

WATER

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HB 09-1174 (Signed into Law) <i>Exempt Pre-1974 Well Depletions</i>	SB 09-147 (Signed into law) <i>Water Supply Plans Pre-2003 Depletions</i>	
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SB 09-165 (Signed into Law) <i>Small Grants for Drinking Water and Waste Water Projects</i>	HJR 09-1002 (Signed into Law) <i>Water Projects Eligibility Lists</i>	SB 09-125 (Signed Into Law) <i>Water Conservation Board Construction Fund</i>
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SB 09-141 (Signed into Law) <i>Fountain Creek Watershed District</i>		
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HB 09-1142 (Postponed Indefinitely) <i>Water Conservancy District Board of Elections</i>		

During the 2009 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, 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 enacted two laws in 2009 that address junior groundwater users in the South Platte River basin.

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 09-1174** which provides that augmentation is not required for current depletions caused by pumping prior to 1974. **Senate Bill 09-147** authorizes 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 law expire on July 1, 2018. It also specifies that no provision of the law authorizes or facilitates additional transbasin diversions from the Colorado River Basin.

Precipitation Collection

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 09-080** allows for the collection of precipitation from up to 3,000 square feet of a roof of a residence that *is not* connected to a domestic water system that serves more than three single-family dwellings. The collected water may be used for ordinary household purposes, fire protection, watering of animals and livestock, and irrigation of up to one acre of gardens and lawns. A person wanting to capture rooftop precipitation must submit an application for a permit and pay a fee to the state engineer. **House Bill 09-1129** authorizes a pilot program for the collection of precipitation from rooftops for nonpotable uses. The program can include up to 10 new residential or mixed-use developments. Unlike Senate Bill 09-080, the pilot project *is not* limited to developments that are not served by a water provider. The purpose of the program is to determine how much precipitation returns to the natural stream system and develop a baseline set of data and methods to measure local precipitation patterns, native plant consumption, and ground water flow information. It will also evaluate precipitation harvesting designs and determine how to prevent injury to water rights.

Water Rights Issues

The Colorado Supreme Court recently determined that removing water from a ground water formation while recovering oil or gas is a beneficial use of water. As a result, coal bed methane (CBM) wells are subject to permitting, adjudication, and administration pursuant to the doctrine of prior appropriation and the Ground Water Act. **House Bill 09-1303** establishes a process to integrate CBM wells that remove ground water this is connected to a stream, called *tributary ground water*, into the doctrine of prior appropriation and the water court adjudication process. Beginning in 2013, only CBM wells with an approved augmentation plan or an approved substitute water supply plan may be operated. Such plans protect other water rights from injury caused by out-of-priority diversions. The act also allows CBM wells that remove tributary groundwater to operate without such plans if they can be operated in priority. The act allows the Division of Water Resources to promulgate rules regarding the withdrawal of non-tributary ground water related to oil and gas wells. In general, nontributary groundwater is isolated from stream systems.

The Colorado Water Conservation Board (CWCB) is the state's primary water policy and planning agency. It also owns water rights for environmental purposes, called *instream flow rights*. For income tax years 2009 through 2014, **House Bill 09-1067** allows a new, nontransferrable, income tax credit for water rights donated to the CWCB capped at \$2 million each year. It specifies the maximum value of the credit, limits the credit to one-half of the value of the water to be donated to the board, and requires that the value of the water rights be determined by the board in accordance with an appraisal and other criteria. The act also specifies that the credit will not be allowed in a particular income tax year if the revenue estimate indicates that the amount of the total General Fund revenues will not be sufficient to maintain the limit on appropriations specified in statute.

Water Supply

House Joint Resolution 09-1002 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, Water Quality Control Commission, and 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 resolution also expands the list of eligible projects to address additional moneys made available under the federal American Recovery and Reinvestment Act of 2009.

Starting July 1, 2009, **Senate Bill 09-165** caps income to the Perpetual Base Account of the Severance Tax Trust Fund at \$50 million per year and transfers up to \$10 million per year to the Small Communities Water and Wastewater Grant Fund. The law directs the Department of Public Health and Environment to make grants from the fund to governmental and not-for-profit public water systems and counties representing unincorporated areas that serve a population of not more than 5,000 people for the planning, design, and construction of drinking water or water treatment systems.

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. **Senate Bill 09-125** 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. Specifically, the law extends by 12 years the authorization for two loans from the Severance Tax Trust Fund, Perpetual Base Account, for a total of \$69,444,570. It also appropriates about \$6 million from the CWCB Construction Fund for the continuation of projects and studies and for new projects and studies. These projects are listed in Table 1.

Table 1
Appropriations for Water-Related Projects in SB 09-125

Project	Amount
Satellite Monitoring System Maintenance (Div. of Water Resources)	\$350,000
Instream Flow Engineering and Technical Support Services	50,000
Water Resource Planning Studies	100,000
Alternative Agriculture Water Transfer Sustainability Program	1,500,000
Water Adaptation Partnership Projects	500,000
Weather Modification Program	175,000
NOAA Statewide Precipitation Atlas	300,000
Dust-on-snow Studies	30,000
Floodplain Map Modernization Program	500,000
Watershed Restoration Program	250,000
Floodplain Technical Services	125,000
Water Resources Information Center and Data Harvesting Initiative	550,000
CO Decision Support Systems With The Modflow Model	50,000
South Platte Decision Support System	150,000
Colorado River Water Availability Study, Phase 2	1,000,000
Arkansas River Surface Water Rules Tech and Financial Assistance	250,000
TOTAL	\$5,880,000

Water Quality Issues

Fountain Creek drainage basin includes the cities of Colorado Springs, Fountain, and Pueblo. The creek has experienced flooding and water quality problems related to urban growth. **Senate Bill 09-141** creates the Fountain Creek Watershed, Flood Control, and Greenway District in El Paso and Pueblo counties. The charge of the district is to manage and fund capital improvements in the Fountain Creek watershed to mitigate flooding and erosion, address water quality issues, improve drainage, protect open space, and develop public recreational opportunities. The district is to be governed by a nine-member board of directors, comprised of representatives of county and municipal governments that are located within the district. The district may levy a property tax and issue bonds, subject to voter approval.

Water Districts

State law provides a mechanism for local communities to form water conservancy districts to finance dams, tunnels, and other water works that provide water for irrigation, mining, domestic, and other beneficial uses. To date, 54 water conservancy districts have been formed in Colorado. Most water conservancy districts are governed by a board of directors who are appointed by the district court. However, elections of district directors may be held if at least 10 percent of the registered electors in a director's district petition the court to hold an election. **House Bill 09-1142**, which was postponed indefinitely in the House Agriculture, Livestock, and Natural Resources Committee, would have reduced the number of registered voters that must sign a petition to elect a director of water conservancy districts in lieu of the court appointing a director. Specifically, it would have required that the minimum number of petition signatures be the lesser of 750 or 10 percent of the number of registered electors residing in a county, or portion of a county entitled to a director of a water conservancy district. The bill also would have eliminated the requirement that an elected director own real property within the district.