

# WATER

## Groundwater Use

**HB 11-1231** (Postponed Indefinitely)  
*South Platte Alluvial Aquifer Study*

**HB 11-1286** (Enacted)  
*Clarify State Engineer  
Authority Nontributary  
Rule Authority*

## Water Supply Projects

**HB 11-1083** (Enacted)  
*Hydroelectricity and Pumped Hydro-power*

**HB 11-1274** (Enacted)  
*Water Conservation Board  
Construction Fund*

**HJR 11-1008** (Enacted)  
*Water Projects Eligibility  
Lists*

## Regulation of Water Transfers

**HB 11-1068** (Postponed Indefinitely)  
*State Engineer Approve Agriculture  
Water Transfers*

During the 2011 legislative session, the Colorado legislature considered a broad range of water bills. The General Assembly addressed water issues related to ground water use, water supply projects, and the regulation of water transfers.

## Groundwater Use

Two bills introduced in 2011 addressed the use of certain ground waters in Colorado. **House Bill 11-1286** 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 ground water that is connected to a stream, called *tributary ground water*, into the doctrine of prior appropriation and the water court adjudication process. House Bill 11-1286 clarifies the State Engineer's rule-making authority regarding dewatering geologic formations for mining operations. The act specifies that the State Engineer can make rules to determine which ground water in the formations or basins is determined to be nontributary, and can establish rule-making and adjudicatory procedures for nontributary determinations after the initial rule making. The act also specifies that the courts must presume that any applicable nontributary determination made by the State Engineer is valid, subject to rebuttal.

Recently, large numbers of wells were ordered to cease pumping due to concerns about their impact on surface streams and water users who rely on this water. **House Bill 11-1231**, postponed indefinitely, would have directed the Colorado Water Conservation Board to conduct a comprehensive study of the interaction of the South Platte alluvial aquifer and surface streams. The bill would have addressed the call from some water users to better understand the effect of ground water pumping on surface streams and the potential availability of additional ground water resources.

## Water Supply Projects

State law requires the Public Utilities Commission (PUC) to consider the cost-effective implementation of clean energy and energy-efficiency technologies in its consideration of generation acquisitions for electric utilities. In 2006, the law was amended to require the PUC to consider the development of integrated gasification combined-cycle electric generation facilities. The law was amended in 2008 to allow the PUC to consider the likelihood of future regulation and the risk of higher future costs associated with greenhouse gas emissions. The bill also allowed the PUC to consider whether acquisition of utility-scale solar resources is in the public interest. In 2009, the PUC was directed to consider projects eligible for funding through the American Recovery and Reinvestment Act of 2009. In 2010, the PUC was authorized to consider geothermal energy generation technologies and methane produced biogenically from geologic strata. **House Bill 11-1083** adds hydroelectricity and pumped hydroelectricity to the list of technologies that the PUC may give the fullest possible consideration when considering generation acquisitions for electric utilities.

**House Joint Resolution 11-1008** 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, the 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 entitlements 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 11-1274** appropriates \$13.9 million from the CWCB Construction Fund for a variety of water-related projects. Table 1 lists the projects funded by the CWCB Construction Fund.

**Table 1**

CWCB Construction Fund Projects	Amount FY 2011-12
Satellite Monitoring System Maintenance (Div. of Water Resources)	300,000
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
Water conservation data tracking	200,000

**Table 1 (Cont.)**

<b>CWCB Construction Fund Projects</b>	<b>Amount FY 2011-12</b>
Arkansas River Decision Support System	500,000
Restoration of Litigation Fund balance	700,000
Purchase of Colorado's allotment of Animas-La Plata Project water	12,000,000
<b>TOTAL</b>	<b>\$14,925,000</b>

### **Regulation of Water Transfers**

A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, municipalities have been seeking to purchase and lease agricultural water rights to satisfy increasing demand for municipal water supplies. **House Bill 11-1068**, postponed indefinitely, would have authorized the State Engineer to approve agricultural water transfer agreements for periods of up to 40 years. The user of the agricultural water right was required to notify the State Engineer and the parties who filed comments to the application for approval of the agreement by March 1 of any year in which the user intended to operate the water rights subject to the agreement. The agreement could have been reapproved using the same process for one additional period of up to 40 years.