

WATER

Water Rights Determination and Administration

SB 14-023 (*Vetoed*)

Transfer Water Efficiency Savings
to Instream Use

SB 14-103 (*Enacted*)

Phase in High Efficiency Water
Fixtures

SB 14-145 (*Postponed Indefinitely*)

Water Conservation Incentives

HB 14-1026 (*Postponed Indefinitely*)

Water Flexible Markets

HB 14-1028 (*Postponed Indefinitely*)

Oppose Special Use Permit
for Water Rights

Groundwater Use

SB 14-147 (*Postponed Indefinitely*)

Increased Well Pumping Study
South Platte River

HB 14-1218 (*Postponed Indefinitely*)

Replace Groundwater Depletions
With Surface Water

HB 14-1332 (*Postponed Indefinitely*)

South Platte River Basin Water
Management

Funding for Water Projects

SJR 14-004 (*Enacted*)

Water Projects Revolving Fund
Eligibility Lists

HB 14-1333 (*Enacted*)

Water Conservation Board
Construction Fund Projects

Water Supply Planning

SB 14-115 (*Enacted*)

State Water Plan Public Review and
Approval by the General Assembly

During the 2014 legislative session, the Colorado legislature considered a broad range of water bills. Specifically, it addressed water issues related to increased flexibility in the use of water, groundwater use, funding for water projects, water conservation and efficiency, and water supply planning.

Water Rights Determination and Administration

The General Assembly considered several bills that address how a water rights owner may use his or her water.

Increased flexibility in the use of water. A water right is a property interest that may be sold or transferred, provided that no other water right is injured and the transfer is approved by the division water court. Currently, most of Colorado's water is used for agriculture. Agricultural water rights are also some of the most senior rights in Colorado. Consequently, the market value of these rights is steadily increasing as demand for municipal water increases. The interim Water Resources Review Committee recommended **House Bill 14-1026**, postponed indefinitely, which would have provided incentives to implement certain alternatives to permanent dry-up of irrigated lands by creating a more flexible change-in-use system. The bill would have allowed an applicant who seeks to implement fallowing, regulated deficit irrigation, reduced consumptive use cropping, or other alternatives to the permanent dry-up of irrigated lands, to apply for a change in use to any beneficial use, without designating the specific beneficial use to which the water will be applied. It defined "flex use" to mean an application of the fully consumptive portion of water that has been subject to a water right change-in-use proceeding to any beneficial use and redefined "appropriation" to exclude flex use from the anti-speculation doctrine. This doctrine limits the appropriation of water for

speculative purposes to help ensure that water is available for beneficial use rather than for the purpose of marketing the rights to others. The law requires an applicant seeking to change the beneficial use of an irrigation water right to designate a specific alternative beneficial use identified at the time of the application.

Water efficiency. Some water users may wish to reduce their water consumption in order to limit the effects of drought on stream flows. However, under current law there is a disincentive that penalizes appropriators who decrease their consumptive use of water. **Senate Bill 14-023**, vetoed by the Governor, would have allowed water efficiency savings to be transferred through a change of water right only to the Colorado Water Conservation Board (CWCB) in the Department of Natural Resources, and only for in-stream use, with the approval of a water judge, provided the change would not materially injure decreed water rights or adversely affect Colorado's interstate compact or equitable apportionment decree entitlements or obligations. Also, the amount of water transferred may not have been more than the minimum amount necessary to add to stream flows to preserve the natural environment to a reasonable degree. Water efficiency savings would have been defined as an amount of water, as determined in a water court proceeding, in water divisions 4, 5, 6, or 7 that is not consumed under existing practices by which ditch seepage, surface run-off, return flow, or tail-water return will be reduced as a result of structural improvements that increase the efficiency of water storage, diversion, conveyance, application, or use practices associated with a water right. Water efficiency savings could also have been derived from water rights that were used solely for agricultural irrigation or stock watering purposes.

