

# State Water Policy

*A Legislator's Guide to Colorado Water Issues*

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Legislative Council Staff



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# Introduction

This handbook was created to help members of the House Agriculture, Livestock, and Natural Resources Committee, Senate Agriculture, Natural Resources and Energy Committee, the interim Water Resources Review Committee, and other legislators to better understand Colorado's water policies and programs that are likely to be encountered during their tenure.

Chapter I of this handbook focuses on state policies and programs that address the use of surface and ground water. Section 1 of this chapter describes Colorado's water supply challenges. Section 2 provides an overview of Colorado's water allocation laws. Section 3 describes legislative committees that address water policy and oversee state water agencies. Section 4 identifies the primary state water agencies. Section 5 describes the primary sources of state funding for water projects and studies. Section 6 summarizes the provisions of recently enacted laws to address Colorado's water supply challenges. Section 7 identifies governmental water supply entities.

Chapter II of this handbook focuses on water quality policies and programs. Section 1 describes the regulation of water pollution discharges. Section 2 identifies the primary state funding sources for public wastewater and drinking water projects.



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# Chapter I

## State Policies and Programs Concerning Water Use

### Section 1.

#### Overview of Colorado's Water Supply Challenges

*Limited and irregular precipitation.* Statewide average annual precipitation for Colorado is 15 inches — with large areas receiving less than 10 inches — and the state experiences extended droughts. In an average year, approximately 16 million acre feet (MAF) of water flows in Colorado's rivers. One acre foot of water is the amount of water needed to flood an acre of land to a depth of one foot, or 325,851 gallons. The majority of water in the state comes from snow in the mountains. Consequently, most of the annual stream flow occurs during the three-month spring run off, from May through July.

*Reliance on snow melt and storage.* To manage the state's inconsistent water supply, over 2,000 dams and reservoirs have been constructed throughout the state. Combined, these reservoirs can hold over 6 MAF of water. The Continental Divide also runs through the state and separates much of Colorado's water supply from its population centers. Approximately 80 percent of the rain and snow falls west of the Continental Divide; however, most of the state's population and irrigated agriculture occurs on the eastern side.



### Section 2.

#### Water Law for a Semi-Arid Land

*Overview.* Colorado's water law was developed to address the state's water supply challenges. According to this law, a water right is a property interest that is separate from the land. This allows water to be moved across the state from where it occurs naturally to where it can be used. The law also allocates water during droughts and seasonal shortages based on the seniority of a water right, called the *doctrine of prior appropriation*. Eight other Western states have adopted a similar water law, including Alaska, Arizona, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. The remaining Western states have adopted a modified version of this law.

#### Allocation of Water From Streams

*First in time, first in right.* Under the Colorado Constitution, the water of every natural stream that is not claimed by a water right owner, called *unappropriated* water, is the property of the public and available for appropriation. Water rights are created by using water for a legally recognized use, such as irrigation. Over 150,000 water rights are currently owned by farmers municipalities, industrial facilities, and other water users in Colorado. In general, a potential

water user first goes to water court to determine if water may be removed from the stream without injuring existing water rights. If approved, a water judge sets a priority for the right to use a specific amount of water, the location of the diversion, the purpose, and if necessary, any conditions to protect senior water rights. The earlier the date of the appropriation, the more "senior" the water right and the more valuable it is. Some of Colorado's most senior water rights date to the 1850s. Court recognition of a water right enables the owner to make a "call" during water shortages. Once a valid call has been made, water use by junior water rights must be curtailed until the senior water right has been satisfied. The doctrine of prior appropriation is also described as "first in time, first in right."

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. Water rights have been granted for most of the stream flows in the state or obligated to downstream states by interstate compacts.

**Types of water rights.** Water rights may be obtained for a number of legally recognized beneficial uses. Agricultural, domestic, and mining are the oldest types of legally recognized uses. Others include power generation, snow making, stock watering, fire protection, and dust suppression. More recently, Colorado recognized the preservation of natural habitat and water-based recreation as beneficial uses of water.

**Use it or lose it.** A water right is a right to use water. Water users may lose all or part of their rights if a water court determines that the water has not been put to a beneficial use within legal deadlines or the user has abandoned his or her right. Also, people who divert water from a stream must allow the unconsumed water to return to the stream for use by others. For example, an acre of corn consumes approximately 40 percent of the water applied to it. In general, the law requires that the remaining 60 percent of the water taken from the stream be allowed to return to the stream for use by others.



**Tributary groundwater.** Many wells in Colorado pump groundwater that is hydraulically connected to a nearby river, called tributary groundwater. Over 500,000 AF are pumped annually from tributary wells near the South Platte and Arkansas Rivers, primarily for agricultural purposes. Tributary groundwater is regulated according to the same principles as water in streams. This policy helps maximize the use of Colorado's large tributary aquifers while protecting surface water rights. Consequently, most well users along the South Platte and other Colorado rivers are administered in priority, with most wells being junior to surface water users.

**Interstate water delivery obligations.** Colorado is a headwaters state, meaning its waters flow out to many states, but very little water flows in. The state is the source for several major river systems, including the Arkansas, Colorado, Platte, and the Rio Grande that provide water to a number of downstream states. Approximately 10 MAF of water flows across Colorado's borders



annually. Most of this water is obligated to downstream states by interstate compacts and other laws. A compact is an agreement between two or more states that is approved by Congress. Nine interstate compacts, two U.S. Supreme Court decrees, and two memorandums of understanding determine how much water may be consumed in Colorado and how much water must be allowed to flow to downstream states. Compacts and court decrees are administered in the same manner as other water rights in the state. During times of shortage, certain in-state water users may be prohibited from diverting water until an interstate water obligation is satisfied.

The state has been involved in several lawsuits with downstream states concerning Colorado's compliance with its water delivery obligations. For example, in 2005, Colorado paid \$34.6 million to Kansas in damages for 425,005 AF of depletions to usable flows at the state line caused by well pumping from 1950 through 1996. In response to a 1998 lawsuit concerning the Republican River Compact, Colorado formed the Republican River Water Conservation District to help farmers raise revenue to pay for the voluntarily retirement of irrigated land, thereby reducing water consumption in the basin. A \$71 million pipeline has also been constructed to deliver water to the Republican River at the Nebraska border.



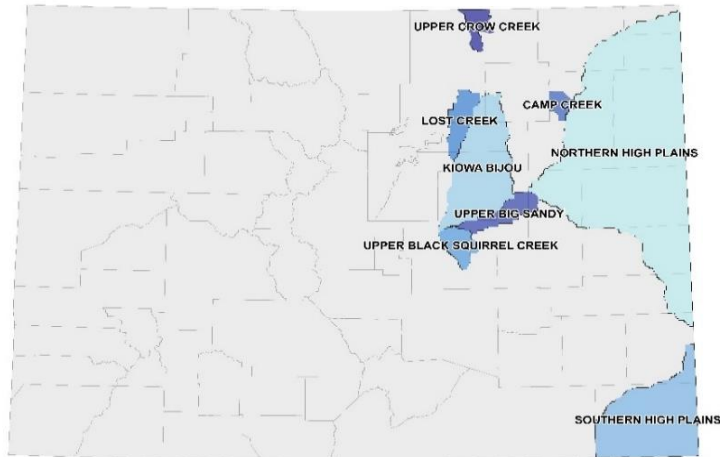
### Allocation of Groundwater That Is Separate From Streams

**Designated groundwater.** In eastern Colorado, there are few rivers, but there are large groundwater resources. These waters include Colorado's portion of the Ogallala Aquifer that extends from South Dakota to Texas. This groundwater is essentially nonrenewable and isolated from surface streams. Wells are the primary source of water used in this area. To administer these wells, the law allows the formation of designated groundwater basins that are regulated according to a modified doctrine of prior appropriation that seeks to protect older wells from impacts caused by newer wells. Over 1 MAF of water is pumped each year from Colorado's eight designated groundwater basins in eastern Colorado. These basins are identified in Figure 1. In general, designated basins may only include groundwater that is not naturally available for decreed surface water rights. Such basins may also include groundwater in areas not adjacent to continuously flowing natural streams where wells have been the principal source of water for at least 15 years.

