

# Natural Resources and Water

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**Overview.** The major natural resource issues facing the Colorado General Assembly during the 2001 legislative session were driven in part by the state's rapid population growth and residential development. Specifically, eight bills addressed water policy and supply issues including three water studies, two water bank proposals, one bill changing the makeup of the Colorado Water Conservation Board and an act that establishes the process and criteria for obtaining an in-channel water right for recreation. Four bills addressed the growing conflict between oil and gas producers and surface landowners including one bill that would have regulated surface damage caused by oil and gas development and one bill that would have imposed stricter conflict of interest requirements for members of the Colorado Oil and Gas Conservation Commission. The Long Appropriations Act also provides \$159 million to the Department of Natural Resources for operating expenses, an increase of 0.2 percent over the previous year's appropriation. It also provides an additional \$19 million for capital construction projects in the department.

**Legislative water committees and water studies.** Colorado's growing population and increasing demand for water has raised concern about developing new water supplies and protecting existing water users. Since 1996, the Special Water Committee has studied the growing use of groundwater from the Denver Basin Aquifer and its potential impact on surface water users in the South Platte River Basin. The Denver Basin Aquifer underlies the Front Range metropolitan area. This committee also oversees Colorado's participation in the Three State Agreement for the Recovery of Endangered Species on the Platte River in Nebraska. **Senate Bill 01-002** would have continued the Special Water Committee until July 1, 2003, and delayed water replacement requirements for certain users of the Denver Basin Aquifer. This bill was postponed indefinitely. The Special Water Committee's duties were transferred to the Water Resources Legislation Review Committee in **House Bill 01-1240**.

Water law and water policy are some of the most complex issues that the General Assembly addresses. **House Bill 01-1240** creates the Water Resources Legislation Review Committee to review and propose water resources legislation. Five members of the committee are from the Senate and five members are from the House. At least four committee members are from west of the continental divide. Members should also represent each of the state's seven water divisions. The committee is authorized to report up to three bills annually provided two-thirds of the committee vote to refer each bill to the Legislative Council.

**Senate Bill 01-161** would have authorized the Colorado Water Conservation Board (CWCB) to conduct a study of the state's water supply, future water demands, and alternatives for meeting that demand including unappropriated stream water, groundwater, water conservation, new storage facilities, and water leasing. The study also would have identified potential constraints on these water supplies including environmental regulations, social and economic impacts of water transfers, and state and local land use controls. This bill was postponed indefinitely in the Senate Appropriations.

**Water banks. House Bill 01-1354** directs the State Engineer to establish and administer a pilot water bank program to simplify and improve the approval of water leases, loans, and exchanges within southeastern Colorado's Arkansas River Basin. The water bank is prohibited from increasing water diversions from another water basin. This bill was enacted. **Senate Bill 01-161** also would have authorized the creation of water banks to simplify water sales, leases, loans, and exchanges. However, this bill was postponed indefinitely in the Senate Appropriations Committee.

**Water conservation. House Bill 01-1111** would have provided an income tax credit to offset up to \$300,000 of the cost of an agricultural water conservation project. The conserved water could then be transferred or exchanged, provided other water rights are not impacted. This bill was postponed indefinitely by the House Agriculture, Livestock, and Natural Resources Committee. If approved by the voters, **House Bill 01-1295** would have imposed a one dollar residential water conservation fee on residential property. The fee would have been used by the CWCB for a residential water conservation program that provides financial incentives to encourage the installation of water efficient plumbing, irrigation systems, and landscapes. The bill was postponed indefinitely by the House Agriculture, Livestock, and Natural Resources Committee.

**Colorado Water Conservation Board.** Under **Senate Bill 01-126**, the membership of the Water Conservation Board (CWCB) would have increased from fifteen to twenty-one by including a member from each congressional district. This change would have provided greater representation to more populous areas of the state. The bill maintained the requirement that four members be appointed from the west slope and decreased from five to four the number members who must be appointed from the east slope. It also increased from five to eight the number of members who may be from one political party. The bill was postponed indefinitely in committee. The board's duties include promoting the conservation of the state's water by financing water projects, gathering data for greater utilization of the water, and cooperating with the federal government on water conservation and flood control projects. This bill was postponed indefinitely in the Senate Agriculture and Natural Resources Committee.

