

# WATER

<b>Recreational Use of Water Facilities and Rivers</b>		
<b>HB 10-1086</b> (Postponed Indefinitely) <i>Limited Liability for Water Rights Facilities and for Land Used for Recreation Purposes</i>	<b>HB 10-1188</b> (Lost in first conference committee) <i>Clarify River Outfitter Navigation Right</i>	
<b>Groundwater Use</b>		
<b>SB 10-52</b> (Enacted) <i>Alter Designated Groundwater Basin Area</i>	<b>SB 10-165</b> (Enacted) <i>Adjust Oil and Gas Regulation</i>	
<b>Water Supply Projects</b>		
<b>HB 10-1250</b> (Enacted) <i>Water Conservation Board Construction Fund</i>	<b>SJR 10-004</b> (Signed by the Governor) <i>Water Projects Eligibility Lists</i>	
<b>Water Conservation</b>		
<b>HB 10-1051</b> (Enacted) <i>Water Efficiency Plans Annual Report</i>	<b>HB 10-1204</b> (Enacted) <i>Plumbing Code Water Conservation Standard</i>	<b>HB 10-1358</b> (Enacted) <i>Water Saving Options for New Home Buyers</i>
<b>Regulation of Water Transfers</b>		
<b>HB 10-1159</b> (Postponed Indefinitely) <i>Mitigation for Water Exports</i>		

During the 2010 legislative session, the Colorado legislature considered a broad range of water bills. The General Assembly addressed water issues related to the recreational use of rivers, groundwater use, water supply projects, and water transfers.

## Recreational Use of Water Facilities and Rivers

Two bills were introduced that would have changed the law concerning the recreational use of water facilities and streams. As introduced, **House Bill 10-1086** would have limited a landowner's liability for injury to a trespasser by stating that a facility constructed for the diversion, storage, conveyance, or use of water is not an attractive nuisance. This bill clarified the definition of "attractive nuisance" as it relates to a landowner's liability for injury of a trespasser. It also would have specified that a landowner is not liable for injuries to members of the public who use land for recreational purposes unless the landowner willfully or deliberately caused the injuries. The bill was postponed indefinitely.

**House Bill 10-1188** would have allowed guides employed by a licensed river outfitter and their passengers to float on certain waterways without committing civil or criminal trespass, provided the waterways were used during 2008 or 2009 for commercial float trips. They would also have been

required to gain access to the waterway from public land or from private land with consent, and could only make incidental contact with the beds and banks of the waterway while floating and portaging. The bill limited a landowner's liability to damages willfully or deliberately caused by the landowner to a guide or passenger, unless the person was an invitee or licensee of the landowner. The bill specified that such a person who damages private property was liable for the damage. The bill was lost in conference committee.

## **Groundwater Use**

Two laws were adopted in 2010 that change how Colorado regulates the use of certain groundwater. **Senate Bill 10-052** limits when the Colorado Groundwater Commission may alter the boundaries of a designated groundwater basin. Under this act, an area included in a groundwater basin may only be excluded if the change will not exclude any wells for which conditional or final permits have been issued. Designated groundwater basins are located in Colorado's eastern plains and contain essentially nonrenewable water that is primarily used for irrigation purposes. **Senate Bill 10-165** amends a recently approved statute that regulates the pumping of groundwater related to coal bed methane (CBM) wells. A law passed in 2009 established a process to integrate CBM wells that remove groundwater that is connected to a stream, called *tributary ground water*, into the doctrine of prior appropriation and the water court adjudication process. Senate Bill 10-165 specifies that, except for coal bed methane wells, no well permit is required from the Division of Water Resources for oil and gas wells that remove nontributary groundwater provided the water is not beneficially used or is used only for purposes allowed under the "Oil and Gas Conservation Act." The act also extends the well permitting for oil and gas wells, including CBM wells, from March 31, 2010, to August 1, 2010.

## **Water Supply Projects**

**Senate Joint Resolution 10-004** lists the projects that qualify for financial assistance from the Drinking Water Revolving Fund and the Water Pollution Control Revolving Fund. In order to qualify for financial assistance from the revolving loan funds, proposed projects must be included on the project eligibility lists, which are created by the Division of Local Government within the Department of Local Affairs, Water Quality Control Commission, and the Colorado Water Resources and Power Development Authority. This annual joint resolution also makes deletions and modifications to the Drinking Water Project Eligibility List and the Water Pollution Control Project Eligibility List previously approved by the General Assembly.

The Colorado Water Conservation Board (CWCB) is the state's primary water policy and planning agency. 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 10-1250** appropriates \$1.5 million from the CWCB Construction Fund for a variety of water-related projects. Table 1 lists the projects funded by the CWCB Construction Fund. Starting June 30, 2011, the act also transfers \$12 million for three consecutive years to the CWCB from the Perpetual Base Account of the Severance Tax Trust Fund for the purchase of 10,460 acre-feet of water from the Animas-La Plata Project in southwest Colorado.

**Table 1**

<b>CWCB Construction Fund Projects</b>	<b>Amount FY 2010-11</b>
Satellite Monitoring System Maintenance (Div. of Water Resources)	250,000
Instream Flow Engineering and Technical Support Services	50,000
Weather Modification Program	175,000
Floodplain Map Modernization Program	500,000
Watershed Restoration Program	250,000
Restoration of the Flood Response Fund balance	300,000
<b>TOTAL</b>	<b>\$1,525,000</b>

## **Water Conservation**

Three bills were enacted that seek to encourage water conservation. Starting June 30, 2014, **House Bill 10-1051** requires retail water providers with an annual customer demand of at least 2,000 acre-feet to annually report water use and conservation data for purpose of water supply planning to the Colorado Water Conservation Board (CWCB), the Senate Agriculture and Natural Resources Committee, and the House Agriculture, Livestock, and Natural Resources Committee. **House Bill 10-1204** requires the Examining Board of Plumbers in the Department of Regulatory Agencies to adopt a plumbing code that includes conservation standards that meet national guidelines and standards, and that are tested and approved by a nationally recognized testing laboratory. Such conservation standards must address water-efficient devices and fixtures and the use of locally produced materials when practicable. **House Bill 10-1358** requires the builder of a new single-family detached residence, for which a buyer is under contract, to offer the buyer a selection of water-saving options, including water-efficient toilets, lavatory faucets, and showerheads; dishwashers and clothes washers that meet federal Environmental Protection Agency energy star program standards; landscape design that follows the Green Industry's best management practices; and pressure-reducing valves.

## **Regulation of Large Water Transfers**

When considering applications to transfer water between water divisions (water divisions correspond to major river basins), **House Bill 10-1159** would have required a water judge to include terms and conditions in the water decree that protect the users in the water division from which the water would be transferred. The decree would have been required to ensure that present and prospective beneficial uses of water would not be impaired or increased in cost in the originating water division. This bill would have pertained to leases of water of at least 10 years, or where the amount of water to be transferred between water divisions was at least 1,000 acre-feet. These terms and conditions would only have applied to applications for conditional water rights, conditional

appropriative rights of exchange, or a change of water rights. To meet the terms and conditions of the water decree, a water rights applicant would have been allowed to enter into a mitigation agreement with affected water conservation and water conservancy districts. The districts would have been required to hold a public meeting prior to entering into a mitigation agreement with notice of the meeting posted by the Division of Water Resources and the clerk of the applicable water court. The bill was postponed indefinitely.