**Ground Water Commission.** Designated basins are established by the 12-member Ground Water Commission. Appointed by the Governor, the commission is authorized to manage and control designated groundwater resources according to statutory guidelines. For example, the commission may grant a right to use designated groundwater only if it will not significantly impair existing water rights. The water court does not have jurisdiction over water in designated basins. Appeals of commission decisions may be taken to the district court of the county where the water right is located.

*The Ground Water Commission manages and controls groundwater resources within eight designated groundwater basins in eastern Colorado.*

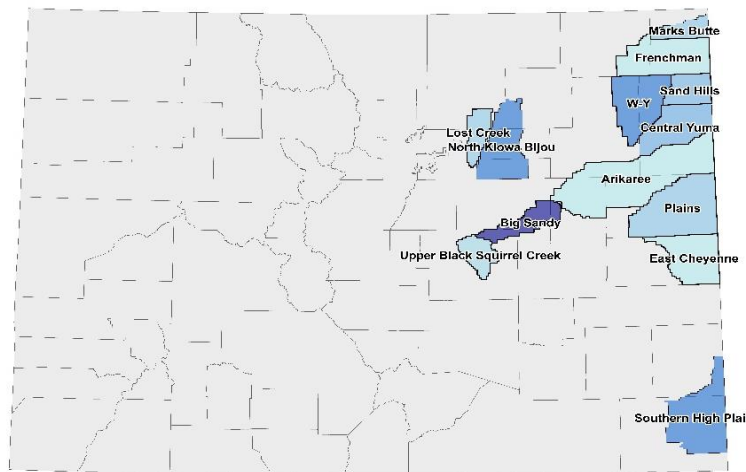
**Figure 1  
Designated Basins**



*Prepared by: Colorado Legislative Council.  
Data Source: Colorado Division of Water Resources.*

**Ground water management districts.** Once a basin has been designated, electors in the basin may create groundwater management districts. Each district is empowered to regulate the use, control, and conservation of groundwaters within the district. District rules and regulations are subject to review by the Ground Water Commission. Thirteen groundwater management districts have been created within six of Colorado's designated basins. These districts are illustrated in Figure 2.

**Figure 2  
Groundwater Management Districts**

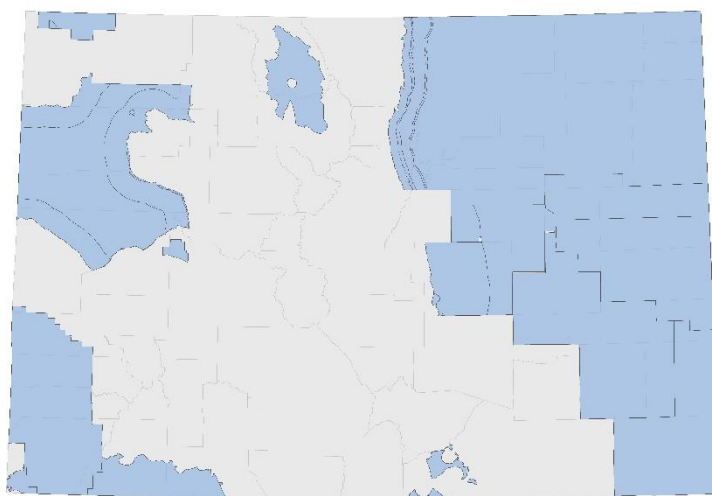


*Prepared by: Colorado Legislative Council.  
Data Source: Colorado Division of Water Resources.*

**State Engineer's regulation of designated basins.** The Ground Water Commission has delegated many of its regulatory functions to the State Engineer in the Department of Natural Resources, including the issuance of well permits and the determination of certain groundwater rights. The State Engineer also provides technical and administrative assistance to the commission and ground water management districts. The commission has delegated to its hearing officer, an employee of the Division of Water Resources, the review of facts, conclusions of law, and initial decisions of the Ground Water Commission. The hearing officer's decision may be appealed to the commission.

**Nontributary groundwater.** Colorado also has large groundwater resources in deep underground rock aquifers, called nontributary groundwater. These waters include the Denver Basin Aquifers that underlie much of the Denver metro area and are primarily used by southern metropolitan communities located in Douglas, Arapahoe, Elbert, and El Paso counties. Use of nontributary groundwater is based on legislatively defined criteria that allow for the gradual depletion of this nonrenewable resource. Nontributary groundwater is defined in statute as groundwater that will not, within 100 years, deplete the flow of a stream at an annual rate greater than one-tenth of 1 percent of the annual pumping rate. Ownership of nontributary groundwater is generally based on overlying land ownership. However, public water providers may obtain ownership of nontributary groundwater underlying their boundaries by satisfying certain statutory criteria and processes. Annual well pumping is also limited to 1 percent of the underlying nontributary groundwater. A well permit from the State Engineer must be obtained prior to drilling for nontributary groundwater. Unlike water in streams, claims for nontributary groundwater typically do not go through water court. Nontributary boundaries are illustrated in Figure 3.

**Figure 3  
Nontributary Boundaries**



*Prepared by: Colorado Legislative Council.  
Data Source: Colorado Division of Water Resources.*

## Section 3. Legislative Committees Addressing Water Policy Issues

### Legislative Committees

*Committees of reference.* The Joint Rules of the House and Senate require the House Agriculture, Livestock, and Natural Resources Committee and the Senate Agriculture, Natural Resources, and Energy Committee to stay advised of the activities, functions, problems, new developments, and budgets of the Colorado Department of Natural Resources, which includes the Division of Water Resources and the Colorado Water Conservation Board. These committees also typically consider water-related bills. The Joint Rules also require the Senate Health and Human Services Committee and the House Health, Insurance, and Environment Committee to stay advised of the activities, functions, problems, new developments, and budget of the Department of Public Health and Environment, which includes the Water Quality Control Commission and the Water Quality Control Division.

*Water Resources Review Committee.* The ten-member Water Resources Review Committee is a committee that meets during the interim and may meet up to two times during the legislative session. It is charged in statute with reviewing water issues and proposing legislation related to the conservation, use, development, and financing of Colorado's water resources. Each interim, the committee may recommend legislation. The committee may meet up to six times during even-numbered years and eight times during odd-numbered years, and is authorized to take up to two field trips per year. Committee members serve for two-year terms. In odd-numbered years, the Senate President selects the committee chair and the Speaker of the House of Representatives selects the vice-chair. The opposite occurs in even-numbered years. Members are appointed according to the following criteria:

- five Senate members — three appointed by the President, two appointed by the Minority Leader;
- five House members appointed by the Speaker in consultation with the Minority Leader;
- at least four members must reside west of the Continental Divide, or their district must have a majority of its population residing west of the Continental Divide; and
- members should represent each of the seven water divisions to the extent possible.

After significant amendments to the Colorado Water Plan, the WRRC is also required to hold at least one public hearing in each of the state's major river basins to collect public feedback on the changes and to provide a summary of the public's feedback as well as its own feedback to the CWCB. By November 1 of each year following the submission to the committee of a plan or plan amendment, any legislator may request that the WRRC hold hearings to review the plan or plan amendment. By November 1, 2017, and every five years thereafter, the committee is also required to prepare a list of topics that it deems necessary to be addressed in the plan. The CWCB must

provide its recommendations within eight months after receipt of the list of specific topics. Additional information about the Colorado Water Plan is provided in Section 6 of this handbook.

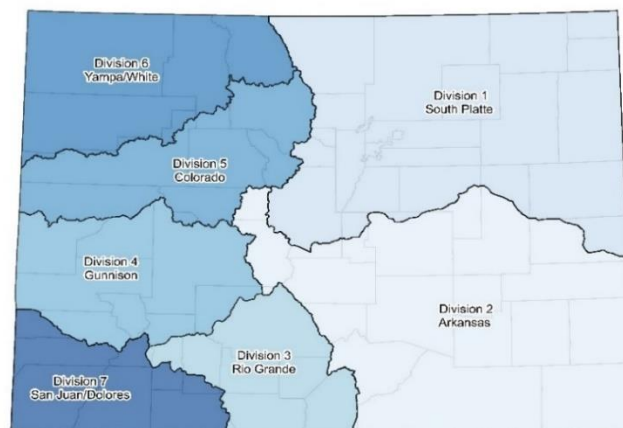
## **Section 4.** **State Water Agencies and Entities**

*Overview.* Two state agencies are primarily responsible for the adjudication and allocation of water rights in Colorado: water courts and the Division of Water Resources. Another state agency, the Colorado Water Conservation Board, is primarily responsible for the development of water policy and planning in Colorado and the protection of water rights for the environment, called instream flow water rights. The legislature also created several other public entities to address long-term water needs, finance public water projects, and educate the public about water issues. A brief description of these state agencies and water entities is provided in the following section.