**Recreational in-channel diversion. Senate Bill 01-216** establishes the process and criteria for reviewing and approving new applications for recreational in-channel water rights by a local government or special district. A recreational in-channel water right requires that a specific amount of water be allowed to flow through a section of stream to protect recreation. Similar instream flow rights are available to protect fish and wildlife. **Senate Bill 01-216** requires applicants for a recreational in-channel water right to submit the application to the Colorado Water Conservation Board for its review. The board is required to report its findings to the water court. When reviewing the water rights applications the board and the water court are required to consider a variety of issues including whether the application will impair the state's ability develop its compact entitlement or injure instream flow water rights. **Senate Bill 01-216** was enacted.

**Compensation for damage to surface land. House Bill 01-1062** would have required oil and gas operators and surface owners to negotiate compensation for damages to the surface that result from drilling operations. The bill also establishes a procedure to be used if parties fail to

reach agreement. Under the agreement, parties may petition the district court in the county to select appraisers to evaluate the anticipated surface damages and file a report with the clerk of the court. Parties may appeal the appraiser's report in court and may file a written demand for a trial by jury. The bill was postponed indefinitely.

***Notice of severed mineral rights.*** When mineral estates and surface estates are severed and a surface estate is being sold, **House Bill 01-1088** requires title companies to notify the individual purchasing the surface estate that the estates are severed. Under the bill, a notice must be provided to owners of mineral interests concerning impending surface development. The bill requires applicants for development to notify mineral estate owners that will be affected by the development of land overlying their mineral estate. Applicants must also notify local governments and provide certification that mineral estate owners have been notified of surface development intentions. The bill was signed into law.

***Uniform Dormant Mineral Interests Act.*** **House Bill 01-1068** would have established procedures for changing the title to certain oil and gas mineral interests that have been abandoned or the owners of the mineral interest cannot be located within a specific amount of time. The bill reunites the surface and mineral estates in property where the mineral estate has been severed in the past but has been unused for 20 years or more, and where the owner of the mineral estate does not appear or record his or her interest. The act applies to oil and gas mineral interests created before, on, or after July 1, 2003. Action to terminate a mineral interest is not permitted until July 1, 2005. The bill was postponed indefinitely.

***Oil and Gas Conservation Commission (COGCC).*** **Senate Bill 01-103** would have prohibited members and staff of the COGCC from having a financial interest in a company that is regulated by the commission. The bill would have imposed similar conflict of interest requirements on the COGCC as currently apply to the Public Utility Commission. The bill was postponed indefinitely.

***Long Appropriations Bill.*** **Senate Bill 01-212** appropriates \$159 million to the Department of Natural Resources for operating expenses; an increase of 0.2 percent over the previous year's appropriation. Of this amount, \$29.2 million will come from General Fund appropriations, \$90 million from Cash Funds, \$25.2 million from Cash Funds Exempt, and \$14.8 million from federal funds. Cash funds revenue comes from user fees, such as park entrance fees, and license charges, such as fishing and hunting licenses. Cash fund exempt revenue is money obtained from grants, such as from the Great Outdoors Colorado Trust Fund, and cash fund balances from previous fiscal years that is not limited by TABOR, the constitutional spending limit. Among other programs, the Department of Natural Resources' appropriation funds salaries, state parks, wildlife management, geologic surveys, mine safety, regulation of the oil and gas industry, regulation of water well development, and the enforcement of water rights.

The Long Appropriations Bill also provides an additional \$19 million for capital construction projects in the Department of Natural Resources. Of this amount, \$17.5 million comes from cash fund exempt moneys and \$582,000 comes from federal funds. An appropriation of \$15 million will be used to fund capital construction projects in State Parks and \$4 million to

fund construction and maintenance projects in the Division of Wildlife. **Senate Bill 01-212** was signed into law.

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