Senate Bill 14-103 prohibits the sale of low-efficiency plumbing fixtures in Colorado as of September 1, 2016. This includes faucets, shower heads, flushing urinals and toilets. "Watersense-listed" plumbing fixtures are defined as having been tested and certified by an accredited third-party body or laboratory in accordance with the federal Environmental Protection Agency's Watersense program or its successor program. It also repeals less stringent standards for water fixtures included in current law. By March 1, 2017, plumbing fixture manufacturers that sell products in Colorado are required to report to the CWCB, and the House and Senate Agriculture committees on their 2016 sales in Colorado of low-efficiency and Watersense-listed plumbing fixtures. Local governments may still prescribe additional or more restrictive water conservation requirements for plumbing fixtures.

Senate Bill 14-145, postponed indefinitely, would have prohibited local government regulations from including mandated minimum percentages of irrigated space. It required that counties, municipalities, and special districts that supply water consider whether tap fees should be reduced if a subdivision developer commits to implementing water efficiency and conservation measures. The CWCB was authorized to annually expend \$500,000 from the Colorado Water Conservation Board Construction Fund for promoting water efficiency and conservation measures through incentive grants of up to \$50,000 each to public agencies for water efficiency and conservation measures. The CWCB was to give priority to local governments that require new subdivisions to implement water efficiency and conservation measures, including water-smart home landscaping.

Water ownership rights. Most ski areas in Colorado have appropriated water rights to facilitate ski area operations, including snow making. The sources of these water rights include federal lands and nonfederal lands. In 2012, the U.S. Forest Service (USFS) attempted to change the terms of its special use permits for ski areas by issuing a directive that would have prohibited ski area operators from transferring certain water rights associated with the ski area to any third parties and would have required that, if the special use permits are terminated, the ski area operators must transfer certain water rights associated with the ski area to the United States or succeeding special use permit holders without any further compensation. The National Ski Area

Association sued the USFS in federal district court in Denver, alleging that the 2012 directive violated both procedural and substantive aspects of federal law. In December 2012, the federal district court entered an injunction that prohibits the USFS from enforcing the 2012 directive. As introduced, **House Bill 14-1028**, recommended by the Water Resources Review Committee, would have specified that a water right is obtained for speculative purposes if it is obtained by the United States as a result of a transfer or conveyance required as a condition to a special use permit or right-of-way. Such rights would have been deemed forfeited by the United States and must revert to the prior owner under the right's original priority. This bill was postponed indefinitely

Groundwater Use

Under Colorado water law, a junior groundwater user may pump their well during water shortages provided they offset their impacts to streams, called depletions, using augmentation water to protect senior water rights. **House Bill 14-1218**, postponed indefinitely, would have allowed the use of surface water to replace or augment out-of-priority groundwater depletions without the necessity of filing an application for a change of water right if both the surface water and the well (groundwater) were decreed or permitted for use on the same parcel of land; the use of the surface water would not result in any enlargement in the use of water; and the use complied with a rule adopted by the State Engineer. In addition, the bill would have amended the augmentation and replacement statute for tributary water and authorized the State Engineer to adopt a pilot program to implement the bill by July 1, 2015.

A law passed in 2012 required the CWCB, in consultation with the State Engineer in the Division of Water Resources (DWR) and the Colorado Water Institute (CWI) at Colorado State University, to conduct a comprehensive study to compile and evaluate available historic hydrologic data for the South Platte River Basin. A final report was presented to the General Assembly on December 31, 2013. **House Bill 14-1332**, postponed indefinitely, would have implemented the recommendations from that report by requiring the CWCB to contract with the CWI to further study the movement of water in the alluvial aquifer, or portions of the alluvial aquifer, and the time, location, and amount of any contributions that the alluvial aquifer makes to surface flows in specified sections of the South Platte River Basin. It also would have required the development of additional information to support a potential rule-making process regarding administration of South Platte River and conduct other investigations into the basin's hydrology and management.