*Water divisions.* The state of Colorado is divided by statute into seven water divisions that each have a water court and division engineer. The seven water divisions (as seen in Figure 4) correspond to the state's major river basins including:

- Division 1 (South Platte River Basin);
- Division 2 (Arkansas River Basin);
- Division 3 (Rio Grande River Basin);
- Division 4 (Gunnison-San Miguel and Lower Dolores River Basins);
- Division 5 (Colorado River Basin);
- Division 6 (Yampa-White-North Platte River Basins); and
- Division 7 (San Juan-Animas-and Upper Dolores River Basins).

**Figure 4**  
**Colorado Water Divisions**



*Prepared by Colorado Legislative Council.  
Data Source: Colorado Division of Water Resources.*

**Water courts.** The Colorado Supreme Court appoints district judges from each water division to act as water judges. Water court judges have exclusive jurisdiction over determination of new water rights, changes of water rights, approval of plans to protect senior water rights, findings of reasonable progress on water diversion projects, approval of water exchanges, and approvals to use water outside the state. A water judge may also order a water user to obey a division engineer's order to cease injury to senior water rights or to cease diversions that are not being used beneficially. There are no juries in water court cases, and judgments entered by water courts are subject to review by the Colorado Supreme Court.

**Division of Water Resources (DWR), State Engineer.** The Water Resources Division (DWR), directed by the State Engineer in the Department of Natural Resources, is responsible for the supervision and control of water resources in the state, which includes administration of 170,000 surface and groundwater rights. This involves active oversight of water allocation to farmers, industries, municipalities, and all other water users within the state in accordance with the doctrine of prior appropriation, Colorado Supreme Court decisions, water court decrees, and rules and regulations issued by the State Engineer. The DWR has contractual water delivery

obligations for each of the state's nine compacts, two United States Supreme Court decrees, and interstate water allocation agreements. The DWR also safeguards public health and protects the groundwater in Colorado by setting and enforcing minimum standards through permit applications and inspections for the construction and repair of wells. The DWR oversees approximately 297,000 permitted and decreed wells. Additionally, the dam safety program protects public safety through the regulation of 1,962 jurisdictional dams, including an average of 550 dam inspections annually. The DWR staff also maintains 570 streamflow, ditch, and reservoir gages used for administration of water rights and reservoir operations.

*The DWR staff drives approximately 2.1 million miles annually.*

For FY 2017-18, the General Assembly appropriated \$23.2 million and 254 FTE to the division from the following sources: \$20.8 million from the General Fund, \$2.2 million from fees, and \$235,050 from federal funds.

**Colorado Water Conservation Board (CWCB).** The CWCB in the Department of Natural Resources is the state's primary water policy and planning agency. Its major programs include water supply protection, flood protection, conservation and drought planning, stream and lake protection (instream flow program), and water supply planning and finance. The CWCB is governed by a 15-member board that is charged with conserving the state's waters to promote utilization and to prevent floods. Nine of its members are appointed by the Governor for three-year terms to represent eight river basins and the City and County of Denver. Other members include the Executive Director of the Department of Natural Resources, the Commissioner of Agriculture, the State Engineer, the Colorado Attorney General, the Division of Parks and Wildlife director, and the CWCB director. For FY 2017-18, the General Assembly appropriated \$9.1 million and 46 FTE to the board, including \$9.0 million from the CWCB Construction Fund, and \$0.2 million from federal funds. No General Fund moneys have been

appropriated for the CWCB since FY 2000-01, when the legislature replaced these moneys with moneys from the CWCB Construction Fund.

***Division of Parks and Wildlife.*** The Division of Parks and Wildlife is housed within the Department of Natural Resources. It manages the state's 960 game and non-game wildlife species by issuing fishing and hunting licenses, enforcing wildlife regulations, and protecting habitat and native wildlife populations. It manages 230 state wildlife areas and 42 state parks. The division is also charged with developing an “official state position” on mitigation measures to protect fish and wildlife resources from the construction, operation, or maintenance of any proposed water diversion, delivery, or storage facility requiring a permit, license, or other approval from the United States. According to state law, impacts related to water diversion, delivery, or storage facilities should be mitigated to the extent that is economically reasonable and should maintain a balance between the development of the state's water resources and the protection of the state's fish and wildlife resources. Applicants for federally permitted water projects are required to submit a proposal to mitigate impacts to fish and wildlife resources to the Division of Parks and Wildlife. The division must review these measures and make recommendations to the CWCB within 60 days of receiving the mitigation proposal unless the review period is extended, in writing, by the applicant. The CWCB may affirm the division's recommendations or make modifications. The board-approved mitigation plan then becomes the state's official position on the project that must be communicated to the agency charged with approving the application.



***Basin roundtables.*** In 2005, the General Assembly enacted a law which established nine basin roundtables covering the Denver metropolitan area and eight of the state’s major river basins, including the South Platte, the Arkansas, and the Colorado river basins. Additional information about the role of basin roundtables is provided in Section 6.

***Interbasin Compact Committee.*** The Colorado Water for the 21st Century Act also created the Interbasin Compact Committee (IBCC) to facilitate negotiations between the roundtables. Its 27 members include two representatives from each of the state’s nine basin roundtables, six at-large members appointed by the Governor, one member appointed by the chair of the House Agriculture, Livestock, and Natural Resources Committee, one member appointed by the chair of the Senate Agriculture, Natural Resources, and Energy Committee, and the Director of Compact Negotiations. Additional information about the role of the IBCC is provided in Section 6.

***Director of Compact Negotiations.*** The Colorado Water for the 21st Century Act creates the Director of Compact Negotiations in the Office of the Governor. The director serves as the chair of the IBCC and oversees the implementation of the IBCC's responsibilities. The chair also oversees spending to implement the 2005 law. The current Director of Compact Negotiations also serves as the Special Policy Advisor to the Governor on Water.

**Colorado Water Resources and Power Development Authority.** The Colorado Water Resources Power Development Authority is an independent public entity created by the General Assembly in 1981 to finance water supply and water quality projects. The authority may issue revenue bonds as debt of the authority, which does not obligate the state or any political subdivision. The authority is governed by a nine-member board appointed by the Governor. The board must represent the state's nine major river basins and must include at least one member with experience in water project financing; engineering aspects of water projects; planning and developing water projects; public health issues related to drinking water or water quality matters; and water law. The authority has provided over \$1.3 billion in low-interest loans to governmental entities in Colorado for water pollution control and drinking water projects through the state revolving funds created under the Clean Water Act and the Safe Drinking Water Act. Each year, the General Assembly approves a list of projects that are eligible to receive these moneys. These loan programs are discussed in greater detail in the following section and in Chapter 2.

**Water Education Colorado.** In 2002, the legislature authorized the formation of the Colorado Foundation for Water Education. The Colorado Foundation for Water Education was officially

*Water Education Colorado was founded as a 501(c)(3) nonprofit in 2002.*

renamed in 2017 and is now known as Water Education Colorado. According to this law, the purpose of the foundation ". . . is to promote a better understanding of water issues through educational opportunities and resources so Colorado citizens will understand water as a limited resource and will make informed decisions." The foundation provides training for

water professionals and the public about Colorado's water laws and programs, distributes citizen's guides on water policy, and provides other documents and educational opportunities. Information from several of these guides was used to develop this handbook. The 2002 law included a \$250,000 appropriation to start the foundation and authorized the CWCB to allocate \$150,000 annually to the foundation.

The board may cease funding the foundation if it determines that the foundation is not meeting its statutory purpose. The foundation is governed by a 20-member board that is required by its bylaws to include the chair of the House Agriculture, Livestock, and Natural Resources Committee, the chair of the Senate Agriculture, Natural Resources, and Energy Committee, two appointees from the Colorado Water Conservation Board, and one appointee from the Executive Director's Office of the Department of Natural Resources. Approximately 20 percent of the foundation's annual budget comes from the CWCB, and the remaining portion comes from membership dues, grants, and donations.

