivers study;
- \$300,000 for the Colorado Drought Mitigation and Response Plan;
- \$150,000 for the Colorado River Augmentation project;
- \$150,000 for the Colorado River Compact - Mexican Treaty;
- \$100,000 for a study on climate change effects on water resources;
- \$300,000 to restore the unencumbered balance in the flood response fund;
- \$100,000 for the Arkansas River Basin water quality project;
- \$84,000 for the Denver Basin pumping optimization model;
- \$67,000 for presentation of 2005 Colorado water user data;
- \$65,000 for high resolution estimates of snowpack moisture;

- \$50,000 for a study on the Purgatoire River channel capacity; and
  - \$30,000 for an agricultural water conservation database.
- \$6.025 million                      Total**

The name of Colorado Watershed Protection Fund was changed to the Colorado Healthy Rivers Fund by **House Bill 08-1241**. The bill also extends the period that state income tax returns will include a voluntary contribution designation benefitting the fund for three tax years (2008 through 2010). This fund is used by the CWCB in cooperation with the Water Quality Control Commission to award competitive grants to Colorado residents working toward the restoration and protection of land and natural resources within Colorado watersheds.

Water efficiency helps extend existing water supplies and reduces demand for new water sources. Moderate water conservation measures such as: preventing leaks in pipes, replacing high-water-use appliances, pricing water to encourage wise water use, and public education can reduce water demand by 5 percent. The Water Conservation Act of 1991 requires municipal water providers that deliver over 2,000 acre-feet per year — "covered entities" — to develop water conservation plans. As an incentive to develop water conservation plans, **Senate Bill 08-036** would have required covered entities to adopt a plan before grants or loans can be allocated from the Water Supply Reserve Account of the Severance Tax Trust Fund by the CWCB. The bill would have also specified that moneys in the Water Supply Reserve Account are subject to annual appropriations by the General Assembly and repayments of principal and interest on loans from the Water Supply Reserve Account credited to the account. The bill would have also repealed current provisions that allow the unencumbered and unexpended balance from the Water Supply Reserve Account to revert to the operational account of the Severance Tax Trust Fund. The bill was postponed indefinitely.

### **Water Quality Issues**

Currently, the Water Quality Control Division works in conjunction with the U.S. Environmental Protection Agency (EPA) to implement and enforce federal and state standards related to pretreatment of wastewater, but the option exists for the EPA to delegate its authority to the division if the division has sufficient resources to meet EPA requirements. **Senate Bill 08-141** would have required that the Industrial Pretreatment Program in the Department of Public Health and Environment, Water Quality Control Division, be funded and staffed at a level to facilitate delegation of enforcement authority from the EPA to the division. The bill would have nearly tripled fees charged to companies and publicly-owned facilities for wastewater discharge that must be treated before reuse. The bill was postponed indefinitely.