

Colorado Water Legislation Alert

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Preview on Water Issues for the 2008 State of Colorado Legislative Session

"Adequate" Water for Development

Reports surfaced late last week that House Agriculture Chair Kathleen Curry (D) is presently drafting a bill that would impose a "more rigorous set of requirements" that developers would have to meet in order to demonstrate an adequate supply of water for new development. The Colorado River Water Conservation District is reportedly working with Representative Curry in drafting the measure, potentially setting the stage for a Front Range vs. West Slope legislative debate over the role that water plays in managed growth. Western Slope and Arkansas Valley (traditionally aligned with the Western Slope) legislators dominate the two Agriculture Committees where all water bills are heard, so the bill will most likely be fought out on the floor.

Well Augmentation Exemption

In Colorado, the first deadline for introduction of bills expires Friday, January 11. One recommendation from the Summer of 2007, South Platte River Basin Task Force has made it into bill form for this new session. The legislation, sponsored by Greg Brophy (R) in the Senate and Mary Hodge (D) in the House, will exempt from augmentation requirements any depletions in the South Platte River basin (Water Division No. 1) caused by well pumping that occurred prior to March 15, 1974.

Notwithstanding the endorsement of the Task Force, exempting these prior depletions from augmentation requirements is a controversial proposal. The debate has already intensified as certain Task Force members have objected to the language of the bill, which was drafted to include all augmentation plans, even those already adjudicated. The question is whether it was the intent of the Task Force for the exemption to apply in blanket fashion to all wells including those in existing decreed plans for augmentation, or only to new wells and wells included in augmentation plans that are currently pending before the water court. As drafted, the bill would reopen those decrees and limit the augmentation requirements of all wells, which raises numerous constitutional questions.

Committee Makeup Mostly Unchanged

There is little turnover in the membership of the House and Senate Agriculture Committees for 2008. The only new Member is Dan Gibbs, who served on House Agriculture prior to his election to the Senate and replaces Lois Tochtrop on the panel. In the House, Christine Scanlan takes over the seat vacated by Senator Gibbs. The full committee membership features the same leadership from 2007:

Senate Agriculture, Natural Resources, and Energy – Jim Isgar (D), Chairman, Gail Schwartz (D), Vice-Chair, Greg Brophy (R), Dan Gibbs (D), Ted Harvey (R), Chris Romer (D), and Jack Taylor (R).

House Agriculture, Livestock, and Natural Resources – Kathleen Curry (D), Chairman, Rafael Gallegos (D), Vice-Chair, Randy Fischer (R), Cory Gardner (R), Mary Hodge (D), Marsha Looper (R), Buffy McFadyen (D), Wes McKinley (D), Frank McNulty (R), Ray Rose (R), Christine Scanlan (D), Judy Solano (D), and Jerry Sonnenberg (R).

Water Bills Introduced in 2008 General Assembly

Bill #	Short Title	Sponsors	Comment
HB-1030	Exempt pre-1974 depletions from augmentation requirements in Division 1	Rep. Hodge (Sen. Brophy to sponsor in Senate)	This bill originated as a recommendation of the South Platte River Task Force, and provides that augmentation plans in Water Division No. 1 that are hereafter applied for or amended shall not require replacement of depletion caused by pumping that occurred prior to March 15, 1974. The legislation is controversial, especially since there is a misunderstanding as to whether the Task Force intended for the provision to apply to adjudicated plans.
SB-10	Raise per diem for Water Resources and Power Development Authority board members	Sen. Schwartz (Rep. Gardner to sponsor in House)	Raises board member per diem from \$50 to \$100 per day; authorizes board members to participate in board meetings by electronic means. Non-controversial.
SB-13	Reallocate funds in the Severance Fund Operational Account from the OGCC and Reclamation to DOW and Parks & Recreation	Sen. Schwartz (Rep. Fischer to sponsor in House)	No mandate for spending in new areas, but authorizes the General Assembly to allocate up to 5% of the operational account to DOW and Parks & Rec., respectively.