## **Section 5. State Funding Sources for Water Projects and Studies**

**Overview.** Historically, the state has played a limited role in the financing and construction of water development projects. Most of Colorado's water projects were constructed using private



moneys, property tax revenue, user fees, and federal moneys. However, the state funds several loan and grant programs for the planning, construction, and rehabilitation of private and public water supply projects. A brief description of these state funding programs is discussed in the following section.

## Statutory Funds and Operational Accounts

*The CWCB Construction Fund.* The CWCB Construction Fund is the state's largest revolving loan program to finance water diversion and storage projects. According to state law, the first priority for moneys in the fund must be for projects that increase the beneficial consumptive use of Colorado's undeveloped compact entitled waters. The balance of the moneys in the fund must be used for the repair and rehabilitation of existing water storage and delivery systems, controlled maintenance of the satellite monitoring system, and for investment in water management activities and studies. Moneys in the fund may also be used to pay for up to 50 percent of the cost of feasibility studies and water supply investigations. Loans may not be used for domestic water treatment and distribution systems. Loans for more than \$10 million must be approved by the General Assembly. Also, grants may not be made from the fund unless authorized by bill. The CWCB is authorized to issue loans for less than \$10 million without General Assembly approval. For loans under \$10 million, the CWCB is required to submit a report by January 15th of each year to the Colorado General Assembly describing the basis for such loans, called the Small Project Loan Report. The board loaned \$40.5 million for 15 small projects during 2017.

The fund receives revenue from the repayment of loans, interest on the fund in the state treasury, and federal mineral royalty distributions. In FY 2018-19, the fund is expected to receive \$10 million from federal mineral lease revenue and earn approximately \$9.5 million from interest. As of July 1, 2018, the fund's value was approximately \$600 million, of which \$510 million is authorized for projects or loans in repayment, \$10 million is available for new loans, and \$80 million in water rights ownership.<sup>1</sup> The board is authorized to adjust loan interest rates that currently range from 1.75 percent for agricultural loans and 2.50 to 3.25 percent for municipal loans. The following table outlines the CWCB Construction Fund projects that received funding in FY 2018-19.

**Table 1**

<b>CWCB Construction Fund Projects — FY 2018-19</b>	<b>Amount (\$)</b>
Republican River Matters	\$8,000,000
Colorado Water Plan	7,000,000
Watershed Restoration Program	2,000,000
Chatfield Reallocation Ownership Cost Increase	4,000,000
South Platte Groundwater Data Collection and Remediation	500,000

<sup>1</sup>The CWCB owns water rights in the Nighthorse Reservoir and Chatfield Reservoir.

**Table 1 (Cont.)**

<b>CWCB Construction Fund Projects — FY 2018-19</b>	<b>Amount (\$)</b>
Chatfield Reservoir Reallocation Project	\$511, 894
Continuation of Chatfield Reservoir Channel Improvements	200,000
Satellite Monitoring System Maintenance	380,000
Technical Assistance for the Federal Irrigation Improvement Cost-Sharing Program	200,000
Colorado Floodplain Map Modernization Program	100,000
Water Forecast Partnership Project	800,000
Weather Modification Program	175,000
Acquisition of Lidar Data	200,000
Arkansas River Decision Support System	500,000
Colorado Mesonet Project	150,000
<b>Total</b>	<b>\$24,205,000</b>

**Severance Tax Trust Fund.** The severance tax is paid by producers of oil, gas, coal, and other minerals. State law provides that 50 percent of severance tax revenues are credited to the Severance Tax Trust Fund and 50 percent of the revenues are credited to the Department of Local Affairs for grants and distributions to local governments impacted by mining activities. Of the revenue credited to the Severance Tax Trust Fund, 50 percent is allocated to the Perpetual Base Fund of the Severance Tax Trust Fund (or 25 percent of total severance tax revenues) for use by the CWCB to build water projects. The other 50 percent of Severance Tax Trust Fund revenues (or 25 percent of total severance tax revenues) are allocated to the Operational Account to fund programs that "promote and encourage sound natural resource planning, management, and development related to minerals, energy, geology, and water."

**Severance Tax Trust Fund Perpetual Base Fund loans.** The CWCB is authorized to issue loans for water projects from moneys in the Severance Tax Trust Fund Perpetual Base Fund. For example, in 2010, the General Assembly appropriated \$36 million from the Perpetual Base Fund for the purchase of 10,460 acre-feet of water from the Animas-La Plata Project in southwest Colorado. In 2012, the General Assembly authorized \$30 million to be transferred from the Perpetual Base Fund for the Rio Grande Cooperative Project. These moneys will be used to rehabilitate the Rio Grande Reservoir and the Beaver Park Reservoir. As of June 30, 2017, the fund's value was approximately \$410 million, of which \$375 million is authorized for projects or loans in repayment. Approximately \$35 million is available for future projects.

**Tier 1 and Tier 2 programs in the Operational Account.** A law enacted in 2008 divides programs funded from the Operational Account of the Severance Tax Trust Fund into two tiers. The tier 1 programs support the operations of the Colorado Department of Natural Resources, including paying salaries for employees. The tier 2 programs support grants, loans, research, and construction. Tier 2 programs are subject to proportional reduction if mid-year revenue

projections indicate there are insufficient funds. The distribution of funding for tier 2 programs is staggered over the course of the fiscal year, with 40 percent released July 1; 30 percent released January 4; and the final 30 percent released April 1.

***Water Supply Reserve Fund.*** The Water Supply Reserve Fund (WSRF) — part of tier 2 of the Operational Account of the State Severance Tax Trust Fund — was created in 2006 to help address Colorado's water needs and support the Interbasin Compact Committee process. Moneys in the fund may be used for grants or loans. Spending from the WSRF does not require legislative approval. The WSRF criteria and guidelines split the WSRF into basin and statewide funds. Once a request for funding from the WSRF is approved by a basin roundtable, the request is forwarded to the CWCB for funding evaluation and final authorization. Eligible activities include:

- competitive grants for environmental compliance and feasibility studies;
- technical assistance regarding permitting, feasibility studies, and environmental compliance;
- studies or analyses of structural and nonstructural water projects or activities; and
- structural and nonstructural water projects or activities.

As of July 1, 2018, each basin fund has received a total of \$3.5 million since 2006. The statewide account has received \$60.9 million, with \$85.4 million in approved grants from both basin funds and the statewide account.

In 2009, the legislature passed a law that transfers \$10 million annually from the Operational Fund of the Severance Tax Trust Fund to the WSRF and continues these transfers indefinitely thereafter.<sup>2</sup> However, the transfers will be reduced according to a statutory formula if appropriations exceed available severance tax revenue. Due in part to low oil and gas prices, no severance tax revenue was transferred to the Water Supply Reserve Fund in FY 2016-17 and none is expected to be transferred in FY 2017-18. However, the legislature appropriated \$10.0 million, primarily from the Perpetual Base Fund, for the Water Supply Reserve Fund program in FY 2017-18. This law also prohibits the board from allocating moneys by grant or loan from the fund to "covered entities" unless they have adopted a water conservation plan. Covered entities are defined as a municipality, agency, or utility with a legal obligation to provide retail water to a customer base with a total annual demand of at least 2,000 AF. Repayments of principal and interest on loans from the fund are credited to the fund.

## **Grant and Loan Programs**

***Water Efficiency Grant Program.*** The Water Efficiency Grant Program — also part of the Operational Account — is administered by the CWCB's Office of Water Conservation and Drought Planning. The program provides financial assistance to communities, water providers, and eligible agencies for water conservation-related activities and projects. Eligible entities, state and local governments, and agencies can receive funding to develop water conservation and

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<sup>2</sup>Section 39-29-109.3 (2)(a), C.R.S.

drought plans, to implement water conservation goals outlined in a water conservation plan, and for public education and outreach regarding water conservation. In 2010, the General Assembly extended the Water Efficiency Grant Program to 2020 and authorized annual appropriations of up to \$550,000 from the Water Efficiency Grant Program beginning on July 1, 2010. However, because of anticipated reductions of severance tax revenue available for tier 2 programs, actual expenditures are expected to be below the authorized funding for at least the current fiscal year. In FY 2017-18, the board issued \$439,000 in grants for 13 projects.