Senate Bill 14-147, postponed indefinitely, would have required the CWCB, in consultation with the State Engineer, to conduct a five-year study to assess the impact of increased alluvial well pumping on surface stream flows in certain parts of the South Platte River Basin. The study was to identify the relationship between the withdrawal of water from the South Platte alluvial aquifer and the volume of surface stream flows in the South Platte River. Beginning June 1, 2014, and continuing throughout the study, the State Engineer would have been required to authorize a 20 percent increase in well pumping by all wells located within the study area that are part of an adjudicated augmentation plan.

Funding for Water Projects

Each year, the Water Quality Control Commission (WQCC), 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 WQCC. 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 waste water projects. **Senate Joint Resolution 14-004** includes the 2014 Project Eligibility List for the Water Pollution Control Revolving Fund that identifies 414 projects with an estimated cost of \$4.9 billion. The resolution also includes the 2014 Project Eligibility List for the Drinking Water Revolving Fund that identifies 453 projects with an estimated cost of \$3.3 billion.

The CWCB Construction Fund is a revolving loan program to fund projects that increase the consumption of Colorado's undeveloped river entitlements and that repair and rehabilitate existing water storage and delivery facilities. The fund receives revenue from the repayment of loans, interest, and federal mineral royalty distributions. **House Bill 14-1333** appropriates \$136.6 million from the CWCB Construction Fund for a variety of water-related projects. Table 1 and Table 2 list the projects funded by the CWCB Construction Fund.

**Table 1
CWCB Construction Fund Projects and Studies**

Projects and Studies	Amount FY 2014-15
Satellite Monitoring System Maintenance (Div. of Water Resources)	\$ 330,000
Weather Modification Program	175,000
Floodplain Map Modernization Program	500,000
Watershed Restoration Program	500,000
Flood Preparedness and Response	300,000
Colorado's Decision Support System Operation and Maintenance	200,000
Arkansas Decision Support System	500,000
South Platte Groundwater Level Data Collection and Analysis	500,000
Gunnison Basin Irrigation System Planning and Organization	250,000
Drought Mitigation Strategies	100,000
Alternative Agriculture Water Transfer Sustainability Grant Program	750,000
Long Hollow Reservoir Project	\$1,575,000
TOTAL	\$5,380,000

Source: HB 14-1333

Table 2
CWCB Construction Fund Loans to Water Districts

Loans to Water Districts	Amount FY 2014-15
Chatfield Reservoir Reallocation Project	
Centennial Water and Sanitation District	\$ 45,450, 000
Central Colorado Water Conservancy District	28,280,000
Castle Pines Metropolitan District	5,050,000
Castle Pines North Metropolitan District	5,858,000
Center of Colorado Water Conservancy District	606,000
Mount Carbon Water and Sewer District	2,525,000
Water Infrastructure and Supply Efficiency (WISE) Project	
Cottonwood Water and Sanitation District	4,040,000
Inverness Water and Sanitation District	5,050,000
Parker Water and Sanitation District	12,120,000
Pinery Water and Sanitation District	1,575,000
Rangeview Metropolitan District	6,060,000
Stonegate Village Metropolitan District	\$ 6,060,000
TOTAL	\$131,199,000

Source: HB 14-1333

Water Supply Planning

Senate Bill 14-115 requires the interim Water Resources Review Committee to review statewide planning for water resources. By August 1, 2014, the CWCB is required to submit to the committee the scope, fundamental approach, and basic elements of a draft state water plan. The law requires the committee to hold at least one public hearing in each geographic region associated with basin roundtables to collect feedback from the public. The committee must provide a summary of the public's feedback as well as its own feedback to the CWCB by November 1, 2014. By July 1, 2015, the CWCB is required to submit a draft state water plan to the committee, after which the committee must hold at least one public hearing in each basin to collect feedback from the public. The committee must provide a summary of the public's feedback as well as its own feedback to the CWCB by November 1, 2015. The committee may repeat this process whenever the CWCB submits a significant amendment to the state water plan. By November 1 of each year following the submission to the committee of a state water plan or plan amendment, any member of the General Assembly may request that the committee hold one or more hearings to review the plan or plan amendment. The committee may recommend the introduction of legislation based on the results of the review.