***Colorado Water Resources and Power Development Authority loans and grants.*** In 2001, the authority committed \$20 million for water resources development through the Water Revenue Bond Program. The authority's Water Revenue Bond Program helps investment grade borrowers finance projects by purchasing bond insurance, pooling borrowers, investing proceeds, and providing other cost-saving services. The authority is allowed to provide similar assistance for loans over \$500 million, provided the projects are determined to be feasible by the CWCB. The General Assembly must adopt a joint resolution authorizing the authority to consider projects that are over \$500 million, and the resolution must be signed by the Governor. Due to the streamlined approval process, projects under \$500 million may receive funds approximately three months after application. Because of the legislative cycle, projects over \$500 million may require up to one year to complete the approval process. Approximately \$508 million has been issued for water supply project loans since 2001.

***Small Hydropower Loan Program.*** In 2009, the Colorado Water Resources and Power Development Authority Board authorized the Small Hydropower Loan Program (SHLP) to support the development and use of clean and renewable sources of electrical power. The board budgeted \$10 million in authority funds to provide loans to local governments for new small hydropower projects that are 5 megawatts or less. For 2017, the board has authorized \$150,000 (up to \$15,000 each) of matching grant funds for the evaluation and development of small hydropower projects. As of July 15, 2017, the authority has issued four SHLP loans totaling \$6 million.

***Colorado Healthy Rivers Fund.*** The Colorado Healthy Rivers Fund was added to the Colorado Individual Income Tax Refund Check-off program in 2002. The law allows taxpayers to contribute voluntarily to watershed protection efforts in Colorado. These moneys may be used for planning and engineering studies to address technical needs for watershed restoration and flood mitigation projects, including projects to restore stream channels, provide habitat for aquatic and terrestrial species, restore riparian areas, reduce erosion, and reduce flood hazards. Grants are awarded by a panel that includes two appointments each from the Water Quality Control Commission and the Colorado Water Conservation Board. This panel is required to cooperate with the Colorado Watershed Assembly when reviewing grant requests. The Colorado Watershed Assembly is comprised of more than 80 watershed protection entities, including municipalities, water conservancy districts, water conservation districts, water providers, landowners, federal and state agencies, and individual citizens. As of September 30, 2017, Colorado taxpayers donated over \$82,000 for the 2016 tax year. Since 2003, taxpayers have donated \$1.1 million to the fund.

## Section 6. State Water Supply Studies and Supply Planning

Spurred in part by the state's growing population and recent droughts, the executive branch and legislature have addressed Colorado's future water supply challenges through water supply studies and planning. The following section highlights several of these water supply studies and planning initiatives.

### Water Supply Studies

***Statewide Water Supply Initiative.*** In 2003, the General Assembly commissioned the Statewide Water Supply Initiative (SWSI) to explore water supply and demand issues in each of the state's major river basins. This study, completed by the CWCB in 2004, estimated that Colorado will need an additional 630,000 AF annually to meet demand in 2030, primarily for municipal and industrial purposes. It further determined that as much as 80 percent of this demand may be satisfied from existing and planned water projects and processes. Depending on a community's geography, financial resources, and other factors, these projects may include transferring agricultural water rights, storing additional water, increasing water use efficiency, and using nonrenewable groundwater. This study was updated in 2007 to reflect additional information developed by technical roundtables concerning water conservation and efficiency, alternatives to agricultural water transfers, environmental and recreational resource needs, and alternatives to address the gap between current supply and future water needs.

In 2010, the CWCB updated the SWSI to assess municipal and industrial demand and agricultural demand in 2050. It estimated that 190,000 to 630,000 AF will be needed to meet these demands in 2050, depending upon the ability of water providers to complete identified projects and processes. To date, the General Assembly has appropriated \$3.5 million from the CWCB Construction Fund for SWSI.

*The SWSI 2017 update will serve as the CWCB's technical basis for water supply planning statewide.*

***Other water supply studies.*** The General Assembly has appropriated over \$10 million from the CWCB Construction Fund since 2002 for other studies concerning Colorado's water resources and methods for addressing the state's water needs, including:

- \$4.1 million to determine how much water from the Colorado River Basin is available to meet Colorado's current and future water needs;
- \$150,000 to assist Colorado and other Colorado River Basin states to identify options to augment water supplies in the basin;
- \$500,000 to study a large-scale water delivery project near the Colorado-Utah border;
- \$600,000 to develop and implement a strategy to address potential impacts from climate change on Colorado's water resources;

- \$5.0 million to identify alternatives to permanent agricultural dry-up; and
- \$30,000 to study dust on snow and its effect on spring runoff.

## Basin Roundtables

*Colorado Water for the 21st Century Act.* In 2005, the General Assembly enacted the Colorado Water for the 21st Century Act, which established a process to address the state's growing water demand. This law created nine basin roundtables covering the following areas:

- Arkansas River Basin
- Colorado River Basin
- Denver Metropolitan area
- Dolores-San Miguel-San Juan River Basin
- Gunnison River Basin
- North Platte River Basin
- Rio Grande River Basin
- South Platte River Basin
- Yampa-White River Basin

Roundtable members are appointed to represent counties, cities, and water districts within the basin for five-year terms. The chairs of the House Agriculture, Livestock, and Natural Resources Committee and the Senate Agriculture, Natural Resources, and Energy Committee appoint by mutual agreement one member to each basin roundtable. These roundtables are charged with identifying water needs within each basin and conducting discussions with other basins to address interbasin water issues. The executive director of the Department of Natural Resources is charged with ensuring the proper integration and nonduplication of activities occurring pursuant to the Statewide Water Supply Initiative and the Water for the 21st Century Act. More information about the Statewide Water Supply initiative is provided in Section 6 of this chapter.

Each basin roundtable is charged with developing a basin-wide water needs assessment consisting of four parts:

- an assessment of consumptive water needs (municipal, industrial, and agricultural);
- an assessment of nonconsumptive water needs (environmental and recreational);
- an assessment of available water supplies (surface and groundwater) and an analysis of any unappropriated waters; and
- proposed projects or methods to meet any identified water needs and achieve water supply sustainability over time.

*Interbasin Compact Committee.* The Colorado Water for the 21st Century Act also created the 27-member Interbasin Compact Committee (IBCC) to facilitate negotiations between the roundtables. In 2006, the legislature approved the IBCC's charter, which includes principles to guide negotiations between roundtables and defines the process for ratifying interbasin

compacts. It also defines the process for integrating the interbasin compact process with other water planning and development processes such as SWSI. In 2014, the IBCC, basin roundtables, and the CWCB directors approved the IBCC Conceptual Agreement that sets the framework for negotiations on potential new transmountain diversions (TMD). TMDs are projects that divert water from the Colorado River or another basin and moves it across the Continental Divide for use by communities in the South Platte or Arkansas River Basins. According to the framework, overdevelopment of the Colorado River System is a serious risk that could result in an interstate compact deficit, and that all planning for a TMD must recognize and mitigate that risk. According to the framework the East Slope should not look for firm yield from a new TMD project and it must accept hydrologic risk for that project. A new TMD must also provide benefits to the West Slope such as a compensatory storage project or a socio-economic compensation fund. The IBCC Conceptual Agreement was incorporated into the CWP.

## The Colorado Water Plan

**Overview.** In 2013, Governor Hickenlooper issued an executive order that directed the CWCB to prepare the Colorado Water Plan (CWP). According to the order, the plan must promote a productive economy that supports vibrant and sustainable cities, viable and productive agriculture, and a robust skiing, recreation, and tourism industry. It must also incorporate an efficient and effective water infrastructure promoting smart land use and a strong environment that includes healthy watersheds, rivers and streams, and wildlife. The 540-page final plan was released on November 19, 2015. The plan identifies objectives, goals, and critical actions by which Colorado will address its future water needs and how the state will measure its progress. For example, the plan sets an objective of reducing the projected 2050 municipal and industrial gap from as much as 560,000 acre-feet to zero acre-feet by 2030 and to achieve 400,000 acre-feet of municipal and industrial water conservation by 2050.

**Role of the General Assembly in setting state water policy.** In 2014, the legislature enacted a law to guide the development of the CWP. Senate Bill 14-115 declares that the General Assembly is primarily responsible for guiding the development of state water policy. It also declares that this law is necessary to protect the interests of the public in the state's water resources and that the General Assembly intends to engage the people of the state in a public dialogue regarding optimal state water policy. The law also affirms the legislature's delegation of policy-making authority to the CWCB, and declares that the law seeks to promote the policies, processes, basin roundtable plans, and Interbasin Compact negotiations conducted pursuant to the "Colorado Water for the 21st Century Act," and the Interbasin Compact Charter.

**Implementation of the CWP.** In 2016, the legislature authorized an annual appropriation of \$5.0 million from the CWCB Construction Fund to the CWCB to implement the CWP. The CWCB may use these moneys to provide planning and engineering studies, including implementation measures, to address technical needs for watershed restoration and flood mitigation projects throughout the state, aquatic habitat protection, flexible operations for multiple uses, restoration

work, quantification of environmental flow needs, and monitoring to support watershed health goals outlined in the CWP. In 2016, the legislature also appropriated \$1.5 million for FY 2016-17 from the CWCB Construction Fund to the CWCB to support watershed health goals outlined in the CWP.

In 2018, the legislature appropriated \$10 million from the CWCB Construction Fund for FY 2018-19 to implement the Colorado Water Plan including:

- \$3 million to facilitate the development of additional storage, to restore full decreed storage capacity for multi-beneficial projects and projects identified in basin implementation plans;
- \$1 million to provide technical assistance, project, or program funding for agricultural projects;
- \$1 million to implement long-term strategies for conservation, land use, and drought planning;
- \$500,000 for water education, outreach, and innovation efforts; and
- \$1.5 million for environmental and recreational projects.

## **Section 7. Governmental Entities that Provide Water**

*Overview.* Most residents and businesses in Colorado receive water from a local public water provider. Colorado law enables local communities to form several types of governmental entities to acquire water rights and finance water supply projects. The following section summarizes the laws that regulate the formation of conservancy districts, conservation districts, special districts, water authorities, and water activity enterprises. It also describes the role of municipal and county water utilities.

### **Conservancy and Conservation Districts**

*Water conservancy districts.* The Water Conservancy Act provides a mechanism for local communities to form water conservancy districts to finance dams, tunnels, and other water projects that provide water for irrigation, mining, domestic, and other beneficial uses. Colorado currently has 52 water conservancy districts, including the Northern Colorado Water Conservancy District and the Southeastern Colorado Water Conservancy District, which own and operate some of Colorado's largest projects. Water conservancy districts that transfer water from the Colorado River Basin to another basin in Colorado may not impair or increase the costs of water users in the Colorado River Basin. Several water storage projects in the Colorado River Basin were constructed to provide water to the basin and offset the impacts of water diversions to eastern Colorado communities. For example, Green Mountain Reservoir in Summit County was built to help offset the impacts to the Colorado River Basin from the Colorado-Big Thompson Project — Colorado's largest transbasin diversion project.



**Water conservation districts.** Water conservation districts are formed in state statute to address water supply issues in a specific area. The legislature has created four water conservation districts:

- the *Colorado River Water Conservation District* was formed in 1937 to develop the water resources of the Colorado River and its tributaries that define the district's boundaries;
- the *Southwestern Colorado Water Conservation District* was formed in 1941 to develop the water resources of the San Juan and Dolores Rivers and their tributaries that define the district's boundaries;
- the *Rio Grande Water Conservation District* was formed in 1967 to develop the water resources of the Rio Grande River and its tributaries that define the district's boundaries; and
- the *Republican River Water Conservation District* was formed in 2004 to help Colorado comply with its water delivery obligations under the Republican River Compact by reducing water depletions in the basin. The Republican River Basin includes Kit Carson, Logan, Lincoln, Phillips, Sedgewick, Yuma, and Washington Counties in northeastern Colorado.

*Water conservation districts are primarily project planning and development entities, while conservancy districts are primarily responsible for the construction and operation of water projects.*

Pursuant to the legislative declarations establishing them, the four water conservation districts were created to promote the conservation, use, and development of waters within the district and to ensure that Colorado receives an equitable share of its rivers. State law grants the water conservation districts many of the same powers. For example, the four conservation districts have the power to:

- acquire property;
- construct projects;
- appropriate water;
- contract for water;
- exercise eminent domain;
- cooperate with federal, state, and local governments on water development projects and other activities;
- collect service charges; and
- issue revenue and general obligation bonds.

The General Assembly also granted unique powers to certain water conservation districts. For example, only the Colorado River and the Republican River Water Conservation Districts may impose a property tax, and only the Republican River Water Conservation District may impose a sales and use tax.

## Other Districts and Entities

**Special districts that provide water.** Water districts are special districts that supply water for domestic and other public and private purposes and provide related reservoirs, treatment

facilities, and other equipment. Water and sanitation districts provide water for domestic and other purposes, as well as sewage, drainage, and water treatment facilities. In addition to the powers granted to the boards of all special districts, state law provides additional powers to water and sanitation districts, including the authority to compel property owners to connect to the district's services. Colorado currently has 78 water districts and 123 water and sanitation districts.

***Metropolitan districts.*** Metropolitan districts are special districts that provide two or more of the following services: fire protection; transportation; parks and recreation; solid waste disposal; water; and sanitation services. In addition to the powers granted to the boards of all special districts, state law provides additional powers to metropolitan districts including the power of eminent domain to acquire property for water and wastewater facilities in the district.

***Water authorities.*** State law encourages governmental entities to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments. The law authorizes governmental entities that operate water systems — including municipalities, special districts, and other political subdivisions — to form water authorities. A water authority provides a mechanism for governmental entities to pool capital and other resources to develop water facilities. There are currently 31 water authorities in Colorado.

***Municipal water providers.*** Municipalities in Colorado operate some of the state's largest water supply projects. State statute authorizes municipalities to:

- acquire water facilities both within and outside municipal boundaries through purchase, lease, or the exercise of the right of eminent domain;
- operate water facilities to serve a city's own needs, as well as the needs of public and private consumers within its boundaries;
- provide water services to public and private customers outside its boundaries provided the local municipality approves the services; and
- cooperate with other municipalities to acquire, finance, and operate water or sewage facilities.

***County water providers.*** Similar to powers granted to municipalities, state statute provides counties authority to own and operate water facilities. Specifically, counties may:

- acquire water facilities both within and outside county boundaries through purchase, lease, or the exercise of the right of eminent domain;
- operate facilities to serve the county's own needs, as well as the needs of public and private consumers within its boundaries;
- provide water services to public and private customers outside its boundaries, upon approval of the local county or municipality; and
- cooperate with other counties or municipalities to acquire, finance, and operate water facilities.

***Water activity enterprises.*** In 1993, the General Assembly enacted a law to allow the formation of government-owned water activity enterprises and to clarify how the Taxpayer's Bill of Rights (TABOR) applies to these entities. Under TABOR, an enterprise is defined as a government-owned business that is authorized to issue its own revenue bonds and may only receive up to 10 percent of its annual revenue from government sources. Enterprises are exempt from TABOR's revenue and spending limits and may issue revenue bonds without obtaining voter approval. Any state or local government entity that has the authority to conduct water activities may form a water activity enterprise, including water conservancy districts, water conservation districts, and special districts. Each water activity enterprise must be wholly owned by a single state or local governmental entity and may not be combined with any water activity enterprise owned by another district.



## Chapter II

# State Policies and Programs Concerning Water Quality

Chapter II focuses on water quality policies and programs. Section 1 describes the regulation of water pollution discharges and the agencies that implement these laws. Section 2 identifies the primary state funding sources for public wastewater and drinking water projects.

### Section 1. Regulation of Water Pollution Discharges

*Overview.* This section of the State Water Policy Handbook summarizes the law that regulates water pollution discharges in Colorado. It also describes the role of the Water Quality Control Commission and the Water Quality Control Division in the Department of Public Health and Environment.

#### Water Pollution Discharges

*Federal regulation of water pollution discharges.* The federal Clean Water Act (CWA) establishes the basic requirements for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit program regulates discharges from point sources, such as pipes or ditches. Industrial, municipal, and other facilities must obtain permits for discharges into surface waters. Under the federal law, the EPA or the states must set limits on the amount of pollutants that facilities may discharge into a waterbody. The thresholds are established according to national technology-based standards, and the conditions of the waters that receive the discharge based on state water quality standards. Federal law allows states to administer the NPDES permitting program, including issuing and enforcing stormwater permits. States may impose stricter regulations than the federal regulations. However, states may not impose less restrictive regulations or exempt activities that would otherwise be regulated by federal law. In 1974, the EPA delegated the authority to administer the NPDES to Colorado.

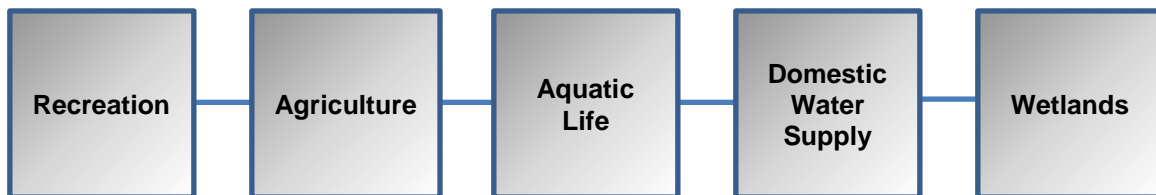
#### Water Quality Control

*Water Quality Control Commission.* The Colorado Clean Water Act requires the Water Quality Control Commission (WQCC) in the Colorado Department of Public Health and Environment to ". . . develop and maintain a comprehensive and effective program for prevention, control, and abatement of water pollution and for water quality protection throughout the entire state and, to ensure provision of continuously safe drinking water by public water systems." The commission is authorized to adopt water quality classifications and standards to protect the beneficial uses of

state waters, including groundwaters, and establish regulations to achieve compliance with the classifications and standards. The commission also conducts administrative hearings concerning appeals of decisions made by the Water Quality Control Division. The commission consists of nine citizens appointed to achieve geographical representation and to reflect the water interests of the state. At least two members of the commission must be from the Western Slope.

**Water Quality Control Division.** The Water Quality Control Division (WQCD) is responsible for maintaining, restoring, and improving the quality of the state's waters and protecting the safety of the drinking water supplied by public water systems. Statewide, the division oversees the water quality of more than 105,000 miles of streams and rivers; about 164,000 acres of lakes, reservoirs, and ponds; approximately 2,200 public water systems; and 1,100 wastewater dischargers. The division issues permits for drinking water systems and wastewater dischargers, monitors and assesses water samples from across the state, and acts as staff for the WQCC. It is also authorized to issue fines and other penalties for violations of the state's water quality laws. For FY 2017-18, the General Assembly appropriated \$26.3 million and 197 FTE to the division, including \$4.5 million from the General Fund, \$7.2 million from fees and other cash funds, and \$14.0 million from federal funds.

**Use classifications.** All surface waters of the state, except for water in ditches and other man-made conveyance structures, are classified by the WQCC according to the uses for which they are suitable or are intended to become suitable. Rivers and streams are divided into individual segments for classification and standard-setting purposes. The current classification categories for water use are as follows:



For each classified stream segment, numeric water quality standards for different pollutants are adopted to maintain the water quality at a level sufficient to protect the classified uses. Water quality classifications and standards adopted by the WQCC are submitted to the EPA for review and approval. The commission is required by state and federal law to review all existing water quality classifications and standards at least once every three years, called the *triennial review process*. The classifications and standards are used to set effluent limits in discharge permits, as well as for other water quality management planning, such as nonpoint source control activities, watershed planning initiatives, and the development of Total Maximum Daily Loads (TMDLs).

Water quality permits specify the levels of contaminants, such as bacteria, metals, and chemicals, that can be discharged by a permitted entity. Both public water systems and permitted wastewater dischargers are required to routinely test their water and report the results to the

division. Violations of any standards must be reported to the EPA. In addition, the division inspects permitted facilities and has the authority to administer enforcement actions if facilities fail to comply with laws and regulations. Enforcement actions can include financial penalties as well as legal actions, such as closing a facility.

## Federal Regulations

*Impaired waters.* Section 303(d) of the federal Clean Water Act requires the state to identify waters for which existing treatments and controls are not adequate to attain the water quality standards. These waters are reported to the EPA on the state's 303(d) list. The state is required to prioritize the listed water segments based on the severity of pollution, determine the causes of the water quality problem, and ultimately implement controls for the pollution. The TMDL process results in a determination of the amount of any specific pollutant that a water segment can receive without exceeding water quality standards.

*Drinking water regulations.* The federal Safe Drinking Water Act regulates drinking water quality in the United States. The EPA sets standards for drinking water to protect health, and the



Colorado Water Quality Control Division enforces those standards. Drinking water standards specify maximum contaminant levels (MCL), which stipulate the maximum level of a specific contaminant that can occur in drinking water. Regulations also address treatment techniques that specify methods facilities must follow to remove certain contaminants. Private household wells that serve fewer than 25 people are not regulated by the Safe Drinking Water Act. Colorado has adopted state drinking water standards that are identical to the MCLs established by the EPA.

*Limits on water quality measures that affect water rights.* The Water Quality Control Act prohibits the WQCC from adopting a minimum stream flow requirement. It is also prohibited from imposing conditions that would injure a water right or limit the diversion of unappropriated water. For example, diverting water for irrigation may remove water from a stream that would otherwise dilute pollutants and prevent the stream from falling below state water quality standards. State law prohibits the commission and the division from requiring an instream flow for the dilution of water pollution or other purpose. Also, some water quality control measures consume water. For example, a discharger may filter polluted water in an artificial wetland that increases consumption through evaporative water loss. This water use would be required to comply with Colorado's water law, including measures to prevent injury to other water rights.

## Section 2. State Funding for Public Drinking and Wastewater Projects

*Overview.* Each year, state agencies identify public drinking water and wastewater projects that are eligible for state loans and grants, called the project eligibility list. The following section

describes the preparation of this list and identifies the major state loan programs that help local communities fund necessary water quality improvements.

## Project Eligibility List

*Annual joint resolution.* Each year, the Water Quality Control Division, the Colorado Water Resources and Power Development Authority, and the Division of Local Government in the Department of Local Affairs, prepare a list of projects that are eligible for loans from the Water Pollution Control Revolving Fund and the Drinking Water Revolving Fund. The lists are approved annually by the Water Quality Control Commission. The projects on the eligibility list are then included in an annual joint resolution that is considered by the General Assembly. Once the joint resolution is approved, the Colorado Water Resources and Power Development Authority may issue loans for public drinking water and wastewater projects. In 2017, the General Assembly approved the project eligibility list for the Water Pollution Control Revolving Fund that identified 330 projects with an estimated cost of \$5.6 billion. The 2017 project eligibility list for the Drinking Water Revolving Fund identified 421 projects with an estimated cost of \$7.1 billion.<sup>3</sup>

## Funding for Drinking Water and Wastewater Projects

*Drinking Water Revolving Fund.* The Drinking Water Revolving Fund (DWRF) is a low-interest loan program to assist public drinking water systems with financing the cost of the infrastructure needed to comply with the requirements and objectives of the federal Safe Drinking Water Act. DWRF loans are administered by the Colorado Water Resources and Power Development Authority. Most of the money in the fund was obtained from annual grants from the EPA. In 2017, the DWRF received a \$14.3 million capitalization grant from the EPA. Pursuant to federal law, the state must provide a match of 20 percent for each dollar that it loans. This match is financed from loan repayments and revenue bonds. As of June 30, 2017, the authority has issued 233 loans totaling approximately \$567 million. It has also provided \$57.2 million to match federal capitalization grants. The authority estimates that it will issue up to \$30 million in DWRF loans in 2018. For 2017, the authority is offering loans of less than \$3 million as direct loans at an interest rate of 2 percent, or less for disadvantaged communities. The interest rate is based on a community's median household income. Loans of over \$3 million are leveraged loans, which require the issuance of municipal bonds at subsidized interest rates at 70 percent of market rates.

*Water Pollution Control Revolving Fund.* The Water Pollution Control Revolving Fund (WPCRF) is a low-interest loan program that helps public entities finance, design, and construct wastewater treatment projects, nonpoint source projects, and reuse projects. In 2017, the fund received \$10.6 million in capitalization grant funds from the EPA. The state must provide a match of 20 percent for each dollar that it loans that is historically obtained from loan repayments and

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<sup>3</sup>House Joint Resolution 17-003.



revenue bonds. As of June 30, 2017, the authority has issued 278 loans representing \$1.17 billion in projects. It has also provided \$61.3 million in matching dollars. The authority estimates that it will issue up to \$35 million in WPCRF loans in 2018. The terms of these loans are similar to the terms for DWRF loans.

***State revolving fund grants for planning and design grants.*** Disadvantaged governmental entities are eligible for grants from both funds for up to \$10,000 for engineering and design; energy audits; plans and specifications; environmental assessments; technical, managerial, and financial capacity (DWRF only); and legal fees for special district formation. In addition, these entities are also eligible for grants for up to \$250,000 for design and engineering directly associated with a proposed project.

***Small Communities Drinking Water and Wastewater Grant Fund.*** The Colorado Department of Public Health and Environment administers state grant programs for drinking and domestic wastewater projects to communities with fewer than 5,000 residents. Drinking water grant funds may be used to plan, design, construct, upgrade, or consolidate water systems. Domestic wastewater treatment grant funds are used to construct or upgrade wastewater treatment facilities. In 2009, the General Assembly capped the amount of severance tax revenues that may be transferred annually to the Perpetual Base Fund of the Severance Tax Trust Fund at \$50 million. If this cap is exceeded, up to \$10 million may be transferred annually from the Perpetual Base Fund to the Small Communities Water and Wastewater Grant Fund. The cap was reached in FY 2014-15 — the first time since 2009 — and reached again in FY 2015-16. The fund received \$10 million in FY 2015-16. According to the department, the fund did not receive any revenue in FY 2016-17 and is not expected to receive any Perpetual Base Fund moneys in FY 2017-18 or FY 2018-19, due to reduced severance tax collections related to lower oil and gas prices.

***Water Quality Improvement Fund.*** The Water Quality Improvement Fund consists of penalties collected from violations of the Colorado Water Quality Control Act, and is administered by the Water Quality Control Division.<sup>4</sup> These moneys are available to provide grants for the improvement of water quality in the impacted community, as well as grants for planning, design, and construction of stormwater and domestic wastewater treatment facilities. In addition, grants may be provided for match funding of non-point source projects, such as projects that control agricultural runoff. The fund has received \$8.2 million in penalties and interest since it was created in 2007. In FY 2016-17, the fund received \$1.1 million, and the division issued \$525,000 in grants for seven water quality improvement projects. Another \$203,000 from the fund is obligated for two other projects.

***Energy and Mineral Impact Assistance Fund.*** The Department of Local Affairs provides funds and technical assistance to towns, school districts, and other political subdivisions impacted by mineral development. Funding for the loans and grants is obtained from federal mineral lease royalties and the state severance tax. These moneys may be used to pay for water and sewer improvements; road improvements; recreation centers, senior centers, and other public facilities;

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<sup>4</sup>Section 25-8-608, C.R.S.

fire protection buildings and equipment; and local government planning. The department is also authorized to provide loans for potable water treatment facilities and domestic wastewater treatment works. During the economic downturn, from FY 2008-09 through FY 2011-12, over \$270 million from the local share of government severance and mineral impact moneys was transferred to the General Fund. While local government direct distributions were maintained, grant funding was suspended and only began to be awarded again during mid-FY 2012-13. Since reinstatement of the impact program in 2013, over \$344 million in grants have been awarded to local governments in Colorado. In FY 2016-17, over \$57 million was awarded in grants to local governments, and nearly \$220,000 has been awarded to local governments since the beginning of the current fiscal year.

## Appendix A

# Key Provisions of Water Quantity Law

*Article XVI, Section 5, Colorado Constitution.* Guarantees the right to appropriate available water for a legally recognized use.

*Article XVI, Section 6, Colorado Constitution.* Establishes the doctrine of prior appropriation.

*Article XVI, Section 7, Colorado Constitution.* Allows for the construction of rights-of-ways for ditches, canals, or flumes.

*Article XIV, Section 18, Colorado Constitution, Section 29-1-201, C.R.S., and Section 29-1-204.2, C.R.S.* Authorizes governmental entities that operate water systems — including municipalities, special districts, and other political subdivisions — to form water authorities.

*Section 30-20-402, C.R.S.* Authorizes counties to own and operate water facilities.

*Section 31-15-708, C.R.S., and Section 31-35-402, C.R.S.* Authorizes municipalities to acquire and operate water facilities both within and outside municipal boundaries.

*Section 32-1-1006, C.R.S.* Provides additional powers to sanitation, water and sanitation, and water districts to provide water for domestic and other purposes, as well as sewage, drainage, and water treatment facilities.

*Section 37-45-101, et seq., C.R.S.* The Water Conservancy Act 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.

*Section 37-45.1-101, et seq., C.R.S.* Allows the formation of government-owned water activity enterprises and clarifies how the Taxpayer's Bill of Rights (TABOR) applies to these entities.

*Section 37-60-101, et seq., C.R.S.* Specifies membership and the powers and duties of the Colorado Water Conservation Board including administration of the CWCB Construction Fund.

*Section 37-60-122.2, C.R.S.* Declares that fish and wildlife resources are a matter of statewide interest and charges the Division of Parks and Wildlife and the Colorado Water Conservation Board with recommending plans to mitigate impacts to these resources from federally permitted water projects.

*Section 37-75-101, et seq., C.R.S.* The Colorado Water for the 21<sup>st</sup> Century Act creates the Interbasin Compact Process.

*Section 37-80-101, et seq., C.R.S. Section 37-92-301, et seq., C.R.S. and Section 37-92-501, et seq., C.R.S.* Specifies the powers and duties of the State Engineer and the Division of Water Resources.

*Section 37-90-101, et seq., C.R.S.* The Colorado Groundwater Management Act regulates the use of designated ground water, including defining the powers and duties of the Ground Water Commission and Ground Water Management Districts.

*Section 37-90-137, C.R.S.* Regulates the use of the Denver Basin Aquifer and other nontributary ground water located outside of designated basins.

*Section 37-92-101, et seq., C.R.S.* The Water Right Determination and Administration Act regulates the use of river water and ground water connected to rivers.

*Section 37-92-102, C.R.S.* Defines the basic tenets of Colorado water law.

*Sections 37-92-301 through 308, C.R.S.* Establishes the water court's process and criteria for determining and administering water rights.

*Section 37-95-101, et seq., C.R.S.* Specifies membership and the powers and duties of the Colorado Water Resources and Power Development Authority.

*Section 39-29-109, C.R.S.* Specifies how moneys in the Severance Tax Trust Fund are to be distributed and creates the Perpetual Base Fund and the Water Supply Reserve Fund.

*Section 39-29-109.3, C.R.S.* Specifies how moneys in the Operational Account of the Severance Tax Trust Fund are to be distributed.

## Appendix B

# Key Provisions of Water Quality Law

*Part 2 of Article 1.5 of Title 25, C.R.S.* Defines the powers and duties of the Department of Public Health and Environment concerning public water supplies.

*Section 25-8-101, et seq., C.R.S.* The Colorado Water Quality Control Act regulates pollution discharges into state waters.

*Section 25-8-104, C.R.S.* Specifies how the Colorado Water Quality Control Act should be interpreted concerning its effect on water rights.

*Section 25-8-201 and Section 25-8-202, C.R.S.* Creates the Water Quality Control Commission and defines its duties.

*Section 25-8-203, C.R.S.* Specifies the criteria the Water Quality Control Commission must use when classifying state waters.

*Section 25-8-204, C.R.S.* Authorizes the Water Quality Control Commission to adopt water quality standards.

*Part 3 of Article 8 of Title 25, C.R.S.* Creates the Water Quality Control Division and defines its duties.

*Section 25-8-608, C.R.S.* Authorizes penalties collected from violations of the Colorado Water Quality Control Act to be used for water quality improvement projects.

*Section 25-8-703, C.R.S.* Authorizes grants for small community water and wastewater projects.

*Section 37-95-104 and Section 37-95-106, C.R.S.* Creates the Colorado Water Resources and Power Development Authority and defines its duties.

*Section 37-95-107.6, C.R.S.* Creates the Water Pollution Control Revolving Fund and specifies loan eligibility requirements.

*Section 37-95-107.8, C.R.S.* Creates the Drinking Water Revolving Fund and specifies loan eligibility requirements.

*Section 39-29-110, C.R.S.* Specifies how severance tax revenue may be allocated for communities impacted by mineral development.



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